NINTH PARLIAMENT OF SINGAPORE

First Session

REPORT OF THE SELECT COMMITTEE ON THE LAND TITLES (STRATA) (AMENDMENT) BILL [BILL NO. 28/98]

Parl. 2 of 1999

Presented to Parliament on
19th April, 1999

COMPOSITION OF THE SELECT COMMITTEE

The Land Titles (Strata) (Amendment) Bill [Bill No. 28/98] was committed to the Select Committee by resolution of Parliament on 31st July 1998. The Committee consisted of:

Mr Speaker (Mr Tan Soo Khoon) (East Coast) *(Chairman)*

Mr Chng Hee Kok (East Coast)

Assoc Prof Ho Peng Kee (Sembawang), Minister of State, Ministry of Law and Ministry of Home Affairs

Prof S Jayakumar (East Coast), Minister for Law and Minister for Foreign Affairs

Mr Koo Tsai Kee (Tanjong Pagar). Parliamentary Secretary, Ministry of National Development

Mr Low Thia Khiang (Hougang)

Dr Teo Ho Pin (Sembawang)

Mr Shriniwas Rai (NMP).

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REPORT OF THE SELECT COMMITTEE ON THE LAND TITLES (STRATA) (AMENDMENT) BILL (BILL NO. 28/98)

The Select Committee to whom the Land Titles (Strata) (Amendment) Bill (Bill No. 28/98) was committed have agreed to the following Report:

Introduction

1 In accordance with Standing Order No. 76 (Advertisement when Bill committed to a Select Committee), an advertisement inviting written representations on the Land Titles (Strata) (Amendment) Bill was published in the *Berita Harian, Lianhe Zaobao, Tamil Murasu* and the *Straits Times of* 17 August 1998. Written representations could be submitted in Malay, Chinese, Tamil or English and the closing date was 7 September 1998.

Written Representations Received

2 The Committee received 46 written representations. A listing of the representations received is in Appendix II.

Meetings of the Committee

3 The Committee held 5 meetings, 3 of which were held to hear oral representations.

Representors who gave Oral Evidence

4 The Committee heard oral evidence on 30 November 1998, 3 December 1998 and 4 December 1998 from 14 representors. They were:

	Name	Paper No
(1)	Mr Ting Piew	15
(2)	Mr Leong Weng Hon	16
(3)	Mark Fong Wei Tsong	1
(4)	Mr Ng Wai Hong, representing Management Corporation Strata Title Plan No. 849	17
(5)	Mr Ng Yuen	19

	Name	Paper No
(6)	Mr Norman Ho and Mr Justin Wee from M/s Rodyk & Davidson	31
(7)	Mr Nga Thio Ping and Mrs Goh Guan Siew, representing the Collective Sale Committee, Kum Hing Court, Management Corporation Strata Title Plan No. 245	25
(8)	Mr Supardi Sujak	26
(9)	Assoc Prof Tan Sook Yee	10
(10)	Mr Wan Fook Kong, Mr Jordan Neo and Mr Tan Yew Teck, representing the Association of Property and Facility Managers	32
(11)	Dr Phang Sin Kat and Mr Tan Hock Boon, David, from M/s Phang & Co	33
(12)	Dr Lawrence Chin Kein Hoong, Dr Alice Christudason, Ms Anne Magdaline Netto and Ms Low Boon Yean, representing the School of Building and Real Estate, National University of Singapore	34
(13)	Assoc Prof Lim Lan Yuan, Dr Amy Khor, Mr Tay Kah Poh and Mr Lim Gnee Kiang, representing the Singapore Institute of Surveyors and Valuers	40
(14)	Mr Derrick Wong Ong Eu, Ms Sylvia Khoo Mei Ling and Mr Chandra Mohan, representing the Law Society of Singapore	39

Mr Yeo Heng Moh (Paper 21) was requested to give oral evidence but did not do so.

The Minutes of Evidence taken are annexed to this Report as Appendix IV.

Written Representations to be Published

5 In addition to the 15 written submissions from representors who were called to give oral representations, the Committee is also publishing the written submissions of another 15 representors. These 30 written submissions are representative of the range of views expressed (Appendix V).

The Committee's Views on Main Issues Raised

6 In considering the amendments to the Land Titles (Strata) (Amendment) Bill (Bill No. 28/98), the Committee took into account the written submissions and oral evidence of the representors, and the views of Members of Parliament expressed in the debates on the Second Reading of the Bill. This Report sets out the Committee's views on the main issues raised and the amendments which it recommends.

(1) Whether to extend the Bill to also allow en-bloc sale by majority consent for developments with 10 or fewer units

7 The Bill currently excludes developments with 10 or fewer units from en bloc sales by majority consent. It may not be possible in some of these cases to designate a clear 90% / 80% majority because of the small number of units in these developments, eg in a development with 4 units of equal share values, 3 out of the 4 owners would account for only 75% of the share values.

8 One MP and some representors felt that en-bloc sales by majority consent should also extend to developments with 10 or fewer units. Many of these developments are old or have large areas which are under-utilised, thus rendering them suitable for redevelopment. Alternatively, one representor proposed that Minister or the Strata Titles Board (Board) be empowered to decide if such a development could qualify. Others suggested lowering the consent level to 70% or allowing a sale where not more than one or two unit owners object.

9 The Committee agrees that the majority owners of developments with 10 or fewer units should also be able to apply to the Board if they can meet the specified consent level of 90% / 80%. This will make more land available for en-bloc development. However, on the lowering of the consent level, it would not be fair to minority owners in such developments to lower the consent level to 70% or to allow a sale where not more than one or two owners object as their dissenting share values could be substantial.

(2) Whether the 90% / 80% majority share value consent level should be varied

10 A number of MPs and representors argued that it would be a waste of resources to tear down a building of less than 10 years old which is relatively new. One representor felt that en-bloc sales of buildings less than 10 years old should be allowed only under exceptional circumstances. Other representors proposed that the consent level be lowered for buildings older than 20 years.

11 There were other representors who felt that market forces will determine whether an en-bloc sale is economically viable and, therefore, whether unit owners will sell and developers will buy. Demolishing buildings that are less than 10 years old will not be a waste of resources because the land would be better utilised and its economic potential maximised. Another representor proposed that if the relevant

authority decides that a particular area should be developed more intensively, a notice should be served on the unit owners in these developments to compel them to redevelop within a certain time frame.

12 The Committee recognises that ultimately it will be market forces and conditions which will determine if an en-bloc sale is economically viable. The Committee recommends that the present approach of 90% / 80% majority share value consent level for developments of less than 10 years and 10 years and more respectively should not be changed. The consent level should be pegged to the age of the development as it is more likely that older developments will be sub-optimally utilised, have higher repair bills and have more unit owners in favour of en-bloc sales.

(3) Whether there should be a system of voting different from the 90% / 80% majority consent level for mixed commercial-residential developments

13 A representor proposed that there should be a different system of voting for en-bloc sales in a mixed commercial-residential development as the commercial unit owners are likely to have more share values than the residential unit owners and can, therefore, outvote them. In addition to the 90% / 80% majority consent levels, 75% of the total owners of the units in the development must consent, or the 90% / 80% majority consent level must apply to each type of use, ie residential, shop and office.

14 The Committee has studied the proposed 2 alternatives and finds that in some of the big development cases where the shops and offices far outnumber the residential units, the share values of all the shops and offices are more than 90%. In a majority of the cases, they account for 75% of the units. To also require an 80% majority from the residential unit owners will give them a veto right. On the other hand, in some of the smaller mixed developments where the residential units outnumber the commercial units the reverse position is true. In some medium sized developments, the proportion of share values between the commercial and residential units are such that a fair number of unit owners from each use group must agree before an en-bloc sale can take place.

15 The Committee feels that adoption of either of the 2 alternatives could lead in certain cases to an en-bloc sale being blocked even though a very significant majority is in favour of the sale. It is better to have one measure and that is 90% / 80% of the share values of all the units.

(4) Whether the voting rights of unit owner-occupiers in strata developments should be more favourable than for absentee unit owners

16 Two representors proposed that an owner-occupier should have relatively more voting rights or veto rights in an en-bloc sale when compared to an owner who buys a unit for investment. This was justified on the ground that an owner-occupier has more at stake as the unit is his home.

17 The Committee is of the view there is no reason to conclude that a unit is of less value to a unit owner who buys for investment and rental than a unit owner who uses it as his home. This proposed voting system is not acceptable as it is contrary to the principle of strata ownership and management where voting is by share values. Absentee owners pay the same maintenance and sinking fund contributions as owner occupiers. Adoption of this weighted system of voting would also be contrary to the rationale of allowing en-bloc sale by majority consent of all the unit owners.

(5) Whether objections to en-bloc proposals should be heard by the High Court or the Board and whether the approach and guidelines for en-bloc sale should be made clearer and stated in the Bill

18 Under the Bill, the Board's primary role is to determine if the required majority consent and other procedures have been met. The Board would not itself review or intervene to set the terms of sale. If the minority do not object, the sale would proceed. If the minority object, the Board would consider the objection essentially in the light of whether the proposed sale is in good faith and at arm's length. Once the Board is so satisfied, the sale would proceed.

19 The Bill also provided that in hearing a case, the Board would consider the scheme and intent of the section, the interests of all subsidiary proprietors and all the circumstances of the case. To avoid limiting the flexibility of the Board, the factors which the Board would consider important in evaluating if the sale is just and fair were not included in the Bill but outlined in the Second Reading Speech, ie the sale price, method of distributing the sale proceeds, relationship of the purchaser to the unit owners (to ensure that there is no collusion) and that the minority will not suffer a financial loss, eg whether the sale proceeds for a minority owner are sufficient to redeem outstanding encumbrances (eg a mortgage or charge) on his unit and is more than the price he had paid for the unit.

20 A number of MPs and representors felt that the High Court and not the Board should hear en-bloc cases. Many representors expressed the view that the general guidelines are too broad with insufficient guidance given on how the Board will decide on objections raised including non-financial ones. Some representors also felt that the Board's approval should be obtained even if no objections were raised.

21 When the approach of the Board was clarified, all the representors who gave oral evidence agreed, without exception, that the Board, rather than the court would be the more appropriate body to mediate and hear en-bloc cases. One representor felt that the Board would not then be performing a judicial function but one that could be considered administrative.

22 The Committee, however, agrees that it is desirable that the provisions should spell out in greater detail the factors which the Board can take into account and recommends the following approach for the Board:

(a) the Board will review a case (regardless of whether there is an objection) to see whether on the face of the application it is satisfied that the transaction is in good faith and at arm's length, after taking into account the sale proceeds, method of distributing the sale proceeds and the relationship of the purchaser to any of the unit owners. It will also ensure that the sale and purchase agreement does not require a minority owner to be part of a joint venture agreement with the developer of the land. This will go some way towards addressing concerns that the Board is not sufficiently pro-active in safeguarding minority interests;

(b) when objections are raised, the Board will, where relevant, mediate. Where mediation on objections of a personal or non-pecuniary nature fails, the Board must order that the sale proceed as long as the Board is satisfied that none of the factors in (c) applies; and

(c) the Board will have power to refuse an order for sale only on the grounds that the purchase price which a minority owner will receive is less than the price he paid for his unit, including all allowable deductions; the purchase, price a minority owner receives is not sufficient for him to discharge the encumbrances (ie mortgages and charges) on his unit; the minority owner is forced to be part of a joint venture agreement with the developer; or the sale is not in good faith and at arm's length considering the factors at para (a). The Board, however, will not impose its own terms and conditions on the parties. If the Board feels that the price is too low or the method of distribution of the sale proceeds is not equitable, it will order that the sale not proceed. The majority owners must then address this issue.

(6) Whether there should be at least one general meeting of all the unit owners held to discuss the en-bloc sale before the majority can apply to the Board for an order for sale

23 A representor felt that the Bill should provide that the majority owners must hold general meetings of all the unit owners to discuss an en-bloc sale. This would facilitate a full airing of views and discussion on the terms of sale, distribution of the proceeds of sale and the terms of appointment of the 3 persons to represent the majority owners.

24 The Committee agrees that it is useful to have a meeting convened for this purpose and recommends that before the majority owners can apply to the Board for an order for sale, there must be at least one meeting convened for all the unit owners to discuss the issue of en-bloc sale. Although the meeting may discuss all relevant matters, the 90% / 80% majority will not be decided by a resolution at the meeting but will be signified by the signing of the conditional sale and purchase agreement.

(7) Whether the majority owners should be allowed to make an application to the Board for an in-principle order for sale

25 Two representors felt that the proposed procedure, which requires the majority owners to enter into a conditional sale and purchase agreement with a purchaser before they can apply to the Board was good because there was transparency and certainty. It would also reduce spurious applications to the Board and ensure that applications to the Board are made only as a last resort.

26 However, some representors felt that the process would be simpler and less uncertain if the majority owners could first apply to the Board for an in-principle order for sale. Unless there is an in-principle order for sale already granted by the Board, a purchaser may be reluctant to bid or offer a lower bid and unit owners may also not want to sign and commit themselves to the sale because they are not sure if the Board will allow the application.

27 The Committee feels that the present approach in the Bill is clearer and more certain. A conditional sale and purchase agreement makes it easier for the minority owners to review the terms and conditions of the agreement and decide whether they want to object and for the Board to decide.

28 Some representors expressed the concern that as time is of the essence, it is essential for the Board to reach a decision quickly. The Committee notes that there is a present provision in the Land Titles (Strata) Act (section 91) which requires the Board to reach a decision within 6 months.

(8) Whether the members of the Board should be increased or its composition changed to enable it to deal with en-bloc sale cases

29 A number of MPs and representors felt that the Board should be strengthened not only in numbers but in terms of its representation so that it can effectively perform its enlarged duties.

30 The Committee agrees and recommends that:

(a) the number of members on the Board's panel be increased from a proposed 24 to a maximum of 30;

(b) the Minister may appoint up to 3 Deputy Presidents instead of the proposed 2 Deputy Presidents; and

(c) the President of the Board be given the power (where he considers necessary) to appoint 4 instead of 2 panel members to form a Board of 5 or 3 persons headed by the President or a Deputy President.

(9) Whether the Board should decide on compensation payable to the lessee of a minority owner's unit

31 A number of representors felt that the Board should decide on the compensation payable to the lessee of a minority owner to expedite and facilitate an en-bloc sale. The minority owner may be unable to agree with his lessee on the latter's compensation.

32 The Committee agrees and recommends that the Board will on application determine the amount of compensation payable to the lessee of a minority owner. Such a lessee cannot object to the sale but he or the minority owner can apply to the Board for determination of compensation. However, the Board will not decide on the compensation payable to the lessees of the majority owners, as the latter must make their own arrangements with their lessees before they commit themselves to the en-bloc sale.

33 One representor suggested that to obviate cases where lessees demand unreasonable compensation, the Bill should stipulate the maximum amount of compensation payable. The Committee feels that it is difficult at this stage to decide on the maximum amount of compensation. This is a matter on which the Board could formulate some guidelines when it deals with its first case, where this issue arises

(10) Whether the method for distributing the en-bloc sale proceeds among the unit owners should be specified in the Bill

34 An MP and some representors stated that they would like the Bill to specify a method for distributing the sale proceeds among the unit owners because this is one of the most common areas of disagreement among the unit owners.

35 All the representors who gave oral evidence on this point agreed that there are a multitude of factors to be considered in deciding on a method for distributing sale proceeds, eg share values, size or market value of the unit, etc. It would be very difficult to specify one method that could apply to all sizes, designs and types of developments, whether they be wholly residential, commercial, industrial or mixed residential and commercial.

36 The Committee is, therefore, of the view that it is not practicable to specify a method for distributing the proceeds of sale in the Bill. It would be better for the majority owners to seek advice from a property consultant and decide on a distribution arrangement which would take into account the peculiar circumstances of their case and the interests of the minority. The minority owners' interests are safeguarded as they can file an objection with the Board on the method of distribution.

(11) Whether the Bill should set out in greater detail the procedural requirements for service of notice on all the owners of units and other interested parties

37 A number of representors felt that the procedure for service of notice on the owners and other interested parties should be made clearer and included in the Bill. One representor felt that there should be personal service. Another proposed that the majority owners be required to register the notice of their application to the Board with the Registry of Titles or Deeds to alert all potential purchasers to an en-bloc sale.

38 The Committee agrees that the Bill should set out the procedural requirements in the Bill. The procedure which the Committee recommends includes:

(a) advertisement in all the 4 language newspapers;

(b) service of notice of the sale to all the owners, the mortgagees and chargees and the management corporation by, registered post and by leaving a copy under the main door of every unit;

(c) affixing a copy of the notice to the door or gate of a minority owner;

(d) affixing a copy of the notice to a conspicuous part of each building in the development; and

(e) filing a copy of the application to the Board with the Registrar of Titles and Deeds for notification on the land register.

39 In view of these detailed provisions to ensure that the owners are given adequate notice of an en-bloc sale, the Committee is of the view that personal service in accordance with the Rules of the Supreme Court is not required.

(12) Whether the proceeds of an en-bloc sale should be exempted from estate duty and whether the tax on capital gains from a unit in an en-bloc sale sold within 3 years of purchase should be waived

40 One representor felt that the proceeds of an en-bloc sale should be exempted from estate duty. The Committee feels that as compensation on compulsory acquisition is not exempted from estate duty, there is no justification to exempt en-bloc sale proceeds.

41 One representor felt that income tax payable on capital gains for properties sold within 3 years of purchase should be waived where a unit owner sells his unit in an en-bloc sale within 3 years of purchase. The Committee recognises that it is impossible to accept that all parties will have equal gains in an en-bloc sale. Some will gain more than others. There should be no waiver of the income tax payable on capital gains.

(13) Whether the Bill should be extended to cover en-bloc sales of landed properties

42 An MP proposed that en-bloc sales by majority consent should also apply to landed properties, especially where they are in poor condition. One representor stated that there may be cases where the use of these lands could be maximised but for an owner of an intermediate piece of land refusing to sell en-bloc, thereby preventing the optimal utilisation of a larger area of land for redevelopment.

43 The Committee notes that the Minister and Minister of State (Law) have stated that en-bloc sales by majority consent will not apply to landed properties. The Committee agrees that en-bloc sale by majority consent should apply only to strata developments. The principle of majority consent in a strata development and the fact of communal living in a strata development with shared obligations to maintain common property do not apply to landed properties.

(14) Amendment unrelated to en-bloc sale and Drafting amendments

44 **Whether jurisdiction to decide on disputes between the management corporation and the unit owners with the developer should be removed from the Board**

An MP and one representor felt that the STB should have jurisdiction to decide on complaints against developers for minor maintenance defects in the common areas or facilities which should be rectified before the developer hands over the management of the development to the elected council at the first annual general meeting or before the expiry of the initial period of 2 years from the date when the management corporation is formed. They agreed that other disputes with the developer, such as complaints on inherent or major defects, are more complex and protracted and will be better handled by the courts.

45 The Committee notes that the Board is a quasi judicial body set up to decide disputes between the management corporation and the unit owners and among the unit owners themselves on the maintenance and management of strata developments. Disputes with developers on defects in a strata development (whether major or minor) are no different from and are similar to disputes with developers on defects in landed property or non-strata titled properties, eg a bungalow or terrace house. The court presently deals with all the latter cases. Similarly, complaints on defects in a strata development (whether major or minor) should also be handled by the court.

46 **Drafting amendments**

A number of drafting amendments proposed by the representors were accepted by the Committee and incorporated in the Bill.

Summary of Recommendations of the Select Committee for Amendment to the Bill

47 The Select Committee, having deliberated on these issues, recommends that:

(a) the Bill be extended to allow en-bloc sales by majority consent for developments with 10 or fewer units where the majority owners can meet the 90% / 80% consent level;

(b) the approach and guidelines for the Board should be spelt out in greater detail in the Bill and the Board shall proceed as follows:

(i) the Board will review a case (regardless of whether there is an objection) to see whether on the face of the application it is satisfied that the transaction is in good faith and at arm's length, after taking into account the sale proceeds, method of distributing the sale proceeds and the relationship of the purchaser to any of the owners. It will also ensure that the sale and purchase agreement does not require a minority owner to be part of a joint venture agreement with the developer of the land;

(ii) when objections are raised, the Board will, where relevant, mediate. Where mediation on objections of a personal or non-pecuniary nature fails, the Board will order that the sale proceed if the Board is satisfied that none of the factors in paragraph (b)(iii) apply; and

(iii) the Board will have power to refuse an order for sale only on the grounds that the purchase price which a minority owner will receive is less than the price he paid for the property, including all allowable deductions; the purchase price a minority owner receives is not sufficient for him to discharge the encumbrances (ie mortgages and charges) on his unit; a minority owner is forced to enter into a joint venture agreement with the developer, or the sale is not in good faith and at arm's length taking into account the factors in paragraph (b)(i);

(c) before the majority owners can apply to the Board for an order for sale, there must be at least one meeting convened for all the unit owners to discuss the issue of en-bloc sale; and

(d) (i) the number of members on the Board's panel be increased from a proposed 24 to a maximum of 30;

(ii) the Minister may appoint up to 3 Deputy Presidents instead of the proposed 2 Deputy Presidents; and

(iii) the President of the Board be given the power (where he considers necessary) to appoint 4 instead of 2 panel members to form a Board together with the President or a Deputy President;

(e) the Board will, on application by a minority owner or his lessee, determine the amount of compensation payable to the lessee of a minority owner; and

(f) the procedure for service of notice is as follows and should be included in the Bill:

(i) advertisement in all the 4 language newspapers;

(ii) service of notice of the sale to all the unit owners, the mortgagees and chargees and the management corporation by registered post and by leaving a copy under the main door of every unit;

(iii) affixing a copy of the notice to the door or gate of a minority owner;

(iv) affixing a copy of the notice to a conspicuous part of each building in the development; and

(v) filing a copy of the application to the Board with the Registrar of Titles and Deeds for notification on the land register.

Text of Amendments to the Bill

48 The amendments to the Land Titles (Strata) (Amendment) Bill (Bill No. 28/1998) which are recommended by the Select Committee are incorporated in the reprint of the Bill which is annexed to this report as Appendix I.

Reprint of the Land Titles (Strata) (Amendment) Bill
[Bill No. 28/98] as amended by the Select Committee

A BILL

intituled

An Act to amend the Land Titles (Strata) Act (Chapter 158 of the 1988 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act may be cited as the Land Titles (Strata) (Amendment) Act 1.999 and shall come into operation on such date as the Minister may, by notification in the *Gazette,* appoint.

Amendment of section 3

2. Section 3 of the Land Titles (Strata) Act (referred to in this Act as the principal Act) is amended -

(a) by inserting, immediately after the definition of "assurance", the following definition:

" "Board" means a Strata Titles Board constituted under section 86;"; and

(b) by inserting, immediately after the definition of "planning permission", the following definition:

" "President" means the President or a Deputy President of the Boards and includes an acting President;".

Amendment of section 7

3. Section 7 of the principal Act is amended -

(a) by deleting the words "or (8)" in subsection (11) and substituting the words ", (8) or (15)"; and

(b) by inserting, immediately after subsection (13), the following subsections:

"(14) Subsection (1) shall not apply where a purchaser has entered into a contract to dispose of a new flat in his proposed development project on the land to -

(a) a subsidiary proprietor of a lot in a strata title plan under section 84A;

(b) a registered proprietor of a flat in a development under section 84D, 84E or 84F;

(c) a registered proprietor of a lot or a flat where the owners of all the lots and flats in the development have agreed to sell their lots or flats to the purchaser; or

(d) a registered proprietor of land (other than a lot or flat) who has agreed to sell the land to the purchaser either by itself or together with the registered proprietors of any adjacent land,

before the legal completion of the transfer for the lot, flat or land, as the case may be.

(15) Where a purchaser referred to in subsection (14) has been registered as the proprietor of the lots, flats or land referred to in that subsection and has obtained planning permission from the competent authority in respect of any proposed development of the land intended for strata subdivision after the completion of any building thereon, he shall, within 6 months of obtaining the planning permission, file the schedule of strata units with the Commissioner in accordance with subsection (1) and shall not sell any other flat in the development before the share values are accepted by the Commissioner.

(16) Subsections (2) to (10) and (13) shall apply, with the necessary modifications, to any development referred to in subsection (14), including the modification that subsection (6) shall apply to such a development after the Commissioner has accepted the schedule of strata units filed under subsection (15).".

Amendment of section 45

4. Section 45 of the principal Act is amended -

(a) by inserting, immediately after subsection (3), the following subsection:

"(3A) Where an order made under Part VI has not been complied with, the management corporation may carry out any work specified in the order and recover from the person against whom the order was made the cost of so doing as a debt in a court of competent jurisdiction."; and

(b) by inserting, immediately before the word "the" in the tenth line of subsection (4), the words "and the defect is not due to any breach of the duty imposed on any person by section 57 (a),".

Amendment of section 49

5. Section 49 (1) of the principal Act is amended -

(a) by deleting the word "or" at the end of paragraph (c);

(b) by deleting the comma at the end of paragraph (d) and substituting the word "; or", and by inserting immediately thereafter the following paragraph:

"(e) any investigation or work required to be carried out by a management corporation under any order made by a Board under section 103,"; and

(c) by inserting, immediately after the words "purpose of" in the fifteenth line, the words "investigating or".

Amendment of section 54

6. Section 54 (1) of the principal Act is amended -

(a) by deleting the word "and" at the end of paragraph (c) (iv); and

(b) by deleting the full-stop at the end of sub-paragraph (v) of paragraph (c) and substituting the word "; and", and by inserting immediately thereafter the following sub-paragraph:

"(vi) whether the management corporation has received a copy of any application or order of the Board made under section 84A.".

Amendment of section 78

7. Section 78 of the principal Act is amended by inserting, immediately after subsection (10), the following subsection:

"(11) No application shall be made under this section where the only reason for the application by the subsidiary proprietors for the sale of all the lots and common property in a strata title plan is that they -

(a) have not been able to satisfy the requirement under section 84A (1);

(b) have been able to satisfy the requirement under section 84A (1) but have not made an application to a Board under section 84A (1); or

(c) have been able to satisfy the requirement under section 84A (1) but their application for an order under section 84A has been refused by a Board.".

New Part VA

8. The principal Act is amended by inserting, immediately after section 84, the following Part:

"PART VA

COLLECTIVE SALE OF PROPERTY

Application for collective sale of parcel by majority of subsidiary proprietors who have made conditional sale and purchase agreement

84A.-(1) An application to a Board for an order for the sale of all the lots and common property in a strata title plan may be made by -

(a) the subsidiary proprietors of the lots with not less than 90% of the share values where less than 10 years have passed since the date of the issue of the latest Temporary Occupation Permit on completion of any building comprised in the strata title plan or, if no Temporary Occupation Permit was issued, the date of the issue of the latest Certificate of Statutory Completion for any building comprised in the strata title plan, whichever is the later; or

(b) the subsidiary proprietors of the lots with not less than 80% of the share values where 10 years or more have passed since the date of the issue of the latest Temporary Occupation Permit on completion of any building comprised in the strata title plan or, if no Temporary Occupation Permit was issued, the date of the issue of the latest Certificate of Statutory Completion for any building comprised in the strata title plan, whichever is the later,

who have agreed in writing to sell all the lots and common property in the strata title plan to a purchaser under a sale and purchase agreement which specifies the proposed method of distributing the sale proceeds to all the subsidiary proprietors (whether in cash or kind or both), subject to an order being made under subsection (6) or (7).

(2) The subsidiary proprietors referred to in subsection (1) shall appoint not more than 3 persons from among themselves to act jointly as their authorised representatives in connection with any application made under that subsection.

(3) No application may be made under subsection (1) by the subsidiary proprietors referred to in that subsection unless they have complied with the requirements specified in the Fourth Schedule and provided an undertaking to pay the costs of the Board under subsection (5).

(4) A subsidiary proprietor of any lot in the strata title plan who has not agreed in writing to the sale referred to in subsection (1) and any mortgagee, chargee or other person (other than a lessee) with an estate or interest in land and whose interest is notified on the land register for that lot may each file an objection with a Board stating the grounds for the objection within 21 days of the date of the notice served pursuant to the Fourth Schedule or such further period as the Board may allow.

(5) The Board shall have power -

(a) to mediate in any matter arising from an application made under subsection (1); and

(b) to call for a valuation report or other report and to require the subsidiary proprietors referred to in subsection (1) to pay for the costs.

(6) Where an application has been made under subsection (1) and no objection has been filed under subsection (4), the Board shall, subject to subsection (9), approve the application and order that the lots and common property in the strata title plan be sold.

(7) Where one or more objections have been filed under subsection (4), the Board shall, subject to subsection (9), after mediation, if any, approve the application made under subsection (1) and order that the lots and common property in the strata title plan be sold unless, having regard to the objections, the Board is satisfied that -

(a) any objector, being a subsidiary proprietor, will incur a financial loss; or

(b) the proceeds of sale for any lot to be received by any objector, being a subsidiary proprietor, mortgagee or chargee, are insufficient to redeem any mortgage or charge in respect of the lot.

(8) For the purposes of subsection (7) (a), a subsidiary proprietor -

(a) shall be taken to have incurred a financial loss if the proceeds of sale for his lot, after any deduction allowed by the Board, are less than the price he paid for his lot;

(b) shall not be taken to have incurred a financial loss by reason only that his net gain from the sale of his lot will be less than the other subsidiary proprietors.

(9) The Board shall not approve an application made under subsection (1) if the Board is satisfied that -

(a) the transaction is not in good faith after taking into account only the following factors:

(i) the sale price for the lots and the common property in the strata title plan;

(ii) the method of distributing the proceeds of sale; and

(iii) the relationship of the purchaser to any of the subsidiary proprietors; or

(b) the sale and purchase agreement would require any subsidiary proprietor who has not agreed in writing to the sale to be a party to any arrangement for the development of the lots and the common property in the strata title plan.

(10) Where no objection has been filed under subsection (4), the determination under subsection (9) shall be made by the Board on the basis of the facts available to the Board.

(11) The Board may make all such other orders and give such directions as may be necessary or expedient to give effect to any order made under subsection (6) or (7).

(12) The Board may, at any time it thinks fit, extend, vary, revoke or discharge any order made under this section, and may vary any term or condition upon or subject to which any such order has been made.

(13) A notice sent by registered post under the Fourth Schedule shall be deemed to be duly served on the person to whom it is addressed 2 days after the day on which the notice was

posted, notwithstanding the fact that the letter may be returned by the post office as undelivered.

(14) The Minister may, by order published in the *Gazette,* amend or add to the Fourth Schedule.

(15) For the purposes of this section, "subsidiary proprietor" includes a successor in title.

Effect of order of Board

84B.-(1) Where a Board has made an order under section 84A (6), (7) or (11) -

(a) the order shall bind all the subsidiary proprietors of the lots in the strata title plan, their successors in title and assigns and any mortgagee, chargee or other person with an estate or interest in land;

(b) the subsidiary proprietors of the lots shall sell the lots and common property in accordance with the sale and purchase agreement; and

(c) a lease affecting any of the lots in the strata title plan (other than a lease held by a subsidiary proprietor) shall, if there is no earlier agreed date, determine on the date on which vacant possession is to be given to the purchaser of the lots and common property.

(2) Nothing in subsection (1) (c) shall prejudice the rights of any lessee of a subsidiary proprietor to compensation from the subsidiary proprietor.

(3) A subsidiary proprietor of a lot who has not agreed in writing to a sale under section 84A or any lessee of the lot may, at any time after an application has been made under section 84A (1) and before the Board has approved the application for sale, apply to the Board to determine the amount of compensation payable to the lessee.

(4) The subsidiary proprietors of the lots who have not agreed in writing to the sale under section 84A and any mortgagee, chargee or other person with an estate or interest in those lots shall, for the purposes of the sale of the lots and common property, produce the certificates of title for the lots to the person having conduct of the sale, the representatives appointed under section 84A (2) or to their solicitors.

Power of Board to appoint person to act for certain subsidiary proprietor

84C.-(1) Where a Board has made an order under section 84A (6), (7) or (11), the Board may, on application by the representatives of the subsidiary proprietors appointed under section 84A (2), appoint any person to deal with all matters in connection with the sale of any lot -

(a) where the subsidiary proprietor of the lot has died and no personal representative has been appointed; or

(b) in such other case as the Board thinks fit.

(2) The Board may authorise the person appointed under subsection (1) to act for the subsidiary proprietor concerned in all aspects of the sale, including the redemption of mortgages and charges, the execution of the transfer, the receipt of moneys, the settlement of encumbrances on the lot, applying for a replacement or subsidiary certificate of title, giving valid receipts thereof and as soon as practicable paying the remaining moneys into court under section 65 of the Trustees Act (Cap. 337).

(3) The execution of any instrument in respect of any lot by the person appointed under subsection (1) shall have the same force and validity as if it had been executed by the subsidiary proprietor in whom the lot is vested.

(4) When the transfers of the lots in the strata title plan are lodged for registration under this Act, the authorised representatives or the solicitor acting for the subsidiary proprietors or the person appointed under subsection (1) shall certify in such form as the Registrar may approve that the provisions of section 84A have been complied with; and the certificate in favour of the purchaser of the lots and common property and the Registrar shall be conclusive evidence of the facts stated therein.

Application for collective sale of parcel not registered under Act by majority of proprietors where proprietors of flats own the land

84D.-(1) This section shall apply where there are subsisting leases of flats in a development registered under the Registration of Deeds Act (Cap. 269) or the Land Titles Act (Cap. 157) and the proprietors of the flats own the land comprised in the development.

(2) An application to a Board for an order for the sale of all the flats and the land in a development to which this section applies may be made by -

(a) the proprietors of the flats who own not less than 90% share of the land where less than 10 years have passed since the date of the issue of the latest Temporary Occupation Permit on completion of any building comprised in the development or, if no Temporary Occupation Permit was issued, the date of the issue of the latest Certificate of Statutory Completion for any building comprised in the development, whichever is the later; or

(b) the proprietors of the flats who own not less than 80% share of the land where 10 years or more have passed since the date of the issue of the latest Temporary Occupation Permit on completion of any building comprised in the development or, if no Temporary Occupation Permit was issued, the date of the issue of the latest Certificate of Statutory Completion for any building comprised in the development, whichever is the later,

who have agreed in writing to sell all the flats and the land in the development to a purchaser under a sale and purchase agreement which specifies the proposed method of distributing the sale proceeds to all the proprietors of the flats (whether in cash or kind or both), subject to an order being made under subsection (4) or (5).

(3) A proprietor of any flat in the development who has not agreed in writing to the sale referred to in subsection (2) and any mortgagee, chargee or other person (other than a lessee) with an estate or interest in the flat and whose interest is notified on the land register for that flat may each file an objection with a Board stating the grounds for the objection within 21 days of the date of the notice served pursuant to the Fourth Schedule or such further period as the Board may allow.

(4) Where an application has been made under subsection (2) and no objection has been filed under subsection (3), the Board shall, subject to subsection (7), approve the application and order that the flats and the land in the development be sold.

(5) Where one or more objections have been filed under subsection (3), the Board shall, subject to subsection (7), after mediation, if any, approve the application made under subsection (2) and order that the flats and the land in the development be sold unless, having regard to the objections, the Board is satisfied that –

(a) any objector, being a proprietor, will incur a financial loss; or

(b) the proceeds of sale for any flat to be received by any objector, being a proprietor, mortgagee or chargee, are insufficient to redeem any mortgage or charge in respect of the flat.

(6) For the purposes of subsection (5) (a), a proprietor –

(a) shall be taken to have incurred a financial loss if the proceeds of sale for his flat, after any deduction allowed by the Board, are less than the price he paid for his flat;

(b) shall not be taken to have incurred a financial loss by reason only that his net gain from the sale of his flat will be less than the other proprietors.

(7) The Board shall not approve an application made under subsection (2) if the Board is satisfied that -

(a) the transaction is not in good faith after taking into account only the following factors;

(i) the sale price for the flats and the land in the development;

(ii) the method of distributing the proceeds of sale; and

(iii) the relationship of the purchaser to any of the proprietors; or

(b) the sale and purchase agreement would require any proprietor who has not agreed in writing to the sale to be a party to any arrangement for the development of the flats and the land in the development.

(8) Where no objection has been filed under subsection (3), the determination under subsection (7) shall be made by the Board on the basis of the facts available to the Board.

(9) Sections 84A (2), (3), (5), (11), (12) and (13), 84B and 84C shall apply, with the necessary modifications, to any application or order made under this section.

(10) For the purposes of this section -

"development" means any parcel of land with one or more buildings where the parcel is owned by the proprietors of the flats;

"proprietor" includes a successor in title.

Application for collective sale where proprietors of flats own leasehold estate of at least 999 years or other estate in flats not registered under Act but do not own the land

84E.-(1) This section shall apply where there are subsisting leases of flats in a development registered under the Registration of Deeds Act (Cap. 269) or the Land Titles Act (Cap. 157) for a leasehold estate of 999 years or more or for such other estate as the Minister may, by notification in the *Gazette,* specify and where the proprietors of the flats do not own the land comprised in the development.

(2) The proprietors of 25% of the flats to which this section applies may apply to the Registrar for notional shares in the land to be assigned to each of the flats based on the method used by the Commissioner for the allocation of share values.

(3) An application to a Board for an order for the sale of all the flats and the land in a development to which this section applies may be made by -

(a) the proprietors of the flats who own not less than 90% notional share of the land where less than 10 years have passed since the date of the issue of the latest Temporary Occupation Permit on completion of any building comprised in the development or, if no Temporary Occupation Permit was issued, the date of the issue of the latest Certificate of Statutory Completion for any building comprised in the development, whichever is the later; or

(b) the proprietors of the flats who own not less than 80% notional share of the land where 10 years or more have passed since the date of the issue of the latest Temporary

Occupation Permit on completion of any building comprised in the development or, if no Temporary Occupation Permit was issued, the date of the issue of the latest Certificate of Statutory Completion for any building comprised in the development, whichever is the later,

who have agreed in writing to sell all the flats in the development to a purchaser under a sale and purchase agreement which specifies the proposed method of distributing the sale proceeds to all the proprietors of the flats (whether in cash or kind or both), subject to an order being made under subsection (6) or (7).

(4) The proprietors of the flats referred to in subsection (3) shall also serve a copy of the notice to be served pursuant to the Fourth Schedule on the proprietor of the land and every mortgagee, chargee or other person with an estate or interest in the land and whose interest is notified on the land register for that land.

(5) A proprietor of any flat in the development who has not agreed in writing to the sale referred to in subsection (3) and any mortgagee, chargee or other person (other than a lessee) with an estate or interest in the flat and whose interest is notified on the land register for that flat may each file an objection with a Board stating the grounds for the objection within 21 days of the date of the notice served pursuant to the Fourth Schedule or such further period as the Board may allow.

(6) Where an application has been made under subsection (3) and no objection has been filed under subsection (5), the Board shall, subject to subsection (9), approve the application and order that the flats and the land in the development be sold.

(7) Where one or more objections have been filed under subsection (5), the Board shall, subject to subsection (9), after mediation, if any, approve the application made under subsection (3) and order that the flats and the land in the development be sold unless, having regard to the objections, the Board is satisfied that -

(a) any objector, being a proprietor, will incur a financial loss; or

(b) the proceeds of sale for any flat to be received by any objector, being a proprietor, mortgagee or chargee, are insufficient to redeem any mortgage or charge in respect of the flat.

(8) For the purposes of subsection (7) (a), a proprietor -

(a) shall be taken to have incurred a financial loss if the proceeds of sale for his flat, after any deduction allowed by the Board, are less than the price he paid for his flat;

(b) shall not be taken to have incurred a financial loss by reason only that his net gain from the sale of his flat will be less than the other proprietors.

(9) The Board shall not approve an application made under subsection (3) if the Board is satisfied that –

(a) the transaction is not in good faith after taking into account only the following factors:

(i) the sale price for the flats and the land in the development;

(ii) the method of distributing the proceeds of sale; and

(iii) the relationship of the purchaser to any of the proprietors; or

(b) the sale and purchase agreement would require any proprietor who has not agreed in writing to the sale to be a party to any arrangement for the development of the flats and the land in the development.

(10) Where no objection has been filed under subsection (5), the determination under subsection (9) shall be made by the Board on the basis of the facts available to the Board.

(11) Where a Board has made an order for the sale of the flats and the land, the proprietor of the land shall be deemed to have transferred his estate and interest in the land to the purchaser without consideration upon the registration by the Registrar of the transfers of all the flats (except the flats deemed to be owned by the proprietor under subsection (14)) in the development and the Registrar shall enter a notification of the vesting of the land in the purchaser on the land register.

(12) The proprietors of the flats who have not agreed in writing to the sale, the proprietor of the land, a mortgagee, chargee or other person with an estate or interest in land, where applicable, shall produce the title deeds for the flats or the land to the person having conduct of the sale, the representatives appointed under section 84A (2) or to their solicitors.

(13) If the title deeds for the flats or the land are not produced under subsection (12), the person having conduct of the sale shall not be required to produce to the purchaser any title deed other than a certified true copy of the title deed or a subsidiary certificate of title.

(14) Where the proprietor of the land in a development referred to in subsection (1) has granted leases for some but not all the flats in the development, he shall be deemed to be the proprietor of the flats which are still owned by him.

(15) Sections 84A (2), (3), (5), (11), (12) and (13), 84B and 84C shall apply, with the necessary modifications, to any application or order made under this section.

(16) For the purposes of this section -

"development" means any parcel of land with one or more buildings;

"proprietor" includes a successor in title.

Application for collective sale by all proprietors of flats who own leasehold estate of at least 999 years or other estate in flats not registered under Act but do not own the land

84F.-(1) This section shall apply where there are subsisting leases of flats registered under the Registration of Deeds Act (Cap. 269) or the Land Titles Act (Cap. 157) for a leasehold estate of 999 years or more or for such other estate as the Minister may, by notification in the *Gazette,* specify and where the proprietors of the flats do not own the land comprised in the development.

(2) Where the proprietors of all the flats in a development to which this section applies agree in writing under a sale and purchase agreement to sell all their flats to a purchaser (whether in cash or kind or both), they shall serve a notice on the proprietor of the land and every mortgagee, chargee or other

person with an estate or interest in the land and whose interest is notified on the land register at least 21 days before the date of the first transfer of any such flat informing them of the transfer under subsection (4).

(3) Notice under subsection (2) shall be given by -

(a) advertising the proposed sale in such local newspapers in the 4 official languages as approved by the Registrar;

(b) serving the notice on the proprietor of the land and every mortgagee, chargee or other person with an estate or interest in the land and whose interest is notified on the land register by registered post; and

(c) affixing a copy of the notice in the 4 official languages to a conspicuous part of each building in the development.

(4) The proprietor of the land referred to in subsection (2) shall be deemed to have transferred his estate and interest in the land to the purchaser without consideration upon the registration by the Registrar of the transfers of all the flats in the development and the Registrar shall enter a notification of the vesting of the land in the purchaser on the land register.

(5) A notice sent by registered post under this section to a proprietor of the land, his mortgagee, chargee or other person with an estate or interest in the land and whose interest is notified on the land register at its last registered address in the case of a company registered under the Companies Act (Cap. 50) or otherwise at its last recorded address at the Registry of Titles or the Registry of Deeds, as the case may be, shall be deemed to be duly served on the person to whom it is addressed 2 days after the day on which the notice was posted, notwithstanding the fact that the letter may be returned by the post office as undelivered.

(6) When the transfers of the flats to which this section applies are lodged for registration with the Registrar, the solicitors acting for the proprietors of the flats shall certify in such form as the Registrar may determine that the provisions of this section have been complied with, and the certificate in favour of the purchaser and the Registrar shall be conclusive evidence of the facts stated therein.

(7) Section 84E (12), (13), (14) and (16) shall apply, with the necessary modifications, to a development to which this section applies.".

Repeal of section 85

9. Section 85 of the principal Act is repealed.

Amendment of section 86

10. Section 86 of the principal Act is amended -

(a) by inserting, immediately after subsection (1), the following subsections:

"(1A) The Minister may appoint not more than 3 Deputy Presidents of the Boards.

(1B) Unless otherwise provided by this Act, a Board shall determine by arbitration every dispute of which it has cognizance and every matter with respect to which it has jurisdiction under this Act.";

(b) by inserting, immediately after the word "two" in the 5th line of subsection (2), the words "or 4";

(c) by inserting, immediately after subsection (2), the following subsections:

"(2A) Any party to a dispute of which a Board has cognizance, or a matter with respect to which a Board has jurisdiction, under this Act may, within the prescribed period and for any reasonable cause, object in writing to any member of the Board selected by the President under subsection (2).

(2B) The Board shall be constituted -

(a) upon the expiration of the prescribed period if the Registrar of the Boards does not earlier receive any objection under subsection (2A);

(b) if any objection received under subsection (2A) is allowed by the President, upon the selection of another member by the President; or

(c) if any objection received under subsection (2A) is disallowed by the President, upon the decision to disallow the objection."; and

(d) by deleting the words "the Deputy President" in subsections (2) and (3) and substituting in each case the words "a Deputy President".

Amendment of section 87

11. Section 87 (1) of the principal Act is amended by deleting the words "20 persons" and substituting the words "not more than 30 persons".

Amendment of section 92

12. Section 92 of the principal Act is amended -

(a) by deleting the word "such" in subsection (1) and substituting the words "a Registrar of the Boards (referred to in this Part as the Registrar) and such other";

(b) by inserting, immediately after subsection (1), the following subsections:

"(1A) Subject to the directions of the President, the Registrar may, in connection with any application to a Board, make interlocutory orders.

(1B) The Registrar shall, in the performance of his functions and duties under subsection (1A), have the same protection and immunity as a member of a Board."; and

(c) by inserting, immediately after the words "remuneration of" in subsection (2), the words "the Registrar,".

Amendment of section 99

13. Section 99 (1) of the principal Act is amended by deleting the words "planning approval" in paragraph (a) and substituting the words "planning permission for the development of land".

Repeal and re-enactment of section 103

14. Section 103 of the principal Act is repealed and the following section substituted therefor:

"Disputes regarding performance of functions, etc.

103.-(1) Subject to subsections (4), (6) and (7), a Board may, pursuant to an application by a management corporation, subsidiary proprietor, mortgagee in possession, lessee or occupier of a lot in a subdivided building, make an order for the

settlement of a dispute, or the rectification of a complaint, with respect to -

(a) any defect in a lot, a subdivided building or its common property;

(b) the liability of a subsidiary proprietor to bear the costs of or any part thereof for any work carried out by a management corporation in the exercise or performance of its powers, duties or functions conferred or imposed by this Act or the by-laws relating to the subdivided building; or

(c) the exercise or performance of, or the failure to exercise or perform, a power, authority, duty or function conferred or imposed by this Act or the by-laws relating to the subdivided building.

(2) An order under subsection (1) may be made on -

(a) any person entitled to make an application under this section; or

(b) the chairman, secretary or treasurer of a management corporation or its council.

(3) Any order made under subsection (1), except an order made with respect to the exercise or performance of, or the failure to exercise or perform, a power, authority, duty or function conferred or imposed by this Act or the by-laws, may provide for the payment of damages.

(4) For the purposes of this section, where a management corporation has a, discretion as to whether or not to exercise or perform a power, authority, duty or function conferred or imposed on it by this Act or the by-laws, it shall be deemed to have refused or failed to exercise or perform that power, authority, duty or function only if it has decided not to exercise or perform that power, authority, duty or function.

(5) For the purposes of subsection (4), where an application is made to a management corporation to exercise a discretion referred to in that subsection, and the management corporation does not, before the expiration of 2 months after the making of the application -

(a) exercise or perform a power, authority, duty or function in accordance with the application; or

(b) inform the applicant that it has decided not to exercise or perform the power, authority, duty or function in accordance with the application,

the management corporation shall be deemed to have decided not to exercise or perform the power, authority, duty or function.

(6) Nothing in subsection (1) shall empower a Board to make an order with respect to the exercise or performance of, or the failure to exercise or perform, a power, authority, duty or function of a management corporation where that power, authority, duty or function may, in accordance with any provision of this Act or the by-laws, only be exercised or performed pursuant to a unanimous resolution or a special resolution.

(7) An order in respect of any matter dealt with in any other section in this Part shall not be made under this section.

(8) Subsection (5) shall apply to any application to a management corporation made before the date of commencement of the Land Titles (Strata) (Amendment) Act 1999 as if the application had been made immediately after that date.".

Amendment of section 109

15. Section 109 of the principal Act is amended -

(a) by deleting the words "For the purpose of securing compliance with an order under this Part" in the first and second lines of subsection (2) and substituting the words "Without prejudice to subsection (1)"; and

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

"(3) Any order made by a Board under this Act may, by leave of a District Court, be enforced against the person in the same manner as a judgment of that Court, and where leave is so given, judgment may be entered in terms of that order.".

Repeal and re-enactment of section 110

16. Section 110 of the principal Act is repealed and the following section substituted therefor:

"Representation before Board

110.-(1) A party to any proceedings under this Act may appear before a Board or may be represented by counsel, or such other person as the Board may allow, who may examine witnesses and address the Board on behalf of the party.

(2) A management corporation appearing before a Board may be represented by counsel, a member of the council of the management corporation or such other personas the Board may allow.".

Amendment of section 118

17. Section 118 of the principal Act is amended -

(a) by deleting subsection (1) and substituting the following subsection:

"(1) In any proceedings brought by one or more subsidiary proprietors against the management corporation, or by the management corporation against one or more subsidiary proprietors (including subsidiary proprietors joined in third party proceedings), the court or a Board may order that any moneys (including costs) payable by the management corporation pursuant to an order of the court or a Board, as the case may be, in those proceedings shall be paid, in respect of such lots as are specified in the order and in such proportions as may be specified, by the management corporation out of contributions levied for the purpose."; and

(b) by inserting, immediately after the word "court" in the first line of subsection (2), the words "or a Board".

New section 125A

18. The principal Act is amended by inserting, immediately after section 125, the following section:

"Subsidiary strata certificates of title for flats where proprietors own leasehold estate of at least 999 years or other estate

125A.-(1) Where the subsisting leases of the flats registered under the Registration of Deeds Act (Cap. 269) or the Land Titles Act (Cap. 1.57) are for a leasehold estate of 999 years or more or for such other estate as the Minister may, by notification

in the *Gazette,* specify and where the proprietors of those flats who altogether own not less than 25% of the total number of flats in the development have agreed to have the land brought under the Land Titles Act (Cap. 157) and for the issue of subsidiary strata certificates of title for all the flats, the proprietor of the land shall be deemed to have agreed to the transfer of the land without consideration to the proprietors of the flats in the shares as specified in section 125 (2) (a) or section 126 (1) or (2), as the case may be.

(2) The proprietors of the flats referred to in subsection (1) shall serve a notice on the proprietor of the land and the subsisting mortgagees, chargees or other persons with an estate or interest in land who appear as such in the records of the Land Titles Registry or the Registry of Deeds, as the case may be, at least one month before the date of the application for registration of the strata title plan is filed with the Registrar, informing him of the transfer under subsection (1).

(3) Section 125 or 126, as the case may be, shall, except the provisions relating to the transfer of the land by the registered proprietors, continue to apply to the proprietors of the flats referred to in subsection (1).

(4) Upon registration of the strata title plan for the development and the issue of subsidiary strata certificates of title for the flats in the development, the estate and interest of the registered proprietor in the land shall vest in the subsidiary proprietors.".

Repeal of section 131

19. Section 131 of the principal Act is repealed.

Amendment of Third Schedule

20. Paragraph 11 of the Third Schedule to the principal Act is amended by deleting the words "paragraph 4" and substituting the words "paragraph 3".

Repeal and re-enactment of Fourth Schedule

21. The Fourth Schedule to the principal Act is repealed and the following Schedule substituted therefor:

"FOURTH SCHEDULE

Sections 84A (3), 84D (3)
and 84E (4)

REQUIREMENTS UNDER SECTION 84A, 84D OR 84E

1. The subsidiary proprietors referred to in section 84A (1) or the proprietors referred to in section 84D (2) or 84E (3) shall, before making an application to a Board -

(a) consider the collective sale at an extraordinary meeting held in accordance with the Act or, where the development is not registered under the Act, at a meeting held after sending a notice of the meeting by registered post to all the proprietors to their last recorded addresses at the Registry of Titles or the Registry of Deeds and placing a copy of the notice under the main door of every flat in the development;

(b) advertise the particulars of the application in such local newspapers in the 4 official languages as approved by the Board;

(c) serve a notice of the proposed application to be made under section 84A (1), 84D (2) or 84E (3) by sending a copy by registered post to all the subsidiary proprietors or proprietors, as the case may be, and by placing a copy under the main door of every lot or flat, together with a copy each of -

(i) the advertisement referred to in sub-paragraph (b);

(ii) the sale and purchase agreement;

(iii) a statutory declaration made by the purchaser under the sale and purchase agreement on his relationship, if any, to the subsidiary proprietors of the lots or the proprietors of the flats;

(iv) a valuation report which is not more than 3 months old;

(v) a report by a valuer on the proposed method of distributing the sale proceeds; and

(vi) the minutes of the extraordinary meeting or meeting referred to in sub-paragraph (a);

(d) affix a copy of the notice referred to in sub-paragraph (c) to the main door of the lots or flats whose subsidiary proprietors or proprietors, as the case may be, have not agreed in writing to the sale; and

(e) affix a copy of the notice referred to in sub-paragraph (c) in the 4 official languages to a conspicuous part of each building in the development.

2. The notice referred to in paragraph 1 (c) to be served by registered post shall be served on an affected party -

(a) where the party is a subsidiary proprietor of a lot in the strata title plan, at the address as shown on the strata roll;

(b) where the party is a proprietor of a flat or land, at the last recorded address at the Registry of Titles or Registry of Deeds;

(c) where the party is a mortgagee, chargee or other person with an estate and interest in the lot or flat whose interest is notified on the land register, at the address on the strata roll or last recorded address at the Registry of Titles or Registry of Deeds; and

(d) where the party is a management corporation, at its address recorded on the folio of the land register comprising the common property.

3. The advertisment referred to in paragraph 1 (b) shall include -

(a) information on the development;

(b) the names of the subsidiary proprietors or proprietors, addresses, unit numbers and strata lot numbers, if any, of their flats;

(c) the names of mortgagees, chargees and other persons with an estate and interest in the lots, flats and land;

(d) brief details of the sale proposal; and

(e) the place at which the affected parties can inspect documents for the collective sale.

4. An application to a Board shall be made by the subsidiary proprietors referred to in section 84A (1) or the proprietors referred to in section 84D (2) or 84E (3) within 14 days of the publication of the advertisement referred to in paragraph 1 (b), enclosing -

(a) the documents specified in paragraph 1 (c);

(b) the statutory declaration made by the representatives appointed under section 84A (2) or their solicitors that paragraph 1 (a), (b), (c), (d) and (e) have been complied with;

(c) a list of the names of the subsidiary proprietors who have not agreed in writing to the sale, their mortgagees, chargees and other persons (other than lessees) with an estate or interest in the lots or flats whose interests are notified on the land register; and

(d) such other document as the Board may require.

5. The Board shall, within 5 days of the filing of an objection, serve a copy of it by registered post on the representatives appointed under section 84A (2) and their solicitors, if any.

6. The subsidiary proprietors referred to in section 84A (1) or the proprietors referred to in section 84D (2) or 84E (3) shall, after making an application to the Board, cause a copy of the application to be registered under the Act, the Land Titles Act (Cap. 157) or the Registration of Deeds Act (Cap. 269), as the case may be.

7. The subsidiary proprietors referred to in paragraph 6 shall, if an order for sale is granted by the Board under section 84A, 84D or 84E, register the order of the Board in accordance with the Act, the Land Titles Act (Cap. 157) or the Registration of Deeds Act (Cap. 269), as the case may be, or if the order for sale is not granted by the Board, apply to cancel the application registered under paragraph 6,

8. For the purposes of this Schedule, "affected parties" means -

(a) the subsidiary proprietors referred to in section 84A (1) or the proprietors referred to in section 84D (2) or 84E (3);

(b) the subsidiary proprietors of the lots or the proprietors of the flats who have not agreed in writing to the sale, and any mortgagee, chargee and other person (other than a lessee) with an estate or interest in the lot or flat whose interest is notified on the land register;

(c) the proprietor of the land under section 84E, his mortgagee, chargee or other person with an estate or interest in the land whose interest is notified on the land register; and

(d) the management corporation, where applicable.".

Saving

22.-(1) This Act shall not affect -

(a) any proceeding commenced or pending before any Strata Titles Board before the date of commencement of this Act, and every such proceeding may be continued and everything in relation thereto may be done in all respects after that date as if section 12 had not been enacted;

(b) the continued operation or force of any order or decision of a Strata Titles Board made before the commencement of this Act; and

(c) any right of appeal accrued before the commencement of this Act in respect of any such order or decision of a Strata Titles Board.

(2) The first Registrar of the Strata Titles Boards shall be the person who, immediately before the commencement of this Act, held office as the Secretary of the Strata Titles Boards, and he shall continue to hold office as if he had been appointed under the principal Act as amended by this Act.

Appendix II

LIST OF INDIVIDUALS AND ORGANISATIONS WHO SUBMITTED WRITTEN REPRESENTATIONS

Those marked * were invited to give oral evidence before the Select Committee

Paper No.	*Representor*
*1	Mr Mark Fong Wei Tsong
2	Dr Michael Lim
3	Mr Chuah Teong Soon
4	Mrs Kiang Peck Wan
5	Mr Ronny Sim
6	Ms Karen Goh Jade Hua
7	Mr Sum Wai Leong
8	Mr Kevin Seah
9	Mr Chan Chee Chiu/ Ms Chan Oi Lin/ Mr Yeoh Cheng Ee
*10	Assoc Prof Tan Sook Yee
11	Mr Tan Leong Soon
12	Miss Ghan Sam Hiang
13	Ms Chan Oi Lin
14	Dr Ho Tung Ya
*15	Mr Ting Piew
*16	Mr Leong Weng Hon
*17	Management Corporation Strata Title Plan No. 849
18	Dr Cheng Shao Lin
*19	Mr Ng Yuen
20	Mr Poon Hau Fu
*21	Mr Yeo Heng Moh
22	Ms Ivy Scow Choon Neo
23	Dr Paul Anantharajah Tambyah

Paper No.	*Representor*
24	Mr Michael F Fullwood & Mdm Teo Lee Huang
*25	Mr Nga Thio Ping
*26	Mr Supardi Sujak
27	Mr S Ramiah
28	Mr Teo Lip Hua Benedict
29	Ms Teo Kar Tin
30	Mr Tang Koon Eng
*31	Messrs Rodyk and Davidson
*32	Association of Property and Facility Managers
*33	Messrs Pang and Co
*34	School of Building and Real Estate National University of Singapore
35	Mr Yap Pett Chin
36	Mr Chua Tiang Hee
37	Mr Yeo Heng Moh/ Mr Jack Au Chiang Huat/ Mr Mak Yone Hoi
38	Mr Gerard M Goon
*39	The Law Society of Singapore
*40	Singapore Institute of Surveyors and Valuers
41	Mr Wong Hong King
42	Mr Chung Sang Pok
43	Mdm Tay Siok Leng [received on 8 September 1998]
44	Dr & Mrs Khoo Kian Seng [received on 8 September 1998]
45	Mr K S Chew [received on 8 September 1998]
46	Mr Hong Lin Thong [received on 12 September 1998]

Appendix III

WRITTEN REPRESENTATIONS

Paper 1

From: Mr Mark Fong Wei Tsong
2 A Stevens Close
Singapore 257940

Dated: 24 August 1998

Received: 19 August 1998

I thank you all for allowing me to offer my views on the proposed changes of the above law.

The law if passed as it stands will have far reaching ramifications which I believe have not been thought through thoroughly enough.

By needlessly elevating what is essentially a commercial transaction between businesses and individuals into a law, we have to examine what is there for hard working tax-paying middle-class Singaporeans to look forward to in Singapore in the years to come.

The issues

The home is the biggest single expenditure of all Singaporeans. It is the reason why many of us are willing to mortgage the longest part of our working life to a bank for.

For the majority, the decision to buy a house is not one taken lightly.

A house is first and foremost a place where people develop a sense of belonging and pride of ownership. It is a place where relationships strengthen and families grow. And is daily reaffirmation for the husband and wife to say at the end of the work day that it was all worth it.

A house is not just bricks and mortar. It is not just an investment.

However, the proposed Bill seeks only to view properties as just that. Characterless title deeds that can be traded for gain.

But to some like my wife and I, a home is a place where we derive joy simply by being able to live so in the style of our choosing.

It's a place where we have paid a premium to enjoy free from encumbrance and harassment.

Background to my proposal

I live in a free-hold private apartment block in the heart of Singapore's more desirable districts.

The block, although more than 30 years old is immaculately well maintained and has 12 units.

Of the twelve, two are owned by one owner, 3 are owner-occupied and the rest rented out.

Every year, at the annual general meeting, the same few people attend. However four years ago, we had an unexpected turn up from absentee owners who caught wind of a potential en-bloc sale.

Issues as to block improvements were shunted aside to speculative guesses as to how much each owner could potentially reap.

In time, the en-bloc talk proved to be just that. And the absentee owners disappeared again.

Thankfully that time, a vote was not required to turn down an en-bloc sale as I was a minority voice. With this law, I shudder to imagine how easily my family could have been separated from the home we have chosen to make.

When my wife and I saw our apartment 9 years ago, we envisaged a place where we could and wanted to build a life together and start a family in.

We torn down doors. and windows and rebuilt everything according to our own plans. It was a labour of love. And looking at what we achieved, it was well worth it.

It's also very personal. (As any home should be).

So much so that we have even declined offers of having it featured in interior magazines.

Beyond the sum of the renovation we put in (which was almost a quarter of the purchase price), it is impossible for us to put a dollar value to the door I designed, or the shade of wood we chose or the combination of fittings we installed.

The new law would never recognise the intrinsic value we attach to what our home is to us and unfairly assumes that money alone is all a property's worth.

It fails to acknowledge that home is truly what the heart is.

By seeing properties only as commodities where everything is for sale, we're not. I'm sad to say, becoming a nation of homeowners but a bunch of speculative title deed holders.

What's the difference, you may ask.

A homeowner has a stake in the place. He has roots. And will continue to grow and care for its future. (The term country and home can be used interchangeably and the point is still the same).

On the other hand, speculators are in only for the ride. They have no loyalties and will bail out with no care to the damage they inflict on the market or to the other bona fide home buyers. (Case-in-point, the present state of the property market).

This law, I believe will benefit the latter at the expense of the former.

And its effect will cause many to question the long-term prospect of staying and raising children in such an environment where everything is so readily reduced into mere dollars and cents.

Long-term consequences

As a professional who can work anywhere in the world, I chose to return to Singapore to live. But if the very pillar of that life is at stake, I may have to reconsider whether is this really the place where I want to be.

Hard questions which I am certainly not the only one who will ask himself if faced with the possibility of losing of their home with the passing of this law.

However, if this has to and we know will eventually become law, I propose that the Bill differentiates the needs and rights between the owner and the absentee-owner.

My proposals

(i) Still require the unanimous consent for en-bloc sale for apartment buildings with 20 or fewer units. In Singapore, apartment blocks with 10 units or less are rare. The present exemption is too narrow and the Bill protects almost no body.

(ii) Divide the number of votes based on the number of owners as opposed to the number of units. So if one owner has three units in a block of 24, the voting share should be 21 as holding multiple units will give them an unfair advantage.

(iii) Instead of having an 80% outright majority to vote in favour of an en-bloc sale, qualify it such that it requires an 80% majority by the owner-occupied.

As they have the most to lose in terms of moving costs and relocation, it seems fair that they have a bigger say.

The vote of an absentee owner who rents their property out should have a lower weight ratio of 3:2 to an owner-occupied one. After all, they are not using the property as a home but merely as a tool of revenue. They already live elsewhere and their vote should not carry the same value as one who has to sacrifice more.

I am certain that absentee owners living in their own (apartment) homes would not look forward to having to sell their home by force simply because of a majority decision by their fellow non-residential co-owners.

In conclusion

This simple consideration seems fair as it balances the need to safeguard the rights of homeowners like myself with the country's need to regenerate itself.

The cost of not doing so is to tell Singaporeans like me that "It's okay to be greedy as long as everybody gets a share and that everything's for sale. Even your home."

One wonders how this sits with the Prime Minister's call to make Singapore our best home, when we have little certainty in keeping the very homes we live in.

Yours sincerely,

Mark Fong

Paper 2

From: Dr Michael Lim
37 Bedok Road #01-05
Singapore 469360

Dated: Undated

Received: 20 August 1998

I would like to make a representation to the Select Committee. I have had a very bitter and very unpleasant experience in connection with the proposed enbloc sale of my condo, and my family and even my baby were threatened with physical harm by anonymous letters. The Police investigated and narrowed down the suspects to 3 but were unable to solve the case.

I am very much against this amendment because it is an abrogation of the property rights of buyers. It is not a government acquisition of land for the public good, for eg. to build a new expressway or a hospital, but purely to promote a commercial profit making motive not everything in life can be equated or measured in monetary terms. The quality of life is also important. What is the point of getting 1.5 million, and then being forced to move against your will to another condo with no gardens and greenery, because every square metre of land has been maximised to make beehive like apartments cramped together like sardines. People have other valid reasons for wanting to stay in a particular condo or area not everyone is greedy for the money from an en bloc sale. Money is not everything.

I am also very concerned about collusion between the members of the sale committee and the developer buying the land. There may be bribes and under hand coffee money to make sure the deal goes through. It is even worse when the members of the sale committee are themselves developers, builders and contractors who stand to benefit from contracts, once the land is sold and the existing condo demolished. Collusion and bribery of this kind is very hard to investigate and prove, much less bring to court. In my condo, many of the me and the previous sale committee are developers, builders and contractors.

It is also very, very wasteful to demolish perfectly good condos just to build another cramped condo with more storeys. Will this exercise go on every few years once the price of land goes up?

I propose only leasehold 99 year condos should be subject to the removal of unanimous consent. I also propose that condos with 50 or fewer units should not be affected by this amendment. When people buy a freehold condo they expect to

live there till they die and then give it to their children. They do not want to be forced by their greedy avaricious, money mad neighbours to move elsewhere.

I am willing to appear before the committee to give oral evidence if called upon.

Thank you,

Sincerely,

Paper 4

From: Mrs Kiang Peck Wan
167 Hillcrest Road
Singapore 289037

Dated: 21 August 1998

Received: 25 August 1998

I refer to the article in the Straits Times 18 August 1998 inviting comments on the above-mentioned topic.

2 I own a small apartment which is worth more than $1m in Orchard Boulevard. As my other assets are worth less than $600,000, my heirs will not have to pay estate duty when 1 die.

3 However, if an en-bloc sale is forced on me, estate duty will be liable unless I purchase another property. This is not practical as I am approaching four score years.

4 I therefore wish to suggest that provision be made for the proceeds of an enforced en-bloc sale be exempted from estate duty.

Yours faithfully

KIANG PECK WAN (MRS)

Paper 5

From: Mr Ronny Sim
32 Mei Hwan Drive
Singapore 568367

Dated: 24 August 1998

Received: 25 August 1998

I would like to give my views to the Select Committee on the matter of the Land Titles (Strata) (Amendment) Bill.

I am solidly in support of the proposed amendments, especially those with respect to the collective sale of property. Many owners in my estate are also supportive of the Amendment Bill as revealed in Parliament by the Minister of State for Law and Home Affairs, Mr. Ho Peng Kee.

By facilitating enbloc sales in aging estates under very transparent criteria, the Government would have achieved two things, viz.

1 Provide an important exit strategy for the majority of subsidiary proprietors in private condominiums and prevent the situation where the small minority could be unreasonable (tyranny of the minority).

2 Provide liquidification of an old and aging estate where capital values would otherwise have been severely eroded, thus turning it into a potential slum with the passing years. With the Amendment Bill - the majority of subsidiary proprietors, through the invisible hand of the price mechanism, will be able to exit in a manner that allows them to arbitrage their capital values and allow redevelopment to take place in line with the optimal land use for the area. In the process, government policy objectives as to optimal land use will also be realized.

DGP plot ratio increase and Amendment Bill must, of necessity, go hand in hand

Sir, the sale of old estates collectively or enbloc sales can potentially take place only in response to a DGP plot ratio increase. The DGP plot ratio increase allows existing owners in old private condominiums to engage in arbitrage that frees the old condominium for redevelopment. Without a DGP plot ratio increase (which makes it possible for developers to built more densely and thus able to pay more for the land, which in turn provide the catalyst to owners to relocate) no enbloc sale can be contemplated. However, without the Amendment Bill and with the existing requirement to have 100% agreement of subsidiary proprietors, the success rate for enbloc sale will be negligible. Those few that were successful - quite a high percentage involved payment of some ransomnous amount. For the majority of owners that abhor such practices, there will be no redevelopment. Such owners in old estates will have no way out. With a DGP plot ratio increase coupled with

the Amendment Bill - irrespective of the pricing in the property market - arbitrage will be possible and subsidiary proprietors could make decisions that are optimal - benefiting themselves and indirectly be consonant with the signal given by the Government on optimal land use. The dissenting minority is not marginalized or discriminated in any way as the transparent nature of the enbloc sale will ensure that all owners are treated in an equitable manner. Without the Amendment Bill, the few subsidiary proprietors could always throw a spanner in the works to the detriment of the majority who has to suffer in silence without proper redress.

Present reality

Sir, my wife and I owned a unit out of a total of ninety-five units in an old condominium. We purchased this unit in 1980 with TOL in January 1982. Sixteen years have elapsed and the condominium showed obvious signs of old age. Many of the owners purchased the units on mortgages. In 1980, the units were priced from $350,000-$600,000 depending on the dwelling types. This is a condominium with four different dwelling types. The DGP plot ratio was then 1.01. Most of the owners were and are still professionals - i.e. salaried persons with a sprinkling of businesspersons. Now that the estate has aged considerably - owners find it difficult to fund the interim capital expenditures to rejuvenate the estate. The maintenance fund just meets the actual monthly needs with not much to spare. The sinking fund of the estate is a pittance compared to what is required. Maintenance repairs are on the rise - roof leaks, concrete gutter leaks and wall leaks. Slight sinking of the road surface at certain stretches of the private roads could also be seen. The Management Corporation, in a survey, has noted functional obsolescences. Quite a number of owners in the condominium have moved out and rented their units out. Increasingly tenants are hard to come by due to the state of the estate. Rentals have dropped considerably. To have rental income - tenants are increasingly from foreign workers who does not mind the lack of aesthetics but just require a roof over their heads for relatively low rentals. If the situation persists - soon there will be more and more of foreign workers and non-professional, non-family type of people coming in to fill the units available. Those staying put will have to bear with the situation. As it is, owners have become disenchanted and angry at the physical state of the estate but helpless to do anything. The Management Corporation is also in a predicament without sufficient funds. With the Amendment Bill - I am certain that owners, having a way out, will decide in the majority to opt for enbloc sale as the better alternative.

Sir, our estate has attempted to go for enbloc sale/enbloc redevelopment since late 1994 when we learnt that the DGP plot ratio for our estate has been raised to 2.1 with a maximum of 20-storeys permitted. This was considered the better alternative to the lack of funds for upgrading of the estate. However, up to now, the efforts have met with opposition from three subsidiary proprietors. The majority of owners were so desperate for a way out that the Management Corporation sought legal redress through Section 78 of the above Act. That Court Application was withdrawn once news comes out that the Government intends to make it easier for enbloc sale to take place.

Tyranny of the minority manifested

Sir, in our estate, only three owners objected to the enbloc sale/enbloc redevelopment effort. In their affidavits to oppose our Court Application - they cited reasons such as love of the place; nearness of their children's school to the estate and so forth, In private negotiations - they demanded compensation far and above what other owners would be getting. Each wanted what works out to $2.0 million to $2.5 million in excess of what other owners would be getting. Incidentally, in our estate, those who opposed were foreign nationals (three Chinese-Indonesian businesspersons). One of the three owners, purportedly wealthy businesspersons, vowed to frustrate any attempts at enbloc sale, unless their monetary demands are met. Under the existing legislation, the rights of the majority are easily trampled upon with scorn. Such a situation would be a thing of the past with this Amendment Bill. Given the criteria for 80% or 90% of owners to agree as spelt out under the new section 84A (1), there is no way that the majority could put the dissenting minority at a disadvantage.

Amendment Bill is a ẇ n-ẇ n for all, including the state

Sir, it is commendable that the Government have been proactive in wanting to amend the legislation to make it easier for enbloc sales to take place and prevent the oppressive actions of the few. It is clear that the various MPs have their ears close to the ground. This Amendment Bill will be a big help to the majority who lives in private condominium whether new or old. The exit strategy, which this Amendment Bill will provide, will bring great relief to many law-abiding citizens. Providing the appropriate amendments in the laws to support such a move does not mean that every private condominium will jump on the bandwagon. The 80% or 90% of share values as mandated under the new Section 84A (1) requirement is a sufficient enough deterrent. If the estate were not run-down and in good condition - many would be loath to sacrifice a well-spaced out estate for more dense ones elsewhere. It is only where the estate is nearing its useful life that the majority of owners talk reasonably of arbitrage - i.e. selling their units in the old estate and buying a new one elsewhere with some cash as the inducement. For those in new private condominiums, comforting is the thought that, when the time comes and there is a majority decision to go for enbloc sale - the law is already in place and decisions can be made in a rational and fair manner. The government's policy on optimal land use can also be met.

Thank you, Sir, for the opportunity to give my views.

Yours truly,

Ronny Sim

Paper 7

From: Mr Sum Wai Leong
#11-03 Ruby Plaza
205 Balestier Road
Singapore 329682

Dated: 26 August 1998

Received: 27 August 1998

In principle I am opposed to the legislation. It is in effect a power to acquire private property given to certain individuals.

I own an apartment in a mixed development where there are 89 shops and 36 residential apartments and the share values apportioned are 71.2 per cent for the shops and 28.8 per cent for the apartments. Given such share values, the shop owners have a pervasive influence over any decision to go for en-bloc sale. If the shop owners made such a decision, all they need is to get 11 apartment owners to agree and they would have got 80 per cent share value and hence the decision to go ahead - in other words, a majority of the apartment owners - 25 - would have to submit to wishes of the minority of apartment owners - 11 - who decide to side with the shop owners - herein lies the inequitable situation.

We must bear in mind that shop owners can sell for any number of reasons but for apartment owners, we may not want to sell for any price. A shop is just a shop as long as it suits the business but an apartment for residential purposes may not be easily found. From experience, I know that it is difficult to locate one which satisfies all these considerations: (1) Suitable Location (2) Right Size (3) Right price (4) Good condition (5) Right Floor (6) Well managed (7) Good neighbours (8) Inexpensive maintenance contribution (9) Adequate car parks (10) Freehold title. To find one with all these attributes is as difficult as looking for the right spouse!

My IC No: 00004671G, Telephone No: 3347464 and I am not prepared to appear before the Committee to give oral evidence.

SUM WAI LEONG

Paper 7

From: Mr Kevin Seah
37 Jalan Chengam
Singapore 5783207

Dated: 23 August 1998

Received: 28 August 1998

I fully support the proposed bill as it is for greater good of the majority- a key government principle.

Singapore is a small country which should optimise the use of all available land. The new bill would facilitate urban renewal necessary for continued economic progress.

Generally, old buildings are likely to be less well maintained as maintenance costs are high and owners have little incentive to keep them in excellent state. Some turn into incongruous eyesores.

Many old buildings have ancient electrical and sanitation systems that pose health and safety hazards. Structurally, the buildings have deteriorated. It is expensive and not cost-effective to constantly repair and service them.

Strata-titled properties represent a form of communal ownership of private property which is distinct from private landed properties that are solely owned. Thus, if the majority feel that they would benefit much from an en-bloc sale, the minority should not stop the sale since they would also be able to partake of the benefit. No doubt there would be some amount of sacrifice on the part of every owner.

Very often, the reasons for the minority objecting to any potential sale are selfish-whether for "sentimental reasons" or to hold the majority to ransom (perhaps, hoping that money would be "thrown" at them to buy their "reluctant" consent).

Granted, the minority interest should be safeguarded, so the appeals board proposed in the bill represents an avenue for those with reasons for objecting to any en-bloc sale. If the subject is on apportionment of the proceeds, than parties concerned should be referred for enforced arbitration in a fair, usual and customary manner. In this way, precious judiciary resources are spared. If the reasons are purely "sentimental", little value should be attached for the obvious reason that they are very subjective and unquantifiable. Other reasons can be considered on their own merit.

In addition, I propose an extension of the bill:

- For developments more than 20 years old, 70% majority required.
- For developments more than 30 years old, simple majority required.

As many strata-titled developments in Singapore age, there would be an increasing number of strata-title owners who are forced by circumstances and minority owners to refer their cases to the formal judiciary system. Hence, the new bill is timely and preempts wastage of public resources on long-drawn trials.

Yours faithfully,

Kevin Seah

Paper 9

From: Mr Chan Chee Chiu & Others
Chanster Holdings Pte Ltd
Delfi Orchard #05-01
402 Orchard Road
Singapore 238876

Dated: 26 August 1998

Received: 28 August 1998

We are the owners of units at Delfi Orchard and am very concerned that if the Bill is passed: it would affect the future ownership of our property at Delfi Orchard in an adverse way.

1 Delfi Orchard is a mixed development of residential and commercial. For obvious reasons it is a highly desirable prime commercial block ripe for re-development.

2 City Development Ltd owns and runs the adjacent property; Orchard Hotel and Orchard Shopping Center. It does not have any frontage to Orchard Road and adding the Delfi Orchard lot to their development would add significant commercial value to the property it already owns.

3 The Bill allows for a consensus of the majority of owners to approve the en-bloc sale of a lot. However, in the case of Delfi Orchard, the majority of units (88.3% see attached) are owned by one party, City Developments Ltd, a property development company listed in the stock exchange.

4 The majority owner of Delfi Orchard will and has been able to pass through any of its recommendations as it has the major voting power.

5 Minority ownership therefore does not have any voting power to change any of the majority owner's decisions.

6 In the event that the amendment to the Bill is passed, it is conceivable that one majority owner can force minority owners to an en-bloc sale. Although an open system of tender for sale may be carried out, the majority owner by the mere fact that it has major voting rights can select whomever it sells to (perhaps its own subsidiary company); or at whatever price to sell it at.

7 Minority owners, including ourselves with a vested interest in individually owned lots, through the enactment of the amendment will be put in a dis-advantaged position.

8 A property such as Delfi Orchard should therefore be excluded from the amendment bill for the following reasons:

(a) It is not wholly residential.

(b) Its majority shareholding is held by one owner.

(c) One larger party stands to benefit financially more than another.

(d) A bigger entity uses the law to dis-advantage several smaller owners.

9 I believe that the amendment to the Land Titles Act is intended to benefit all parties financially and to allow for progress to continue. It should not allow a single majority owner the tools to coerce and to pursue its own agenda.

without prejudice

Chan Chee Chiu
Chanster Holdings Pte Ltd
Delfi Orchard #05-01
402 Orchard Road
Singapore 238876

Dr Yeoh Cheng Ee
Delfi Orchard #05-17
402 Orchard Road
Singapore 238876

Ms Ong Fung Kui
Delfi Orchard #05-30
402 Orchard Road
Singapore 238876

Ms Chan Oi Lin
Delfi Orchard #09-05
402 Orchard Road
Singapore 238876

DELFI ORCHARD

10TH ANNUAL GENERAL MEETING OF THE MANAGEMENT CORPORATION S T PLAN NO. 1338

Unit No.	Name of Subsidiary Proprietor	Share Value	Signature of Owner	Name of Proxy Representative	Signature of Proxy Representative	Remarks
#01-01 to #01-11						
#01-13 to #01-14						
#02-01 to #02-14						
#03-01 to #03-30						
#04-01 to #04-28						
#05-02 to #05-14	Allinvest Holding Pte Ltd	8893		Mrs Jacqueline Siew		
#05-24 to #05-29						
#06-01 to #07-01						
#07-03 to #07-06						
#08-05 to #08-06						
#09-01 to #10-02						
#10-03 to #11-01						

DELFI ORCHARD
10TH ANNUAL GENERAL MEETING OF THE MANAGEMENT CORPORATION S T PLAN NO. 1338
HELD ON 29 DECEMBER 1997

Unit No.	Name of Subsidiary Proprietor	Share Value	Signature of Owner	Name of Proxy Representative	Signature of Proxy Representative	Remarks
#01-12	Swain Jewellery (Pte) Ltd	66				
#05-01	Chanster Holdings Pte Ltd	45				
#05-15/16	Mr Link Wan Thye	170				
#05-17	Yeoh Cheng Ee & Yang Peow Li	58				
#05-18	Lee-Ho Medical Laboratory Pte Ltd	63				
#05-19	Teo S.K., Dong S.H., Chia S.C. & K	63				
#05-20/21	P G Books (Pte) Ltd	126				
#05-22	Doreen Chua Yit Meng	58		Dr Yeoh Cheng Ee		
#05-23	Mr Seiji Ebihara	50				
#05-30	Ms Ong Fung Kui	48				
#07-02	Walton Investment Pte Ltd	30				
#07-04	Mr Teo Hock Hye	23				
#07-05	Lim Claire & Barker Deborah Eval	23				
#08-01	Mdm Kao Su Hsien	30				
#08-02	Ciap Services Pte Ltd	30				
#08-03	Mr Joseph Tse Hsien Tsung	23				
#08-04	Mdm Young Wee Hoong, Veronica	23				

DELFI ORCHARD
10TH ANNUAL GENERAL MEETING OF THE MANAGEMENT CORPORATION S T PLAN NO. 1338
HELD ON 29 DECEMBER 1997

Unit No.	Name of Subsidiary Proprietor	Share Value	Signature of Owner	Name of Proxy Representative	Signature of Proxy Representative	Remarks
#09-02	Mr Chee Boon Keng	30				
#09-03	Ms Angeline Chan Lai Kuen	23				
#09-04	Ms Rosaline Chow Yoong Ching	23				
#09-05	Ms Marissa Chan Oi Lin	23		Mr Chan Chee Chiu		
#09-06	Mr Goh Yong Swee	30				
#10-01	Ms Tan Kim Hong	30				
#10-04	Aket Realty Pte Ltd	30				

APPROVAL

PURSUANT TO SECTION 7(2) OF THE LAND TITLES (STRATA) ACT (CAP. 158)

BA/0-34

Yamasin Enterprise Pte Ltd
402 Orchard Road #05-02/03
Singapore 0923

FINAL SHARE VALUE ALLOTMENTS FOR ONE BLOCK OF 11 STOREY SHOPPING/RESIDENTIAL COMPLEX ON LOT 183 TO 189 & 580 TS 25 AT ORCHARD ROAD

Strata Unit No.	Type of User	Floor Area (m^2)	Final Share Value
01-01	Shop	175.00	282
01-02	"	51.00	82
01-03	"	51.00	82
01-04	"	51.00	82
01-05	"	51.00	82
01-06	"	51.00	82
01-07	"	66.00	106
01-08	"	50.00	81
01-09	"	33.00	53
01-10	"	31.00	50
01-11	"	31.00	50
01-12	"	41.00	66
01-13	"	41.00	66
01-14	"	48.00	77

Strata Unit No.	Type of User	Floor Area (m^2)	Final Share Value
02-01	Shop	58.00	94
02-02	"	39.00	63
02-03	"	40.00	65
02-04	"	41.00	66
02-05	"	37.00	60
02-06	"	28.00	45
02-07	"	53.00	85
02-08	"	53.00	85
02-09	"	53.00	85
02-10	"	53.00	85
02-11	"	51.00	82
02-12	"	23.00	37
02-13	"	30.00	48
02-14	"	30.00	48
02-15	"	30.00	48
02-16	"	30.00	48
02-17	"	30.00	48
02-18	"	31.00	50
02-19	"	41.00	66
02-20	"	41.00	66
02-21	"	46.00	74
02-22	"	16.00	26
02-23	"	39.00	63
02-24	"	69.00	111

Strata Unit No.	Type of User	Floor Area (m^2)	Final Share Value
03-01	Shop	26.00	42
03-02	"	32.00	52
03-03	"	39.00	63
03-04	"	40.00	65
03-05	"	40.00	65
03-06	"	39.00	63
03-07	"	28.00	45
03-08	"	30.00	48
03-09	"	40.00	65
03-10	"	40.00	65
03-11	"	40.00	65
03-12	"	40.00	65
03-13	"	40.00	65
03-14	"	40.00	65
03-15	"	40.00	65
03-16	"	63.00	102
03-17	"	36.00	58
03-18	"	39.00	63
03-19.	"	39.00	63
03-20	"	39.00	63
03-21	"	39.00	63
03-22	"	36.00	58
03-23	"	31.00	50
03-24	"	41.00	66
03-25	"	41.00	66
03-26	"	46.00	74

Strata Unit No.	Type of User	Floor Area (m^2)	Mf	Final Share Value	Sf
03-27	Shop	16.00		26	
03-28	"	39.00	340.20	63	18.90
03-29	"	33.00	286.20	53	15.90
03-30	"	30.00	259.20	48	14.40
04-01	"	58.00	50.76	94	28.20
04-02	"	39.00	340.20	63	18.90
04-03	"	40.00	351	65	19.50
04-04	"	40.00	351	65	19.50
04-05	"	40.00	351	65	19.50
04-06	"	29.00	253.80	47	14.10
04-07	"	30.00	259.20	48	14.40
04-08	"	40.00	351	65	19.50
04-09	"	40.00	351	65	19.50
04-10	"	40.00	351	65	19.50
04-11	"	40.00	351	65	19.50
04-12	"	40.00	351	65	19.50
04-13	"	40.00	351	65	19.50
04-14	"	40.00	351	65	19.50
04-15	"	63.00	550.8	102	30.60
04-16	"	36.00	313.20	58	17.40
04-17	"	39.00	340.20	63	18.90
04-18	"	39.00	340.20	63	18.90
04-19	"	39.00	340.20	63	18.90
04-20	"	39.00	340.20	63	18.90
04-21	"	36.00	313.20	58	17.40
04-22	"	31.00	270	50	15
04-23	"	41.00	356.40	66	19.80

Strata Unit No.	Type of User	Floor Area (m^2)	Final Share Value
04-24	Shop	41.00	66
04-25	"	46.00	74
04-26	"	16.00	26
04-27	"	39.00	63
04-28	"	69.00	111
05-01	"	28.00	45
05-02	"	37.00	60
05-03	"	40.00	65
05-04	"	40.00	65
05-05	"	40.00	65
05-06	"	40.00	65
05-07	"	45.00	73
05-08	"	45.00	73
05-09	"	40.00	65
05-10	"	40.00	65
05-11	"	40.00	65
05-12	"	40.00	65
05-13	"	40.00	65
05-14	"	40.00	65
05-15	"	40.00	65
05-16	"	65.00	105
05-17	"	36.00	58
05-18	"	39.00	63
05-19	"	39.00	63
05-20	"	39.00	63
05-21	"	39.00	63
05-22	"	36.00	58

Strata Unit No.	Type of User	Floor Area (m^2)	Mf	Final Share Value	Sf
05-23	Shop	31.00		50	
05-24	"	41.00		66	
05-25	"	41.00		66	
05-26	"	46.00		74	
05-27	"	16.00		26	
05-28	"	39.00		63	
05-29	"	33.00		53	
05-30	"	30.00	5150	48	
6th Storey	Restaurant	990		1068	9.40
07-01	Apartment	109.00	2	30	
07-02	"	120.00		30	
07-03	"	60.00		23	
07-04	"	60.00		23	
07-05	"	60.00		23	
07-06	"	109.00	2	30	
08-01	"	121.00	2	30	
08-02	"	144.00		30	
08-03	"	72.00		23	
08-04	"	72.00		23	
08-05	"	72.00		23	
08-06	"	120.00	2	30	
09-01	"	120.00	2	30	
09-02	"	140.00		30	
09-03	"	70.00		23	
09-04	"	70.00		23	
09-05	"	70.00		23	
09-06	"	120.00	2	30	

Strata Unit No.	Type of User	Floor Area (m^2)	Mf	Final Share Value
10-01	Apartment	109.00	2	30
10-02	"	118.00		30
10-03	"	118.00		30
10-04	"	109.00	2	30
11-01	"	177.00		30

Total No. of Strata Units : 150	Share Value Allotted to Building : 10,011

$8480m^2$

V RAJENDRAM
COMMISSIONER OF BUILDING

Paper 10

From: Assoc Prof Tan Sook Yee
Faculty of Law
National University of Singapore
10 Kent Ridge Crescent
Singapore 119260

Dated: 31 August 1998

Received: 1 September 1998

I The main thrust of the Land Titles (Strata) Amendment Bill [the Bill] is to amend the Land Titles (Strata) Act Cap. 158 1998 Rev Ed by inserting a new Part VA which provides for Collective Sale of Property. My comments will be confined to this part of the Bill and are divided into three sections. In the first section under *General*, I submit that there is no demonstrated need for this provision. In the *second under Appropriate body to hear disputes*, I submit that if the provision is called for, the more appropriate body to deal with disputes, is the High Court. In the third section, *Comments on specific drafting points*, I indicate omissions or amendments to specific clauses of the Bill.

General

2 *Object of the provision*

2.1 The Explanatory Statement attached to the Bill says that the object is to facilitate en-bloc sales of subdivided developments. The Minister of State for Law Assoc. Prof. Ho Peng Kee in moving the second reading of the Bill referred to rejuvenation of old developments, and the use of land at the enhanced plot ratios.

2.2 These are laudable objectives. Personal safety of the occupiers are at stake in old and dilapidated buildings. Though less immediate, it is also in the public interest that such a limited commodity as land should be put to optimum use.

3 *Existing provisions for termination of strata title plans*

3.1 The current Land Titles (Strata) Act Cap. 158 1988 Rev. Ed. [the Act] sets out three ways for terminating a strata title plan. All require the matter to be brought to the High Court at the instance of either a subsidiary proprietor or the management corporation.

3.2 *Section 81* This applies where all the subsidiary proprietors agree to terminate the strata title plan. Thus it is not relevant in the present discussion.

3.3 *Section 77* Where a subdivided building is "damaged or destroyed", the Court may, on the application of a subsidiary proprietor or the management corporation, order the settling of a scheme for the reinstatement or continued use

of the building in whole or in part. Alternatively the court may invoke the procedure of section 78 and terminate the strata title plan.

3.4 *Section 78* Essentially this section permits the court to order the termination of a strata title plan and the sale of the land where the court considers it "just and equitable" to do so. In considering whether it is "just and equitable" the court is required to consider *inter alia* "the probability of unfairness to one or more subsidiary proprietors if termination of subdivision is not ordered", and "the rights and interests of the subsidiary proprietors as a whole."

3.5 Thus sections 77 and 78 do provide ways for terminating the strata title plan of a subdivided building in the absence of an unanimous vote. The High Court has to sanction it whereupon the then subsidiary proprietors hold the property as tenants in common. The court may also make an order for the sale of the property.

3.6 This being the case I submit that there is no demonstrated need for the proposed amendment. The Minister of State for Law Assoc. Prof. Ho Peng Kee in moving the reading of the Bill referred to examples of en-bloc sales of old developments being held up by a few owners. However it appears that in those instances the existing procedures were not tried. Since there has not been a reported judgement, to the best of my knowledge, I would submit that the exsiting provisions neither been used nor tested. Thus there is no demonstrated need for the proposed amendment.

4 *Perceived advantages of proposed amendments questionable*

4.1 The advantage of the amendments to the existing provisions are obvious. There is no need to show either damage or destruction, (section 77) nor is there any need to satisfy the Court that termination is just and equitable (section 78). All that is needed is the requisite majority decision (clause 84A(1) of the Bill). I submit that there is no pressing need for such haste and cavalier treatment of the rights and wishes of the minority. **They are after all sole owners of their flats** although they may be tenants in common with owners of other flats of the common property. I would also submit that currently the maximum utilisation of land is not such an overriding need that the rights of ownership of private property should be ignored.

4.2 Rights of property are not unfettered. For the public good, owners of land can be compelled to curtail or even surrender some or all of their rights of ownership [e.g. compulsory acquisition of land]. But the public good must be present e.g. roads, schools, public housing. The immediate effect of the proposed provision is more of private gains for the majority subsidiary proprietors and for the developer/purchaser.

5 *Non economic factors*

5.1.1 It would seem that the main immediate advantage for the proposed en-bloc sale amendments are economic. Such reasons, and the macro picture are

important. But in a matter of a man's home, more is involved than just dollars and cents.

5.1.2 Unlike the situation in other countries, [the Minister of State for Law referred to some provinces of Canada, Hawaii and Hong Kong] most Singaporeans have little choice in regard to the type of housing that they can afford to live in. 8.6% of the population live in public housing. Even those who can afford to live in private housing can only afford a unit in a subdivided building or in a condominium development. A piece of "landed" property of which he is sole owner is beyond the financial reach of many Singaporeans. This, I believe, is unlike the situations in Canada and Hawaii.

5.1.3 Hong Kong legislation was mentioned by the Minister of State for Law, I assume that he was referring to Land (Compulsory Sale for Redevelopment) Ordinance 1998. This Ordinance has objectives of encouraging redevelopment of old buildings and encouraging the private sector participation in urban renewal [see para 3 Minutes of the Bills Committee Meeting held on 10 February 19981. Even so the tribunal may not make an order for sale unless the tribunal is satisfied that the redevelopment is justified due to the age or state of repair of the existing development [section 4(2) land (Compulsory Sale for Redevelopment) Ordinance 1998].

5.2 Legitimate personal concerns, human factors, are given scant regard by the Bill. To sell and move out of the hone of his choice just because 90% of his neighbours wish to sell may not be the wish of a subsidiary proprietor of a lot in a subdivided building. He may get more money for the unit but the timing may not convenient or he may have selected it to be near his children because he is a semi invalid, or to qualify for a particular school by living within the requisite proximity. Or a subsidiary proprietor may unwilling to sell and move because he is old. Moving would cause him unbearable stress for which money is no compensation. In fact monetary profit may be totally irrelevant to him when all that he wants is peace of mind and a comfortable place to spend his last days. To be forced to sell because the majority want it, is neither be just nor equitable to him.

5.3 Land, and this includes defined airspace, is a unique commodity. In a breach of contract for sale of land the remedy of specific performance is available because it is recognised that damages is not adequate compensation. Thus in the present context, I would submit that unless there is clear need for such forced sale of a subsidiary proprietor's unit, the wishes of a majority in itself is not enough reason to compel an owner of property to exchange it for cash that he does not want.

5.4 Where the public interest is immediate and patently clear then individual concerns and rights must give way. However, unless this is the case, rights of ownership of the individual should be respected. An individual's home is his place of refuge and not just a source of profit.

6 *Tyranny of the minority?*

6.1 Much has been said that as of now the minority controls the majority. In my view this statement is colourful, emotive and not quite accurate. Not accurate because there are existing ways for ensuring that both the views of the majority and minority are considered and taken care of. Section 78 of the Act empowers the court to order the termination and sale of the land, and though it can be argued that section 78(1)(c) seems tilted in favour of the majority, nevertheless the court can evaluate the rights of all the parties in the context of the prevailing circumstances and order a termination where it considers just and equitable to do so.

7 *Age of building*

7.1 Even in a young country like Singapore a building of 10 years cannot be old. It would seem to be a waste of resources to tear down a 10 year old building unless it is unsafe for human use. Yet the Bill contemplates buildings of even less than 10 years to be torn down simply where a majority of 90% of the subsidiary so agree. [clause 84A(1)(a) & (b) of the Bill] And all on account of the maximum utilisation of land. I submit that this public interest is not more pressing than that of not wasting resources.

Appropriate body to hear disputes

8 *High Court or Strata Titles Board*

8.1 In the proposed amendment any affected subsidiary proprietor may lodge an objection with the Strata Titles Board (the Board). [clause 84A(4) of the BiII)]

8.2.1 I submit that in view of the functions of the Board as set out in clause 84A(5) of the Bill, a more appropriate body to deal with the matters is the High Court.

8.2.2 On application by the requisite majority subsidiary proprietors the Board shall order the lots and the common property to be sold unless objections have been lodged by the minority subsidiary proprietors. [Clause 84A(1), (2) and (7) of the Bill] Where there are objections then the Board is to mediate. If the mediation is unsuccessful then the Board may decide to approve or reject the application taking into account the matters raised in the objection and the interests of all of the subsidiary proprietors. [clause 84A(5), (6), & (7) of the Bill]

8.2.3 Thus where there is an objection, the Board is expected to balance the interests and rights of all the owners. It is more than putting a right valuation on the property or determining the quantum of compensation that each subsidiary proprietor is to have. The High Court is, I submit, better suited to discharge this function.

8.2.4 A specialist panel, comprising of surveyors, engineers architects, like the Board, is good for handling matters such as cause of damage and defects to flats or the common property and to apportion liability but not to handle issues of law. This is acknowledged by clause 14 of the Bill which repeals the existing section 103 and substituting for it a new section which removes disputes with developers from the jurisdiction of the Board. Issues of law such as developers' liability under contract are now within the province of the courts. Likewise I submit, the balancing of rights and interests of property owners, should be for the Courts.

8.2.5 Tribunals e.g. the Appeals Board under the Land Acquisition Act, the Tenants Compensation Board under the Controlled Premises (Special Provisions) Act are concerned with issues of the value of land, not issues of law and balancing of rights. In the present context the Board even with the proposed amendments to its composition would not in my view be the appropriate body to approve or reject an application to terminate a strata title plan and force a subsidiary proprietor of a flat to accept money in lieu of his "land".

8.3 Under para. 2 First Schedule Supreme Court of Judicature Act a tenant in common of land may apply to the court for sale in lieu of partition where he desires to terminate the co-ownership. The court then considers the entire circumstances in coming to its decision. [See *e.g. Abu Bakar v. Jawahir* [1993] 2 SLR 738: *Abdul Razak Valibhoy v.Abdul Rahim Valibhoy* [1995] 2 SLR 555] I submit that it should not be any different for tenants in common of the land on a termination of a strata title plan.

9. *Summary of submissions*

9.1.1 Individual rights of ownership of land are not unrestricted. They are subject to the public interest. Maximum utilisation of land on a general level. I submit, is not sufficient justification for compelling an owner of a unit in a subdivided development or a condominium to sell his unit.

9.1.2 There are provisions under the current Land Titles (Strata) Act which permit a strata title plan to be terminated viz. where the building is damaged or destroyed, or where the court thinks that it is just and equitable to do so. These provisions have not been tested and found to be unworkable or lacking in any way.

9.1.3 In these circumstances I submit that the public interest of maximising land use is too remote. It is far from being so overwhelming that private rights of ownership must give way. A decision of the majority however great, in the prevailing circumstances, is not a good enough reason to override the rights of ownership of even one owner.

9.2 I submit that a comparison with the right of a tenant in common to compel sale in lieu of partition is not wholly apposite. The subsidiary proprietary of a lot in strata title plan is sole proprietor of his lot and is a tenant in common with the other proprietors only of the common property. Except under the Land Acquisition Act no sole owner of land can be compelled to sell his land.

9.3 I submit that is on account of this dual aspect of ownership of a lot under a strata title plan that in the Act that under existing termination is provided for only where it is necessary for safety or where the matter has been considered by the court. A decision by majority, however large, *per se,* is not sufficient reason for termination.

9.4 On the assumption that the cause is right and private rights should give way then I submit that the High Court, not the Strata Titles Board, is the appropriate body to handle such matters. The decision to override property rights requires the balancing of interests. It is and has always been the Courts that consider such matters. The Strata Titles Board would not be as well qualified to deal with such issues. Under existing laws, a tenant in common applies to court for an order of sale to terminate the co-ownership. I submit that there is no reason why a tenant in common of land which was once a subdivided building or a condominium should be different.

Comments on specific drafting points

10 *Clause 84A*

10.1 Sub-clause 4: 4 lines down "land" should be "lot" to be consistent.

10.2 Sub-clause 4: 5 lines down - the subsidiary proprietors who object to the proposed sale are required to file an objection with " `a' should be `the' Board ... within 21 days of the date of notice served pursuant to this section…."There is no such provision in the section imposing any duty on the majority subsidiary proprietors to give any notice to anyone.

11 *Clauses 84D(3) and 84E(5)*

11.1 The comment in para 10.2 applies *mutatis mutandis* to these sub-clauses.

Paper 11

From: Mr Tan Leong Soon
53 Holland Road
#04-05
Singapore 258859

Dated: 1 September 1998

Received: 1 September 1998

I refer to the article (Straits Times, 18 August 1998) inviting members of the public to give opinion of the Land Titles (Strata) (Amendment) Bill.

I have read a copy of the Bill No. 28/98 and would like to express the following view, which may not be relevant to the proposed amendment to the act, but may be of interest to the public.

In amending the Land Titles (Strata) Act, the Government should also look into the Income Tax Act, with a view to introducing provisions to protect genuine investors who have purchased property solely for investment purposes, but are affected by the amendments to the Land Titles (Strata) Act.

As we know, some of the buildings in Singapore may be more than 10 years old, but they are still in very good condition. A genuine investor may have bought one of the units but has to sell it en-bloc within 3 years of the acquisition thus required to pay capital gain tax.

The government has introduced capital gain tax to restrain speculation and stabilise property prices in Singapore. It should not affect genuine investors.

Yours faithfully,

Paper 15

From: Mr Ting Piew
55 Irrawaddy Road
Singapore 329553

Dated: 1 September 1998

Received: 3 September 1998

I have the honour to submit my views on the proposed new laws for your consideration.

If called upon, I will be pleased to attend before the Committee to clarify these views.

New Section 84A: Collective Sale of Property

Consent Level

I humbly urge the government not to peg the consent majority level to the age of the building. At the moment, the proposal is for either a 90%/80% consent level depending on the age of the building. This is not realistic and could cause hardship or injustice to certain minority owners who may well have good reasons for not agreeing with the majority owners. The disagreement with majority owners may be over matters such as being kept out of discussion and the timing of sale; and not necessarily against collective sale per se.

The principle that minority owners do have rights is well recognised. In balancing their rights with the rights of the majority owners, we should be careful to accord the rights of the few minority owners equal protection, not less, even if by accident the building they live in happened to be more than 10 years old.

It may be true that in older estate, there would be more owners who are interested in selling. However, I feel that it is difficult to say to the few minority owners that they have lesser rights which the government will protect. If anything, I see it as a necessary type of positive discrimination against the majority owners that the few minority owners in older estate should have equal protection under the proposed new law.

Therefore, I submit that the same consent level be adopted irrespective of the age of the building. This should be a better and more equitable balance between the majority and the minority. I favour a 90% consent level across the board. This margin alone should suffice to facilitate en-bloc sales of a substantial number of sites.

Oppression by the majority

I acknowledge that the proposed new law will perform a great service in removing the opportunity for an exceptional owner to demand a ransom amount in exchange for his consent to a collective sale. However, what has been described as "the tyranny of the minority" could also be called "the oppression by the majority" in other circumstances. Some owners might have started off as minority owners but subsequently have added in their signatures with the majority because of employment of tactics, psychological pressure and threat of legal action and costs against them if they do not. I have known this to happen. Under such a scenario, it is foreseeable that a real consent level could be something below the apparent consent level reached. To prevent such abuse, the minimum consent level should not be pegged too low. 90% will be a reasonable level.

Conditional Sale and Purchase Agreement

Apart from the Board requiring a valuation of the land, the clause does not specifically state the types of matters that can or cannot be made conditional. Would it be possible for a purchaser (developer) to seek to reduce his financial outlay by clever drafting and incorporating a buy-back condition or other conditions in the conditional sale and purchase agreement? Will the proposed new law apply to redevelopment, rather than sale? I hope not.

Although the envisaged sale and purchase agreement is expressed as conditional. I hope that it would mean just that - an outright purchase and sale both in style and substance. The proposed new law should make this unequivocally clear.

Checks and safeguards to be introduced

Press reports had indicated that the amendment requires the majority owners to advertise in the local press their intention to sell and the buyer to make a statutory declaration stating his relationship, if any, to any of the owners. Although not foolproof, these are positive steps. However, there appear to be no mention of the same in the Bill.

There must be total transparency in all dealings among the owners, interested buyers, property consultants, agents and lawyers. All possibility for collusion and/or fraud, and reasonable suspicions, must be nipped in the bud.

Perhaps, a suggestion would be for the new law to list out the recommended procedures deemed as proper and fair for following through a collective sale. This would avert quite a number of potential disputes. Hopefully, this would also include a requirement that the successful purchase (developer) must always be procured by way of public tender, unless all the owners agreed otherwise in writing.

Service of notice/filing of objection with the Board

New section 84A(10) requires the notice to be sent by registered post to the subsidiary proprietor at the address as recorded in the strata roll. The notice is deemed to be duly served 2 days after the day on which the notice was posted by registered post even if the notice may be returned by the post office as undelivered. The procedure for serving such a notice is unsafe. For one thing, the address on the strata roll may not be up to date. The discrepancy may be excused as a honest mistake or a clerical error if discovered/challenged. The council member of the management corporation is quite likely to be one of the majority owners.

New section 84A(7) states that if no objection has been filed within 21 days, the Board shall order that the lots and common property be sold. Consequently, it may result in a wrongful sale of a minority owner's property. The minority owner may not even be aware that a notice had been served; eg. through sickness or absence from Singapore; because the notice need not be served personally.

The 3 persons appointed under new section 84A(2) may have motive to deliberately time the serving of a notice for their maximum advantage. It should be realised that when the stage is set for service of a notice, the relationship between the owners (neighbours) would have been somewhat strained already with goodwill fair play the first casualty. The provision of new section 84A(9) will be of cold comfort to the minority owner because it may be too late to rectify the wrong once incurred.

I therefore proposed that the notice to be served under 84A(10) must always be served personally to bring it to the minority owner's attention.

In addition, there should be a provision requiring the Board to enquire into and confirm that the minority owner who did not file an objection pursuant to new section 84A (4) indeed genuinely had no objection, before the Board proceed to make an order under 84A (7). This should further safeguard the interests of minority owners such as those who may be illiterate.

Thank you.

Yours faithfully

Paper 16

From: Mr Leong Weng Hon
Blk 319 Jurong East St 31
#07-62
Singapore 600319

Dated: 2 September 1998

Received: 3 September 1998

I fully support the government's proposed revision to the current law regretting unanimous consent for en-bloc sale.

Firstly and most importantly, the proposed amendment allowed old strata titled properties the avenues for self renewal and give these buildings an economically sound opportunity to transform into a new, modern and well maintain buildings without being hindered unnecessary.

Secondly, I wish that the committee can categories the age group of the properties further and suggests that quorum required be adjusted as follows,

Age of property	*Percentage of agreement*
(a) < 10 years	90%
(b) 11 - 20 years	80%
(c) 21 - 30 years	70%
(d) > 31 years	60%

as compared with the proposed 90% for < 10 years and 80% for > 10 years and give more consideration for older properties.

Reasons are:

(i) Many properties that are more than 30 years are in a bad state of maintenance and it does not make economic sense for owners of such properties to spend huge amount of money on repair or up-grading, while still under utilize the land as allowed by the plot ratio. (Many owners are also unable to pay for it).

(ii) Some owners of these properties have turn their unit into labour quarter and as time goes by more and more owners follow suit as they felt insecure, example like Zhen Sheng Mansion, Angel Court & Thomson apartment and fortunately these properties were en-blocked and make way for new development.

(iii) Many of these old building would failed the current PUB electrical safety test as they do not have proper earth wiring and structurally have deteriorated.

Thirdly, the committee should also spell out a fair method of apportioning the proceed as many of the proposed en bloc sale failed were due to some owners trying to blackmail the others by demanding more than their share.

Lastly, staying in strata title property is a communal living where a lot of decisions are decided based on majority vote unlike living in landed property thus the interest of the minority can be refer to the MCST board should be a good enough channel for them to voice their objection and the MCST should be objective in their approach as some of the minority cried sentimental reasons for their objection which is very subjective and does not hold any ground, short of the proposed amendment, more of such properties will line the street of Singapore creating an eye sore, giving tourists an impression that only the city area are modern while the area outside the city are old and backward.

Yours Sincerely,

Leong Weng Hon

Paper 17

From: Management Corporation Strata Title Plan No. 849
327 Bukit Timah Road #01-01
Bukit Timah Mansions
Singapore 259715

Dated: 2 September 1998

Received: 3 September 1998

Our condominium is a seven storey block of 10 apartments on approximately 2000 square meters of land along Bukit Timah Road close to Newton MRT Station. The development potential of this parcel of land is greatly enhanced due to the current GDP guidelines which provided higher plot ratios and building height. However, under the provisions for en bloc sales in the Land Titles (Strata) Amendment Bill, our property could be sold only if **ALL** owners give their approval.

We wish to provide some feed back on this restriction by relating our experiences regarding our efforts to obtain approval for en bloc sale of the property, which is now 14 years old.

The proposal for collective sale arose in early 1994 when we had to consider between spending a considerable sum for major repairs or selling the property for redevelopment. Hence we convened and held an Extraordinary General Meeting on 19 May 1994 to consider selling the property en bloc. At that meeting, it was decided to circulate to every subsidiary proprietor a form to obtain their written consent to the sale and to spending a small sum to study further the economic and other aspects of the proposed sale.

We received affirmative responses to proceed with the en bloc sale from 9 out of 10 subsidiary proprietors, representing 88.1% of the total share value.

There was no response from the unit held by a company, M/s Ho Lee Investments Pte Ltd, (Ho Lee Investments), which is a subsidiary of Far East Organisation. This company was the original developer of our condominium and they held a penthouse having a share value of 5 out of a total of 42 shares. The company did not send any representative to the Extraordinary General Meeting. In fact they have never attended any meetings of the Management Corporation after it was formed in 1985.

Although we wrote reminders and spoke to their top managers, they did not reply us. Eventually, they wrote us a letter stating that they agree only to spending the sum of money to study the proposal further.

Informally, one of the Council Member approached their top manageress to negotiate a sale of the whole property to Far East. After some discussions, she

quoted a price well below what we thought would be a fair market price. Verbally, she informed us that Far East have the legal right not to sell and no one can compel them to sell. We found it impossible to negotiate as she seemed to indicate that Ho Lee Investment would not sell at any price, if the property is not sold to them or any of its fellow subsidiaries.

Though we received many enquiries from property agents, we had to tell them that they had to obtain the consent of Far East Organisation before approaching us to sell.

In 1997, we appointed a real estate agency to approach Far East's directors to negotiate on the sale of the whole condominium to Far East. Before we appointed the agency, we had informally contacted and obtained the agreement to sell from the other nine subsidiary proprietors. We indicated a price to start negotiations but nothing came out of it.

In our opinion, they, as developers as well as a subsidiary proprietor in our condominium, may have a vested interest in negating the proposal for en bloc sale. This has placed the remaining subsidiary proprietors in a disadvantageous position as Ho Lee Investments could choose to give consent to whom we sell the property and pick the price at which to sell. The situation does not seem fair and equitable nor is it conducive to the conduct of en bloc sales.

May we suggest that the requirement for all owners to consent to enbloc sales for condominiums with 10 or fewer units be lifted so that the enbloc sales rules applies uniformly to all condominiums irregardless of the number of units.

We hope our experiences would provide the Committee with more information and to take whatever necessary measures expedient to provide a fair and equitable means to address such a situation.

If required, we shall be available to present our views orally at your hearings.

Yours respectfully,
for and on behalf of
MANAGEMENT CORPORATION STRATA TITLE PLAN NO. 849

PHILLIP TAN, B.B.M.
Chairman

Paper 19

From: Mr Ng Yuen
53 Jalan Dusun
#13-02
The Sapphire
Singapore 320374

Dated: 22 August 1998

Received: 4 September 1998

I understand that a Bill on the above subject is now pending before Parliament and you are inviting representations from the public on the above subject.

I wish to declare my interest in this subject. I am a lawyer who has in my professional capacity acted for owners in a successful collective sale. If the Bill is passed there may be more such opportunities for me to act in collective sales. I am also the part owner of 2 properties located on underdeveloped land. If the Bill is passed, the probability of organising successful collective sale or part sale of these 2 properties are enhanced.

Having read the Bill I write to:

(1) support the Bill generally; and

(2) suggest amending the scope of the Bill (at paragraph 84A) from the sale of **"all lots and common property"** to **"interest in more than 10 subsidiary lots and the whole or part of the common property"** with corresponding amendments to paragraphs 84D, E and F.

Support of the Bill

I applaud the intention behind the Bill and the purpose it seeks to achieve.

The above mentioned successful collective sale involved a small 30 year old development with less than 20 apartments. The sale was held up for 1 year by a married couple who were the joint owners of one apartment. During that 1 year strenuous negotiations was conducted between the sales committee and the dissenting joint owners. At that time the rest of the owners contemplated a sale by tender and the proceeds of sale to be shared equally. The dissenting husband gave various reasons why they did not wish to sell (newly married/newly moved in) and/or why they should sell only at a reserve price higher than what the rest of the owners had agreed to (better fittings/ground floor location). When all rational reasons failed, the dissenting wife stepped in to say that she wanted a larger share of the sale proceeds because she was on the verge of divorcing her husband and needed a larger pool of savings. Naturally the majority of the owners refused to entertain such personal and irrational reasons - irrational because if the couple

was in need of money, a fortiori they should support the collective sale for the sale proceeds thereof are more than the value of the individual units.

To cut a long story short, a few of the owners joined to contribute part of their respective shares in the collective sale proceeds to top up the dissenting couple's share. Hence the collective sale proceeded successfully.

But any bystander observing the negotiations would see how unjust the situation was. The sales committee worked very hard to benefit all owners. In the end the majority of them were the good Samaritans/contributors who received less than their fair share of the sale proceeds. The rest of the owners who did nothing except to listen to and follow the lead of the sales committee for 1 year received their fair share of the sale proceeds. And of course the stubborn couple received more than their fair share of the sale proceeds. And thereafter there was no more mention of their divorce. Instead they were happily approaching me to act for the purchase of their new house. I laughed and declined.

In 1997 I tried to organise a collective part sale of my apartment at Balestier Road. The attempt was aborted because 1 of the unit owners (a Taiwanese) asked for more than her share value. When asked why her reply in mandarin was:

> "Why (do I want more)? Because you are begging (persuading) me".

In a nutshell I wish to say that I support the Bill generally because:

(1) the absence of legislation to govern collective sales enables dissenting owners to hold the majority to ransom.

(2) Singaporeans buy apartment properties both for personal use and/or investment.

(3) subsidiary proprietors are part owners of the common property and hence subject to the interests of the majority.

(4) most of the majority who agree to the collective sale are looking forward to **upgrade to a bigger, newer, nicer home.** The higher returns from a collective sale enables them to do that. We are not talking about greed for money to spend frivolously. We are talking about the opportunity to upgrade to a **better home**. Now why should anyone belittle such aspirations?

(5) and from the **public policy** point of view, it does not make sense for the Planning Authority to ear mark certain localities for redevelopment and see the potential of those localities stranded in the time warp of an aging underdeveloped past because of the lack of cooperation from a few irrational and greedy owners.

Scope of the Bill

The popular concept of Collective Sale is the sale of all subsidiary lots and shares in the common property. This has been encapsulated in the Bill. However there are several other variations which have not been included within the scope of the Bill.

First, some cases involve joint developments in which the existing owners do not sell their entire interests in the common property. This may occur where the common property and the number of subsidiary proprietors are small. Instead the developer contracts to build (ie akin to a Building Agreement) and to give possession of a specified number of newly built apartment units to be owned by the existing owners. The balance of the newly built apartment units are sold jointly by the existing owners and the developer and the proceeds of sale thereof either accrues to the developer or is shared with the existing owners.

The advantage of this is that the developer does not need to pay stamp duty on any purchase of the common property (as none exists) and the existing owners retain ownership of the common property at all material time. The disadvantage is that existing owners who need the cash up front to purchase a new home or tide over the development period will find this arrangement unsuitable.

Secondly some developments are well maintained and the value of their individual units are corresponding high. However they are sitting on common property which is larger than that required by the current plot ratio requirements. In other words the common property is underdeveloped. It may not be commercially viable to pull down the existing apartments to build new apartments. But it may be viable for the existing owners to sell collectively the excess portion of the common property. This is especially so if the excess portion can be sold at the same time that a neighboring land lot is sold for redevelopment. There is no distinction in principle between this scenario and that encapsulated in the Bill except that instead of selling the entire common property (together with the existing apartments), the owners seek to sell only part of the common property (without the existing apartments).

The third scenario is a combination of the first and the second. Instead of selling the excess common property, the existing owners may wish to combine their development with a neighboring land lot and allow the developer of the neighboring land lot to maximise the development potential of the excess common property as well as that of the neighboring land lot. This may be advantageous to the existing owners and/or the developer if there are limitations in the size and/or shape of the neighboring land lot and/or the excess common property.

A fourth scenario is possible with development that comprises both high-rise and low rise apartments. The size and plot ratio of the entire common property relative to the total number of apartment units may not be sufficient for a viable collective sale thereof. However the portion of land supporting the low rise units may be under developed. The existing owners may therefore agree to:

(1) subdivide the common property and retain the minimum land area to support the high-rise apartments;

(2) sell collectively the rest of the common property together with all the low rise units;

(3) obtain a valuation of the market price of the individual low rise units and pay the same to the existing owners of the low rise units out of the proceeds of the collective sale;

(4) distribute the rest of the sale proceeds amongst all existing owners (ie owners of both high-rise apartments and low rise units).

As stated above I support the BiII because it enables existing owners to upgrade to a better home. This reason applies equally to the first variation described above (where the owners enter into a joint development/building agreement with a developer). This reason also applies to the fourth scenario where the low rise owners are selling their low rise units. It does not make sense to exclude these two variations from the ambit of the Bill.

In the second and third scenario and for the high-rise owners in the fourth scenario, the owners thereof retain ownership of their apartments. Hence they may not be upgrading to a better home. However if these owners are not required to give up their apartments, why is the dissenting minority refusing to join in the collective sale? Most dissenting owners claim "sovereign" right to hold on to their apartments. But these owners are not required to give up their "sovereignty" over their apartments. They are only required to give up part of the common property which they own jointly with other existing owners who have valid interests in selling the same. Excluding these variations from the ambit of the Bill will only serve to enable the dissenting minority to hold the majority to ransom.

Procedure

The procedure set out in the Bill can apply equally to the first, second and third variations. For the fourth variation some adjustment need to be made - apart from the 80% or 90% majority needed to qualify for the application of the Bill, there should be an additional requirement that 80% or 90% of the low rise units affected must also agree to the collective sale. After all the low rise unit owners are the ones who have to give up their units.

The Bill contemplates that a majority of existing owners has collectively sold their property to a developer before applying to the Board for an order to enforce the sale of units belonging to the dissenting minority. Can a clever dissident make a case that some terms in the sale agreement causes him hardship and hence block the sale on that ground? In an outright sale, most hardship relating to the sale price and financial consequences of the sale can be addressed through consequential orders on the distribution of the sale proceeds. However terms of sale relating to

date of vacant possession, fixtures or owner's indemnities may be challenged as causing hardship to a dissident. Yet these may be relatively minor matters which the developer/purchaser may be willing to compromise.

If the majority approaches the developer/purchaser up front to waive those terms prior to the hearing of the Board, the developer/purchaser will be placed in an unfair position. The developer/purchaser may be pressurized into giving up some favourable terms even though parties may reasonably expect the Board to override the dissident's objections on the ground that the alleged hardship is not proven. Once those terms are waived it does not make sense for the Board to adjudicate on the question whether the dissenter's objections are valid in the first place. Instead if the Board orders the sale it is likely to order the sale on terms which incorporates the waivers.

On the other hand if the developer/purchaser does not agree to waive those terms, parties run the risk that the Board may subsequently decline to order the sale based on the dissident's objections.

A simple solution is to provide for the addition of the developer as a party to the proceedings in the event that dissidents object to the terms of the sale agreement. This will allow the developer/purchaser to reserve his position on those terms until after the Board decides whether the dissident's objections are valid. It will also ensure that the developer/purchaser is bound by his waiver. For the developer's comfort the Bill may also provide that the Board has no jurisdiction to force the developer/purchaser to waive any term. In the event that the dissidents' objections are proven valid and the developer/purchaser refuses to waive the objectionable terms, the Board should have jurisdiction to refuse to grant the order only.

Yours faithfully

Ng Yuen

Paper 21

From: Mr Yeo Heng Moh
229 Pasir Ris St 21 #02-32
Singapore 510229

Dated: 3 September 1998

Received: 4 September 1998

I refer to the above and wish to view my opinion.

84A, la; 90% be amended to 80%
84A, b; 80% be amended to 70%
84D, 1a; 90% be amended to 80%
84D, 1b; 80% be amended to 70%

In my opinion, the amendment from 90% to 80% and 80% to 70% is justified. 80% and 70% of the above is already a vast majority.

Consider provision for those who, due to the collective sale, and if he had purchase a flat for less than 3 years and being taxed such that he may find himself losing money.

Consider provision also for those who had purchase a flat and due to the collective sale find himself losing money. For example the majority of Owners there may have purchase a flat there say 10 years ago at a much lower price but he had only purchase a flat in that development say 3 years ago and due to the collective sale, find that the collective sale price is lower than what he had paid for. He may end up losing part of his CPF money or owing a sum of money to the bank.

Thank you.

Best regards.

Yours faithfully

Yeo Heng Moh

Paper 22

From: Ms Ivy Scow Choon Neo
48 Shanghai Road #01-01
Singapore 248204

Dated: 3 September 1998

Received: 4 September 1998

I refer to the article in The Straits Times dated 18 August 1998 and in response, the following are my views:

(1) Section 84A and Section 84D - I believe any building which is less than 10 years old is still considered a worthy dwelling place unless it is not structurally sound. May I suggest that for leasehold properties having less than 999 years lease:

   (a) unanimous consent be required for buildings that are less than 10 years;
   (b) 90% of the owners consent be required for buildings that are 10 years and above; and
   (c) 85% of the owners consent be required for buildings that are 15 years and above.

(2) Section 84E - I am not sure whether this section applies to FREEHOLD properties. In checking a dictionary, freehold means *"a tenure of real property by which an estate of inheritance in fee simple or fee tail or for life is held"*. Therefore, I strongly feel that unanimous consent be required for freehold properties, because:

   (a) when these owners purchase (or inherited) these properties, they may have the intention to pass it on to their next generation(s);
   (b) owners would have paid a `premium' for their freehold properties; and
   (c) owners should be given the choice to decided on their freehold properties and not be `forced' by the majority against their will.

   It should not be perceived that owners of freehold properties are against en-bloc sales but rather, they should rightfully be given the freedom of choice.

   However, should there be a need to include freehold properties in this Section, may I suggest that it will only affect new freehold developments because I feel it is unfair to current freehold property owners if they were to be imposed on the law <u>without any warning.</u>

Thank you for allowing me to express my views. I can be contacted at telephone numbers 222 9973 (office) or 736 0068 (home).

Yours sincerely,

Ivy Scow Choon Neo

Paper 24

From: Mr Michael F Fullwood &
Mdm Teo Lee Huang
2 Suffolk Road #10-00
Singapore 307780

Dated: 6 September 1998

Received: 7 September 1998

We, Michael Frederick Fullwood and Teo Lee Huang would like to submit the following views regarding the proposed legislation for enbloc sales.

People choose to buy homes instead of renting them to give them a sense of fulfilment and permanency. The proposed legislation removes these while perpetuating a sense of uneasiness in homeowners - that anytime, they would be forced to sell the home which they have painstakingly furnished and be subjected to the inconvenience of having to look for another property and starting the whole process again. There are several reasons why owners go for older developments such as location, larger sized units, low maintenance through lack of facilities, proximity to family, schools, familiarity with the area, etc.

While the Act will benefit the few developments where the majority of owners want to sell their properties collectively, it does nothing but harm for the many developments where the owners have no such intention. Potential buyers who are genuinely seeking a home would be hesitant to buy into developments with enbloc potential for fear that they would lose money when they are forced to sell their home. This situation is not far-fetched when one considers that prices have escalated manyfold for old properties and most resale flats require renovations, some rather extensive, before the next owner can move in. The result is that potential buyers will shun such properties thereby penalising owners of properties with enbloc potential rather than help them. The Act should detail how the interests of minority owners would be safeguarded to remove these fears.

In the past few years when property prices escalated, such legislation would appear to benefit every owner of a development which is sold enbloc but in a falling market, the interests of the minority are insufficiently protected.

Suppose you have a development where most owners bought their flats years ago at very low prices. While an enbloc sale may benefit them, those owners who have bought resale flats at high prices and renovated the flats may in fact be making losses and be out-of-pocket when they pay off their housing loans.

The legislation, in its present form, makes it too easy to go enbloc. Buildings under 20 years old should not even be included as it is wasteful to tear down such buildings. If all the owners feel that they want to sell their development enbloc,

there is nothing to prevent them from doing so. For developments 20 years and older, 90% consent would be a more acceptable figure because in a small development, it is conceivable that owner-occupiers are the minority. This legislation would allow speculators to force an enbloc sale at little inconvenience to themselves while the owner-occupiers face the hassle of looking for an alternative home and schools for their children. Some older residents have a genuine aversion to moving such as infirmity, illiteracy, the lack of knowledge of how to go about buying another place, the fear that they would move out of a place which has brought them good "feng shui", etc. In the past, there have been instances where other residents would assist these older folks to look for alternative accommodation in order to achieve an enbloc sale. When blanket approval is given (these older folks may not even be aware of any application made under Section 84A and also may not know the procedure to lodge an objection under subsection (4)), such assistance may not be forthcoming.

We would even venture to suggest that the decision to go enbloc be left to the owners of a development rather than through legislation since the present property glut seems to suggest that land is not so scarce in Singapore after all. Several developments which have been sold enbloc are left vacant, not exactly the best utilisation of prime land. Furthermore, with such legislation in place, the owners are tempted to defer making decisions to upkeep the development, thinking that they would be able to sell enbloc at some future point in time, resulting in the development looking an eyesore.

We would be prepared to appear before the Select Committee if required to do so.

Thank you.

Yours faithfully

Michael F Fullwood Teo Lee Huang

Paper 25

From: Mr Nga Thio Ping
Chairman
Collective Sale Committee
Kum Hing Court, MST Plan No. 245
c/o 28 Tomlinson Road #04-32
Singapore 247854

Dated: 6 September 1998

Received: 7 September 1998

1 There was a time when Potong Pasir was a playground for the children in and around the area. To the adults who resided and worked there, the land gave plots for them to farm, to provide their primary means of income, since generations past. That was up to the early sixties.

2. Then came the PAP government. It wanted to convert it and the adjacent Toa Payoh area into housing cum industrial satellite town. It was a hotly contested issue. This writer could still recall the question which a most fiery speaker thundered in Hokkien, during an evening election rally, at a car park across the Kim Keat Avenue Community Centre.

> "Where are the farmers supposed to grow their vegetables on? The roof tops of the high rise flats?"

3 There would, of course, be others who griped that the expense in these areas should be left undeveloped, to offer the harried workers of the bustling entreport city some space and tranquility.

4 Lands in Potong Pasir, Toa Payoh and elsewhere on this main and off-shore islands were taken over and compensated for, within a master plan, for a comprehensive range of very much more beneficial use, to generate wider spin offs and vital multiplying gains, for Singapore and its people, including the former owners, tenants and workers of the lands which were developed.

5 Had it not been done, there would have been no world-class Singapore that we see today.

6 The programme for national renewal must not stall.

7 Development guide plans and plot ratios have been comprehensively and carefully reviewed islandwide, to better provide for the nation's needs, now and the future. Even older HDB blocks were not missed.

8 But, as normal, there would always be a small number of owners - in their personal, joint or corporate entities - who would, for one reason or other, withold their cooperation, despite all gains which could be realised for themselves and others. This is an especially significant problem for lands and estates involving private owners.

9 Therefore, the decision of the government to draft a fuller resolution through the Land Titles (Strata) (Amendment) Bill that was introduced in Parliament on June 29, 1998, with an invitation to those concerned to submit their views and proposals in writing, to your committee by September 7, 1998.

10 It is an invitation very much appreciated by us all - the Collective Sale Committee for Kum Hing Court and the large majority of fellow individual subsidiary proprietors who are supportive of a collective sale of the estate, but have thus far been frustrated from doing so.

11 We herewith submit our situation and suggestions for your wise deliberation.

Kum Hing Court

12 Kum Hing Court is a 25 year old aged development. It consists of 112 apartments of 1630 sq ft each and 2 penthouses of 3260 sq ft per unit - totalling 114 units or 116 share values (at 1 share value and 2 share value per unit of 1630 sq ft and 3260 sq ft respectively). They are housed in 2 tower blocks (nos 28 and 36) along Tomlinson Road, under Management Strata Title Plan No. 245.

13 Its land area is 96,104 sq ft, with an existing built-up of about 210,000 sq ft, the equivalent of a plot ratio of about 2.3. The River Valley Development Guide Plan allows for a 30-storey development, up to a plot ratio of 2.8. The land is therefore under-utilised.

14 At the same time, the existing two blocks are old, with need for further major costly and messy works, covering new rubbish chutes and sewerage pipes and the affected walls and floors - on top of the soon to be completed long drawn cosmetic improvements.

15 Its 114 units (or 116 share values) are not equally owned by single-unit owners. More than half of these are controlled by two individuals, all stemming from their time as majority shareholders of the company that developed Kum Hing Court.

16 The larger of the two still holds, through the same company, a bloc of 43 units (37% share value) with another two under a separate outfit, plus one penthouse in his personal capacity, that is totalling 40.5% share value under his direct control. The other, who has since left the originating company, holds 12.1% share value, spread into a couple of sub-holdings.

17 It can therefore be appreciated that more than 50% of the units in Kum Hing Court are on rent to tenants who come and go, with some of these tenants even sub-letting out their rooms.

18 There had also been occasions when there were fights, tenants from colourful professions, with a unit or more every now and then doubling up as dedicated or casual gambling den.

Past Effort at Collective Sale

19 In January 1996, a Pro-tem Collective Sale Committee was formed to look into the possibility of organising a collective sale for Kum Hing Court.

20 One of the primary consideration was to ensure that the dominant owner was in favour of the collective sale. Without such a cooperation, the whole exercise would have been futile. His initial response was favourable, and the decision was taken to proceed with the organising of the work.

21 Quotations were obtained from various agents to assist the Pro-tem Sale Committee. By July 1996, Knight Frank Pte Ltd was selected as the marketing agent. Subsequently, Drew & Napier was also appointed to be the lawyers to draw up the collective agreement for the sale of the estate by tender. Both appointments were subject to all owners signing the collective agreement.

22 Lots of effort were put in. There was much anticipation. Encouragements came in from owners across the spectrum - especially those seeking to better provide for their needs, be it their children, ageing parents, careers, businesses and, particularly for the more elderly ones, health and retirement. All, through one way or other, to benefit the nation.

23 By September 1996, support from 108 out of the 114 units, that is around 94%, were garnered. Momentum was maintained to persuade the remaining owners to join in. A draft collective agreement was in the meantime prepared for owners' signatures.

24 The signing exercise was scheduled for a weekend in November 1996. But suddenly, 4 evenings before it, just as the committee was about to meet to run through the event, word came that the dominant owner had backed out.

25 Then reserved price which was then assessed for the collective sale of the estate was just over S$300 million.

26 Strenuous efforts were made over the many months since then to persuade that owner to reconsider. These had not been successful. Requests for direct dialogue were also turned down.

27 A real costly disappointment indeed. The hopes and needs of so many had been frustrated. This would include one elderly gentleman, a brother of an individual whom all Singaporeans have every reason to be grateful for. This owner of an apartment had since died. This writer had the privilege to be encouraged by him over the telephone, during those earlier months of organising work,

28 Many other elderly and not-so-elderly owners are still hoping.

The Draft Bill

29 The `New Part VA, Collective Sale of Property, clause 84A of the Land Titles (Strata) (Amendment) Bill' states in (b):

> "An application to a Board for an order for the sale of all the lots and common property in a strata title plan with more than 10 lots may be made by the subsidiary proprietors of the lots with not less than 80% of the share values where 10 years or more have passed since the date of the issue of the latest Temporary Occupation Permit on completion of the development or, if no Temporary Occupation Permit was issued, the date of the issue of the latest Certificate of Statutory Completion for any building comprised in the strata title plan, whichever is the later, .."

30 Based on the responses received during the organising of the collective sale, the large majority of the individual owners was in favour of a collective sale. This was clearly the case if the wishes of each and every one of the owners were to be considered, without taking into account the number of units each might be owning.

31 Yet when computed against share values (as is proposed in the draft) this high level of some 86% of the individual owners who were still in support of a collective sale would be rendered to represent less than 59.5% - because of the 40.5% of the share value of that dominant owner!

32 The wishes and interests of the majority of individual owners should surely take precedence in matters concerning collective sale, especially when a most dominant owner - with a very high holding by share value - also happens to be the original developer of that particular estate.

33 Self interest may result in such a dominant share value owner to hold every other owner to ransom. In an endeavour like this, such an owner can effectively demand that other owners sell their units to him at a price dictated by him, or that he be paid a premium over and above what is enjoyed by the rest. Or, to see the worth in their units diminish, relative to what could otherwise be had, if this would be the preference of that owner.

34 Though the last has yet to happen, it does not mean that it will not.

Income Tax

35 One of the primary issues raised by that dominant owner was the question of income tax on the profit from the sale. He was unsure as to whether there would be tax on the 43 units which were held under the name of the development company in his control, upon the successful execution of a collective sale. As the original developer of Kum Hing Court, there was the anxiety that the authorities would tax on the substantial profit received, after deducting the original costs involved, to result in the payment of `prohibitively high' amount of taz.

36 Possibly a psychological barrier. But a very real one.

Recapitulation of Basic Aim for the Proposed Bill

37 Every equitable, workable and positive improvement should be incorporated to get the proposed Land Titles (Strata) (Amendment) Bill to succeed in what it is intended to achieve.

38 This is: "To promote optimum utilisation of land, a critical resource in land-scarce Singapore, with no un-reasonable requirement of any, so as to accomplish the long-term land use goals as laid out in the respective Development Guide Plans."

Submission in Request for Improvements

39 It is in the above context that the following are earnestly proposed for your kind consideration, refinement and, hopefully, adoption into the Land Titles (Strata) (Amendment) Bill.

(1) That the term "share values" as used in situations like those in clause 84A(1) be qualified with "or individual owners regardless of the number of units each may own if the development also has owners holding multiple units."

(2) That the line "10 years or more" (page 5, line 21, clause 84A(b)) be replaced by "10 years or more to below 20 years".

(3) That an additional sub-paragraph (c) be incorporated after 84A(b), with the initial lines to read "the subsidiary proprietors of the lots with not less than 70% of the share values or individual owners regardless of the number of units each may own if the development also has owners holding multiple units where 20 years or more have passed since the date of the issue…."

(4) Under any new or appropriate existing heading in the Bill, insertion of a provision to give effect "That affected corporate multi-unit subsidiary proprietor will be exempted from paying income tax on profits or gains from units which it ploughs back as reinvestments in the new property that is developed from the site that is sold by collective sale".

40 The requests are made to cater for real-life situations, as like the one which Kum Hing Court faces - where a minority (in terms of owner-individuals) holding a significantly large share (in terms of number of units) can obstruct a collective sale of a property, especially one that is old and aged, thus thwarting the government's goal of maximising land usage, to the detriment of the legitimate interests of the larger majority of owner-individuals and the nation.

41 If required, clarification or elaboration will be furnished gladly in writing or in person.

42 With sincere thanks, we remain

Yours faithfully

NGA THIO PING
Chairman
Collective Sale Committee
Kum Hing Court, MST Plan No 245

Paper 26

From: Mr Supardi Sujak
Blk 508 Pasir Ris Street 52
#07-171
Singapore 510508

Dated: 7 September 1998

Received: 7 September 1998

Introduction

En-bloc sale is not simple nor smooth. For every successful sale, there are numerous unsuccessful deals, frustrated for one reason or another. To succeed, it is important that owners look at the bigger picture and be realistic about the sale price and other circumstances surrounding the sale, such as the prospect of a new development potential that will take place in the future.

The Bill will ease the present difficulty of going through the process of en-bloc sales because of the disagreement from the small minority owners. The Bill enhances a better managing this conflict, as well as allowing the en-bloc to take place so that it will further creates impetus in:

- enhancing a new development that will increase plot ratio
- churning out new and innovative ideas on the development of land
- meeting Singapore's strong desire for quality living

The Bill if passed, should reflect the appropriate safeguards to protect minority owners, while giving the majority owners the right to proceed with the sales. At the same time it paves way for better land use, especially in scarce land in Singapore.

En-bloc Sales Command a **Premium Price & Creates Better Utilisation of Scarce Land Resources**

With the pressing need to better utilise each plot of scarce land in Singapore, the Development Guide Plans (DGPs) proposed an increase in plot ratios for certain areas. As a result, some property owners suddenly find themselves "sitting on a pot of gold" as their land can now be put to more intensive use, thus creating the incentive for en-bloc sales. Developers are willing to pay for these sites as they are often freehold land located in prime areas- an increasingly scarce item given the most land are now obtained from government land sales with 99-year tenure.

On the other hand, if we look at any existing or old residential property, it is far from being a potential gold mine, if marketed individually. However, as a collective sale, it means another story. The potential of commanding a premium price is within reach if sold under en-bloc sales. For example, the first collective sale was Cosy Mansion in October 1994. Owners of the nine-story walk-up apartment in Upper East Coast reaped a windfall of $1.2 million cash each compared with the average market price of $700,000 for each of the apartments had they sold individually instead. A whooping of more than 71% above the purchase price if sold individually. Moreover, a new development from the existing land will pave way for better utilisation of scarce land resources and maximises development potential. It also rejuvenates the estates and add "new life" to the surrounding.

What is a Fair Purchase Price that will Satisfy an En-bloc Sales to Take Place?

It is not worth the while if the premium obtained from en-bloc sale compared with the conventional sale of individual units is less 30% to 50% as they will have to put up with inconvenience such as finding new accommodation within a stipulated period. Some owners may be used to living in a particular location and are unwilling to relocate. Or they may be owned by absentee owners who do not wish to go through with the hassle of collective sale or some units may have existing tenancies. For owners nearing retirement, there is the problem of getting bank financing for the next purchase. Then there are trustee situations and owners who want to hold out at unrealistic prices.

Likewise, in Parliament in November 1997, Mr Chiam See Tong put forth a realistic scenario that deserve attention. Mr Chiam raised the issue of "certain cases of residents who oppose en-bloc development. It is not because they do not want the place to be improved, but there are cases of persons who are widows and who are living alone with no relative,... it is difficult for them to move out". This is a very relevant issue which is more complicated than the "number games" of small minority owners against majority owners. It is a matter of the hearts, giving nostalgic feelings and sentimental value of living in the house. The desire to move out is nil even there is a prospect of making significant profits.

The question is, with all these setbacks and relevant opinion of disagreement to the sales, this have affected the likely chance of an en-bloc sales to take place smoothly. If we respect the opinion of the small minority owners, it will be unfair to the large majority owners who is ready to sell off their properties. It is a trade off between the two groups of owners. Henceforth, a solution to this deadlock situation is through economic opinion. In this way, at least, it satisfies both parties. For example, as long as there is an indication that a small minority owners disagree with the sales, then the best way out is to ensure that the purchase price is within say, a range of 50% - 70% above the value price of a unit sold individually.

New Opportunities or being Sentimental - Which is more Realistic now?

With this arrangement, the interest of the small minority owners and the majority owners will be satisfied. Market mechanism will play a pivotal role in achieving a fair price and ensuring that the safeguard of the minority be taken care of. However, market mechanism itself has no place to quantify the "sentimental feelings" of owners - the market will not wait for disagreement to be over. Property prices will change all the time.

It may be to the disadvantage of the owners if decision to sell is postponed. The delay is where all the "small talks", endless discussions and disagreements that have taken place, which have affected a smooth sales to take place. If we want to move as fast as the market forces and secure a fair price, then the small minority should view the en-bloc sales as a worthwhile course of action that will be favourable to them, at least financially.

In short, "sentimental feelings" or "unhappiness" over the prospect of en-bloc sales have to be "put aside" and instead be realistic that at the end of the day, we could not deny the fact that if opportunity to make it big comes along the way, it is time to pick that opportunity. Through this opportunity, new opportunities will evolve. At the end of the day, the decision make by the small minority owners to decide to join in the en-bloc sales will be looked up by the families as something that is justifiable, even though there is some reservation to do so initially. It is a decision that looks into the long term stability rather than to succumb into a short term conviction of "being too individualistic" and neglecting the aspirations of majority owners. Everyone wants that opportunity too.

Board of Appeals - How Far they can Safeguard the Interest of the Small Minority Owners

Assoc Prof Ho Peng Kee mentioned in Parliament in November 1997 that as far as the safeguards is concerned, especially for the minority, the Board of Appeals will serve this purpose. It is on this note that 1 think the members of the Board of Appeals must ensure that a "fair price" is really a fair price. Owners may be too excited with the possibilities of the sale and a high tendency of "quick sales transaction" out of under pressure. This may end up with a price that is not fair. The question is, how will the Board of Appeals ensure there is no pressure that comes along the way in reaching a purchase price agreement? What role will the Board of Appeal plays in ensuring "safeguards" especially for the small minority, who may have every intention not to join in the en-bloc sale, but have to do so by law?

There will be no different if it's a 100% or 75% Agreement among Owners - the Litmus Test is what constitute a Fair Price

If there is a 100% agreement to the en-bloc, there is no problem. The price will not be the main issue. However, if there is a handful of owners who disagree with

the sales, then we have to go one step further. The minority may make up 25% of the ownership. It may make up 30% of the ownership. It all depends whether we go by per unit or base on strata-areas, as some owners have smaller units. Therefore, my proposal is, if there is a handful of owners not keen with the en-bloc sales, we have to make sure that as long as the law allows for the sales to take place, it will only go through if the price fetch at least more than 50% based on the value price of a unit sold individually.

Conclusion

Looking ahead, the Bill has created the foundation for new development to take place out of an en-bloc sales and in meeting the needs of a more affluent and discerning population that places a premium on the environment and the quality of life. The Bill allows better utilisation of scare resources which is in line with the DGPs in tackling the biggest constraint of meeting the aspiration of an independent nation of 4 million people within the 730 square kilometres area ultimate land mass of Singapore. In line with this understanding, the Bill should be supported.

Paper 28

From: Mr Teo Lip Hua Benedict
104E Grange Road
Singapore 249593

Dated: 4 September 1998

Received: 7 September 1998

I respectively submit for your consideration, my views on Clause 8 of the Land Titles (Strata) (Amendment) Bill, being Bill No. 28/98 (the "Bill").

2 Currently, en-bloc sales of land with subdivided building is possible only if all the subsidiary proprietors of the relevant strata title plan agree to do so. Any unreasonable subsidiary proprietor can block an en-bloc sale. If there is no unanimous consent from the subsidiary proprietors for an en-bloc sale, the subsidiary proprietors who wish to proceed with the en-bloc sale can file an application for the termination of the strata title plan pursuant to section 78 of the Land Titles (Strata) Act. Due to the requirement of unanimity for an en-bloc sale, some subsidiary proprietors may hold back their agreement to an en-bloc sale in order to bargain for a price higher than those payable to the other subsidiary proprietors. I support the Government's initiative to facilitate en-bloc sales of land with subdivided buildings so as allow for a better utilisation of our limited land.

3 To initiate an en-bloc sale, a collective sale agreement must first be signed by the subsidiary proprietors for the development concerned. Where all the subsidiary proprietors sign the collective agreement, the real estate company will then market the development and proceed with the sale. Unless it is a small development, sale by tender is usually the preferred method to ensure transparency. The identity of the purchaser is of little interest to the subsidiary proprietors so long as they achieve the reserve price. The process of obtaining the signatures of the subsidiary proprietors to the collective sale agreement alone can take about 3 to 6 months. This is because people normally do not want to be the first to commit themselves. The collective agreement will usually be binding for an limited period, after which it will lapse if the en-bloc sale does not succeed. For the marketing and en-bloc sale of a development, real estate agents will often ask for a period of 6 to 9 months to market and sell the development.

4 From the time a collective sale agreement is ready for signing until the conclusion of a sale and purchase agreement for the en-bloc sale, it would take at least 6 to 12 months. As we have experienced recently, market conditions can change drastically over a short period, not to mention a period of 6 to 12 months.

5 Based on the above, whatever may be the Board's decision, there should be greater certainty for all parties on the time taken for the Board to make an order under the section. The existing provisions of section 84(A) do not provide for any certainty as to when an application will be heard. It does not set a dateline for the

disposal of the application. Although this provides the Board with flexibility in carrying out its duties, the developer and the owners have to face with undue uncertainty on their sale and purchase transaction. If it is possible to stipulate that the Board will make its order within 6 months of the application being lodged, both the developer and the owners will know in advance and for certain when the outcome of the sale and purchase transaction can be confirmed. If the above is unduly restrictive, it may be possible to prescribe a period within which the notices referred to in subsection (4) have to be sent out by the Board, after the Board's receipt of an application under subsection (1)?

6 In addition to the numerical requirements set out in section 84(A)(1)(a) and (b), the subsidiary proprietors must *"have agreed in writing to sell all the lots and common property in the strata title plan to a purchaser under a sale and purchase agreement which specifies the proposed method of distributing the sale proceeds to all the subsidiary proprietors, subject to an order being made under subsection (6) or (7)."* Subsection (1) envisages that the. The purchaser must be identified. However, it is not clear whether the sale and purchase agreement can be subject to conditions other than the order being made under subsection (6) or (7). For example, it is not clear whether the sale and purchase agreement can be subject to a condition on time. This means that if an order is not made under subsection (6) or (7) within an agreed time, the whole sale and purchase agreement will be void. This will allow the purchaser to have a greater degree of certainty on the extent of its commitment.

7 Subsection (6) empowers the Board with the discretion to refuse the application or to approve the application and order that the lots and common property in the strata title plan be sold. In exercising the discretion, the Board shall consider the matters raised in the objection filed under subsection (4), the scheme and intent of section 84A, the interests of all the subsidiary proprietors and all the circumstances of the case. The discretion exercised by the Board under subsection (6) affects not only those parties who are objecting to the en-bloc sale but also the owners who made the application and the purchaser. Assuming that the market value of the development has appreciated by 50% at the time of the Board's hearing of the objection, will the Board consider it to be the "interests of all the subsidiary proprietors" not to proceed with the en-bloc sale? If so, wouldn't this be unfair to the developers? the existing provision does not require those who object to the en-bloc sale to discharge any burden of proof of any matters.

8 Subsection (5) and (6) envisages that the Board may mediate in any matter arising from an application made under subsection (1). However, there is very limited scope for the Board to assist in the mediation process since the sale and purchase agreement has been entered into with the purchaser. If it is intended that the Board should assist to mediate and resolve differences between the majority owners and the minority owners, it should be at the stage before the sale and purchase agreement has not been entered into with the purchaser. It should be at the stage of the signing of the collective sale agreement prior to launching the development for tender. However, I am not proposing that the Board should intervene at the stage of the collective sale agreement. Element of trust and

transparency is crucial in an en-bloc sale. I support the proposed scheme whereby the Board will make an order at the stage when a sale and purchase agreement has been entered into. This allows the Board to act as a final check to ensure that the sale process is carried out properly.

9 I will now make my specific comments on the provisions of the new section 84(A). From the scheme and intent of the section 84(A), it would appear that the Board can only refuse the application or approve the application and order that the lots and common property in the strata title plan be sold. This is provided for in subsection (6) of the section 84(A). In fact subsection (7) compels the Board to order that the lots and common property in the strata title plan be sold if no objection has been filed under subsection (4). Subsection (7) states that *"if no objection has been filed under subsection (4), the Board shall order that the lots and common property in the strata title plan be sold"*.

10 It would appear that the Board is not allowed to impose any conditions to an order made under subsection (7). This is correct. Similarly, it is submitted that the Board should not be allowed to impose any conditions on the order made under subsection (6) to approve the application and order the sale. The Board should not be empowered to alter the commerical terms of the sale and purchase agreement by approving the sale and yet imposing its own conditions. If the Board is allowed to do so, it will be considering the commerical merits of an en-bloc sale. It is submitted that this is an area which the Board should not be allowed to intervene. This position is consistent with the wordings adopted in section 84(B)(1)(c) that *"the subsidiary proprietors ... shall sell the lots and common property in accordance with the sale and purchase agreement"*. When the Board approves an application and order the sale of the lots and the common property, the sale must be carried out in accordance with the sale and purchase agreement referred to in subsection (1).

11 It would also appear that the scheme and intent of section 84(A) envisages that an order made under subsection (6) or (7) must be final. This means that once the Board makes an order to approve or refuse the sale, it cannot subsequently change its mind by revoking, discharging or varying it. This will provide finality to the sale and purchase transaction between the owners and the purchaser.

12 It is submitted that the scope of subsection (9) should not extend to an order for sale made under subsection (6) or (7). Subsection (9) should be amended as follows:

> "The Board may, at any time it thinks fit, extend, vary, revoke or discharge any order made under <u>subsection (4) or (8),</u> and may vary any term or condition upon or subject to which any such order has been made."
> *(amendments are underlined)*

13 Subsection (7) compels the Board to order that the lots and common property in the strata title plan be sold if no objection has been filed under subsection (4). There is no discretion vested in the Board unlike subsection (6). There is no

reference in subsection (7) to a time period to determine the filing and non filing of an objection under subsection (4). There is however no time reference for the Board to decide whether the condition set out in subsection (7) has been fulfilled. Assuming that at the end of the 21 day period mentioned in subsection (4), the Board has not received any objection and has not make any order for extension of time for any party to file their objection. When will the Board be compelled to make an order for the sale of the lots and common property in the strata title plan? Can the Board entertain an application after the expiration of the 21 day period referred to in subsection (4) to extend time for the filing of the objection? This should be clarified to provide certainty. Subsection (4) and (7) may be amended as follows:

> "A subsidiary proprietor of any lot ... may each file an objection with a Board stating the grounds for the objection within 21 days of the date of the notice served pursuant to this subsection (4) or such longer period as the Board may allow." *(Amendments are underlined)*
>
> "If no objection has been filed under subsection (4) within the time prescribed therein or such further period as the Board may allow under subsection (4), the Board shall order that the lots and common property in the strata title plan be sold." (amendments are underlined)

14 The above representations are based on my personal experiences in a collective sale exercise which did not succeed. I trust that my written representations will suffice without the need for any further oral clarification.

Yours sincerely,

Teo Lip Hua, Benedict

Papers 31 and 31A

From: Messrs Rodyk & Davidson
9 Raffles Place #55-01
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Dated: 7 September 1998

Received: 7 September 1998

We are solicitors who have acted in more than 30 cases of en-bloc sales of which more than 10 have been successfully completed

Having perused the new Bill, we have the following comments:

(1) Section 7(14)

This sub-section allows the sale of new units to the owners of the existing flats in the proposed development without the schedule of strata units allocating the share values being filed and approved by the Commissioner of Buildings PROVIDED such contract of disposal is before the legal completion of the sale.

We envisage some difficulties in putting this into effect:

(a) Even if the planning permission is obtained, any sale by the developers of units in the proposed development before obtaining the sale licence is a breach of the Housing Developers (Control & Licensing) Act;

(b) There are also legal issues of whether there can be a contract of sale of units in the proposed development even before the said units can be identified. There are a string of local cases which states that such contract of sale of inadequately specified units will be void for uncertainty;

(c) It is also noted that this sub-section caters for a sale of "new flats" to owners of **original flats,** the redevelopment in some cases relate to a collective sale of landed property, the owners of the landed property should also have the similar right to buy new flats on the same plot of land before approvals of the authorities.

(2) Section 78(11)

It is clear from the explanatory statement that this section is not to be used in en-bloc sale cases whether section 84A is not satisfied or otherwise rejected by the Board. However, we respectfully submit that this section can be drafted with more clarity so as to avoid ambiguity or being open to a different, albeit reasonable construction otherwise.

We refer to the words "and there is no reason for applying to the court under this section **other than that** the subsidiary proprietors". It is open to 2 constructions namely, section 78 cannot be resorted to even if the reasons for doing so is the failure to satisfy the requirements of the new sections 84A-F or to obtain the approval of the Board under section 84A(1); alternatively, it suggests that section 78 may be utilised if either of the sub-paragraphs (a), (b) or (c) is applicable. We submit that the latter should be the wrong interpretation as the section provides generally that no application for en-bloc sale be made under this section, however the said words seem to provide an exception to this prohibition.

We propose the new section 78(11) would end just before the said words and that would clarify without doubt the intention as stated in the explanatory note.

If the said words are to remain, we strongly propose the deletion of the words in bold i.e. "other than that" and substitute with the some other words. Similarly, the sub-paragraphs (a), (b) or (c) are to remain, they should not merely refer to section 84A(1) as the other sections like 84D(2) and 84E(3), which are the operative sections like section 84A(1) should also be included.

(3) Section 84A

We note the requirement for the subsidiary proprietors to have contracted conditionally in writing to sell all the lots and common property to a purchaser under a sale & purchase agreement before an application to the Board may be made.

This is likely to make the transaction more uncertain, be it for the developers or the sellers, who in view of this condition may not know when the purchase may be completed and as such a much smaller sum of deposit would be paid. We submit that the approval may be obtained even before the sale to a buyer so that the onus is on the sellers to get their act together before selling en-bloc.

We also note it only covers developments with more than 10 units. From our experiences, there are numerous developments with less than 10 units sitting on land with redevelopment potential. We propose that the Board would similarly hear their application for approval for sale as well.

(4) Section 84B

We note that all leases, tenancies shall determine on the date of delivery of vacant possession (unless an earlier date has been agreed upon), although it is provided that this is to be without prejudice to the tenant's rights for compensation.

We suggest that it should be stated clearly that the amount of compensation to be paid out should not exceed an equivalent of a number of months' rent unless the tenant can otherwise show proof (to the Board's satisfaction) of further reasonable damages incurred. As from our experiences, there are some tenants who demand huge amounts of compensation and which is unreasonable. There is a need for certainty for the seller, otherwise the problem of tenant would drag on long after delivery of vacant possession.

(5) General

We have also dealt with cases where original developers of the land proposed for redevelopment who still own the strip of land (which is to be set aside for road widening) but which has not been surrendered. They are still the legal owners of the strip of land. We propose that in such cases, there should be a similar provision for them to surrender the title deed without consideration (see position of the holder of the reversionary estate) as in Sections 84E(8) and 84F(3).

We propose that the Rules should contain guidelines on the mediation process between the minority and the majority of the owners. These guidelines should amongst others indicate what are the types of reasons that would be taken into account and that which would be overriden. This is enable the minority to be relatively certain of their position before objecting. This would help reduce the time involved in the mediation.

We also propose that the owners of landed property may apply to the Board for redevelopment. The details of which has to be worked out.

Our Mr. Norman Ho and our Mr. Justin Wee would be pleased to assist the Select Committee in the finalisation of the this new Bill.

Paper 31A

Dated: 5 December 1998

Received: 7 December 1998

LAND TITLES (STRATA) (AMENDMENT) BILL

We refer to our written submission of 7th September 1998 and our representation before the Select Committee ("the Committee") on 30th November 1998 wherein we have been requested by the Chairman of the Committee to further elaborate on issues relating to the payment of the purchase price into the project account by Housing Developers.

This is in relation to the proposed Section 7(14) of the Land Titles (Strata) (Amendment) Bill ("the Bill") which enables the purchaser of an en-bloc project to sell any of the new units in the development notwithstanding the schedule of strata units has not been filed with the Commissioner of Buildings where the purchaser has under Section 84A, 84D, 84E or 84F entered into a contract to dispose of the new flats.

An important issue to address would be the payment of purchase monies into the project account as any development on en-bloc sites is invariably governed by the Housing Developers (Control and Licensing) Act since there are more than 4 units to be built.

Under the Housing Developers (Project Account) Rules (Cap. 130 Rule 2), payment of instalments is to be made to the project account and there is no provision for exchange of units. If this issue is not resolved, there will be uncertainty and it is advisable to have a suitable provision which excludes the requirement of the Housing Developers (Project Account) Rules, similar to the proposed Section 7(14) of the Bill which specifically excludes Section 7(i) of the Land Titles (Strata) Act.

Yours faithfully

NORMAN HO JUSTIN WEE

Paper 32

From: Association of Property and Facility Managers
c/o Singapore Institute of Surveyors and Valuers
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Dated: 7 September 1998

Received: 7 September 1998

Our Association would like to submit the following for the consideration of the Select Committee:

General comments

The provisions in the Bill, particularly those relating to en-bloc sale, serve a useful purpose in facilitating the better use of land which is a scarce resource. The overall concept therefore, of providing a mechanism where land could be re-cycled, as it were, is to be supported; without these provisions, most strata titled developments would find it more difficult to proceed with an en-bloc sale. However, it should also be appreciated that there will be instances where owners will be forced against their will to part with their property. As a general rule, where forced disposal of their property is for a public purpose, e.g. as in compulsory acquisition for infrastructure works, public housing, etc. most owners have accepted such measures as it is in the national interest. En-bloc sale however, benefits a group of owners (as against the public at large) and it is critical, in our view, that the interests of the minority group should be adequately protected.

Clause 3

1 Clause 3 which amends section 7 of the principal Act allows the purchaser of a site the subject of a collective sale to sell a unit in the proposed development to a subsidiary proprietor prior to the filing and approval of the schedule of strata units by the Commissioner of Buildings.

2 This is a useful provision as it allows the purchaser of the property (usually a developer) more flexibility in trying to meet the subsidiary proprietors' requirements which may include acquiring a unit in the new development. However, the amendment by itself may not achieve this intention because a developer, before he can sell any unit in a proposed development has to comply with the following:

(a) in respect of residential development

1. obtain a developer's licence (for developments of more than 4 units);

2. obtain approval of the building plans;

3. open a Project Account into which all sales proceeds must be paid;

4. use the prescribed Option Form and Sales and Purchase Agreement under the Housing Developers' Rules

(b) *in respect of non-residential development*

1. obtain approval of the building plans
2. use the prescribed Option Form and the Sales and Purchase Agreement under the Sale of Commercial Properties Rules.

It can be seen therefore, in order to permit the developer to sell a new flat in the proposed development to the subsidiary proprietors, appropriate changes/ amendments to the Housing Developers (Control and Licensing) Act, the Sale of Commercial Properties Act and the Rules made thereunder have to be made.

Part VA

1 *New Section 84A*

This new section allows owners of 80% or 90% of the share values in a strata development with more than 10 lots to apply to the Strata Board after they have entered into a conditional agreement.

In respect of homogenous developments, i.e. developments comprising similar types of use, e.g. a office development or a residential condominium, the 80% or 90% rule can be said to represent the view of a substantial majority of the owners, not only in share value terms but also the physical number. However, the clause as proposed may not provide adequate protection to the subsidiary proprietors of the balance 20% or 10% share values in respect of mixed developments.

Presently, the allocation of share values is dependent on the size of the unit (i.e. the larger the unit, the more share values) and the type of use (e.g. whether it is residential, office or shop). The guide lines issued by the office of the Commissioner of Buildings in respect of what has been described as "complex mixed use development" (i.e. residential and air-conditioned office or retail premises) suggest that for a unit of similar area, a residential lot will have a ratio of 1 share value as compared to 4 share values for office and 5 share values for shop. This could result in a situation where the residential component could, be outvoted and their interests over-ridden. This is not advisable and we believe is also not the intention of the amendment.

To ensure that the various interests are adequately considered and also that the 80% or 90% provisions also represent the views of the substantial majority of the number of lots, the Association suggests that two alternatives be considered:

(a) to require that the 80% or 90% of the share values should also comprise say, 75% of the total number of subsidiary proprietors of the lots in the development. This will in effect mean that there will a significant number of owners who represent the 80% or 90% of the share values and will be more equitable.

(b) Alternatively, as the inequity is more likely to apply in mixed developments, the requirement for 80% or 90% of the share value be applied to each type of development, e.g. in a mixed development of residential, retail and office use, 80% or 90% be applicable to owners of each type of use. Only in the event that the requirement is achieved in each use type will the en-bloc sale proceed. There may be some difficulties in implementing this as the Commissioner's guide lines for allocation of share values identify three main uses only, viz. residential, office and retail. In practice, there are developments which include hotels, bowling alleys, cinemas, entertainment complexes, convention centres etc. for which there are no guide lines.

2 It is also noted that there are no provisions for the holding of a general meeting to decide on the issue of en-bloc sale. We are of the view that it is important that a general meeting be held and an appropriate resolution passed which could include the proposed terms of the sale, distribution of proceeds etc. A general meeting will afford the opportunity for the views of all interested parties be heard, issues discussed and terms and conditions fine-tuned. The "extraordinary resolution" (to differentiate from the special and unanimous resolution as defined in the principal Act) could be defined as:

"a resolution passed at a duly convened general meeting of a management corporation of which at least 21 days' notice specifying the proposed resolution has been given and the votes in favour of such resolution comprised

(a) not less than 90% of the total share values of the management corporation where less than 10 years have passed since the date of the latest Temporary Permit on completion of the development or, if no Temporary Permit was issued, the date of issue of the latest Certificate of Statutory Completion for any building comprised in the strata title plan, whichever is later; or

(b) not less than 80% of the total share values of the management corporation where 10 years or more have passed since the date of the issue of the latest Temporary Occupation Permit on completion of the development or, if no Temporary Occupation Permit was issued, the date of the issue of the latest Certificate of Statutory Completion for any building comprised in the strata title plan, whichever is the later, **and**

(c) not less than 75% of the total number of lots."

Such a resolution can also decide on the 3 persons to represent the subsidiary proprietors as provided under new clause 84A(2) whose provisions do not provide a resolution in event that the subsidiary proprietors cannot agree on who the 3 persons should be. Also, the resolution in appointing them could also provide the extent of their authority, how decisions among the three are to be made (e.g. by majority, by unanimous consent; what is the course of action in event that they cannot agree, etc).

We consider that the terms of appointment and in particular the extent of the authority of these representatives are important as otherwise, these representatives may subject themselves to civil action by dissatisfied subsidiary proprietors.

3 New section 84A(3) require the subsidiary proprietors making the application to the Strata Board to provide an undertaking to pay the costs of the Board under subsection (5). As the sale includes the lots as well as the common property, in order to avoid ambiguity, it should be stipulated clearly whether such costs should be borne out of the funds of the management corporation. It is preferable that such costs be paid directly by the applicants themselves. This is also equitable as otherwise, the subsidiary proprietors opposing the application will be contributing to the cost of an application against themselves!

4 New section 84A(5) provides that the Board can call for a valuation report or other report. Whilst the Board should be afforded some flexibility in making the award it will be helpful to provide some guidelines as to the basis on how the sales proceeds should be distributed, e.g. to be based on share values or market value of the lot. This guide line will be helpful as the sale involves the lot as well as common property. In the sale of the lot, the determining factor is the market value of the unit itself whereas when it involves common property, then the distribution is determined by the share value. Again, this difference is accentuated in respect of mixed or non-residential developments, e.g. a shop unit in a prime location on the ground floor is worth substantially more than a similar size unit on the higher floor tucked away in the corner but both these units have the same share value.

The Association's view is that the sale proceeds should be apportioned in relation to the market value of the lots and this can be determined by a licensed appraiser.

5 It is also important to ensure adequate protection to owners who may be forced to sell against their wishes and under normal circumstances, would be reluctant to dispose of their properties. Most, if not all, instances of en-bloc sale is initiated by a group of owners who are motivated by gain or profit rather than the larger picture of maximising land resources. Objections to en-bloc sale could be due to any one or more such instances e.g.

(a) where the owner suffers a loss or a marginal gain. Under normal circumstances, the owner is likely to continue owing the property as there is no reason why he should dispose of his unit and realise a loss or to sell his property, find another and relocate for a small gain;

(b) where the owner has bought the property for less than three years and has expended substantial costs in renovations; if he manages to achieve a profit, this is taxable and places him at a disadvantage when compared to others in the condominium; the resultant net benefit may not justify relocation and looking for another property;

(c) where the owner does not wish to dispose of the property for emotional and/or sentimental reasons; this is a situation where economic benefits, if any, does not come into the equation; and

(d) the owner may not wish to expose himself to claims for compensation for termination of the lease if it is not scheduled to expire [taking into consideration the provisions of new clause 84(B)(d)].

6 New clause 84(B)(d) provides that any existing lease affected by the en-bloc sale will terminate on the date on which vacant possession is to be given. In addition, new clause 84B(2) clearly stipulates that the rights of any lessee of a subsidiary proprietor to claim compensation from the subsidiary proprietor will not be prejudiced. The provisions as they stand appear to be quite inequitable to the subsidiary proprietor who may be unwilling to sell his unit because of hefty compensation but is nevertheless forced to do so because the majority of the owners wish to do so.

In addition, some owners may be liable to costs resulting from the early termination/redemption of their mortgages as most banks impose charges for early redemption e.g. within a 3 year period.

In order to be equitable, provisions should be made to provide that such costs for which the owner must produce evidence that they are a direct result of the en-bloc sale be taken into account in any distribution of the sale proceeds.

The Association's representatives will be pleased to appear before the Select Committee to give oral evidence if invited to do so.

Yours faithfully

Wan Fook Kong
President.

Paper 33

From: Messrs Phang & Co
Advocates & Solicitors
7 Temasek Boulevard
#12-06 Suntec Tower One
Singapore 038987

Dated: 7 September 1998

Received: 7 September 1998

Introduction

We are pleased to make our representations on the Bill.

We declare our interests in that we are lawyers acting for a number of estates that are attempting to sell the units in en bloc sales.

We agree with, and have no comments on, the clauses of the Bill which are not mentioned in our representations.

Representations

Clause 7

We respectfully disagree with the proposed section 78 (11) (b). If there is the requisite majority, then the majority must make the application under the proposed section 84A first. Otherwise, applications under section 84A would be at the discretion of the majority. We do not think that such discretion should be allowed.

Clause 8

We think that the proposed section 84A should be amended.

In principle:

1 *Board's approval should precede agreement for sale*

The application to the Board should precede any attempt to sell the estate. The proposed tender (or auction) terms (with all the terms including the reserve price) can be placed before the Board for approval. If the Board makes the order, interested purchasers can tender, or bid, for the en bloc purchase. The highest tender or bid, above the reserve price, would be the purchaser.

Purchasers are generally unwilling to tender for an estate if there are owners who are not agreeable to the sale. If there is a conditional

agreement, the purchaser will be concerned that the decision by the Board may be unfavourable, leading to an abortive purchase.

2 *Manner of sharing sales proceeds should be governed by law*

The proposed section 84A should stipulate the manner in which the sales proceeds are to be shared amongst the strata owners. Disagreements over the method of apportionment of sales proceeds have resulted in many failures of en bloc attempts.

The following are alternative methods of sharing sales proceeds, i.e., division according to:

(a) share values

(b) strata title areas;

(c) valuations of the units (which would take into account the orientation, floor level, state of renovation of the flats)

Section 78, in effect, requires that the sales proceeds be divided according to share values.

We propose that section 84A should stipulate the manner in which proceeds are to be divided. We think that division according to the strata title areas is the least unfair of the possibilities, but agree that division according to the share values may have to be resorted to.

3 *Tax liabilities should lie where they fall*

4 *The Board's discretion should be limited, and based on only technical (rather than legal) criteria*

The Board consists largely of members whose expertise is in the technical fields. If the criteria are legal, then the proper forum should be the Courts. Therefore, we respectfully disagree that the Board's discretion should be based on the following factors stated in the Bill:

(a) "the scheme and intent of (the) section" (which is based on the phrase used in section 78);

(b) "the interests of all the subsidiary proprietors"; and

(c) "all the circumstances of the case".

The Board's discretion should, instead, be based on what real estate economists refer to as the "obsolescence" of the estate. This concept has three aspects:

1 *physical obsolescence*, concerning the state and condition of the estate, and the amount of repairs needed;

2 *function obsolescence,* which relates to the design of the buildings, e.g., as to whether there are lifts; and

3 *economic obsolescence,* which takes into account the enhancement of the plot ratio of the site, and whether it is worthwhile, in economic terms, for the owners to pay for the repair, renovation or upgrading costs, when weighed against the en bloc selling price of their flats.

Our suggestion is that if the Board is of the view that an estate is obsolete, then an order of sale must be made. There should be no appeal from the decision, although judicial review may be sought in appropriate cases.

Names & Particulars of representers:

Phang Sin Kat

Tan Hock Boon, David

We would be pleased, if required, to appear before the Honourable Select Committee.

Yours faithfully,

(Dr) S.K. Phang

Tan H.B. David

Paper 34

From: School of Building and Real Estate
The National University of Singapore
10 Kent Ridge Crescent
Singapore 119260

Dated: 7 September 1998

Received: 7 September 1998

Submitted by: Assoc. Professor Lim Lan Yuan
Dr Lawrence Chin Kein Hoong
Dr Alice Christudason
Ms Anne Magdaline Netto
Ms Low Boon Yean

Paper 1

A Does the Bill cover non-residential strata schemes?

The Bill does not indicate whether it is applicable to non-residential developments. Is it the intention of the legislature that the proposed amendment be applicable to all strata title properties? It appears that the Bill has been tailored to facilitate collective sale of residential developments and the Bill primarily addresses issues relevant to these developments. Would the same considerations apply to non-residential development under the Bill?

B Collective sale of relatively new buildings

It is submitted that a building should be of a certain minimum age before it can be the subject of a collective sale under the proposed legislation so as to capitalise on the enhanced plot ratio to realise its full development potential. The Bill authorises the Strata Titles Board (STB) to order the collective sale of even a relatively new building - the 10-year period only specifies the difference in the percentage required by the majority. It is submitted that in the case of relatively new buildings, it is most unlikely that there will an enhanced plot ratio to yield a substantial increase of residential units. In view of this, facilitating the collective sale of such development is not furthering the intention of the proposed legislation. Instead, the collective sale of a relatively new building would result in a wastage of resources at the national level. Such wastage arises for the following reasons:

- Construction materials and technology used today make buildings more durable.

- It is unlikely that in Singapore's context that buildings may degenerate into slum. This is because there is in place, relevant legislation to ensure that our

buildings are well maintained and safe. The Buildings and Common Property (Maintenance and Management) Act, passed in 1973, appointed the Commissioner of Buildings and gave him the authority to regulate the maintenance and management of all buildings and common property in Singapore. Moreover, the Building Control Act 1989 ensures the soundness of buildings in Singapore. Section 28 of the said Act provides for periodic inspection of buildings where non-residential buildings are required to be inspected by a structural engineer at intervals of not less than 5 years while mainly or wholly residential at intervals of not less than 10 years.

- Strata owners could decide together to refurbish or upgrade their building or estate in order to check physical obsolescence. These works can be undertaken to improve the facilities or to add quality and distinctiveness to the estate. Redevelopment of the entire building or estate arising from a collective sale may result in adverse effects on the living environment.

However, it is acknowledged there could be situations where collective sale of relatively new buildings may be justified. For example, where the adjoining sites have different land uses, a merger or amalgamation by a collective sale would optimise land use.

In the view of the above, it is submitted that collective sales of relatively new buildings should be allowed only under exceptional circumstances. Accordingly, specific provisions to that effect should be made in the proposed legislation.

C Community bonding

Perhaps most importantly, buying and investing in property especially as a home is likely to be a major decision and commitment for most Singaporeans. The possibility of a development being subject to a collective sale will create an element of uncertainty and indirectly retard the building up of community bonding in one's neighbourhood. In the case of relatively new buildings, this will be even more undesirable.

D Sharing of sales proceeds

The distribution of sales proceeds arising from a collective sale is most likely to be a crucial and contentious issue to be resolved. The Bill does not specify any particular method of distributing sales proceeds. It is submitted that the Bill should provide for a clear and equitable formula to be applied in the situation where the subsidiary proprietors are unable to reach agreement.

Section 30 (2) of the Land Titles (Strata) Act 1988 provides that the share value of a strata lot is used to determine the voting rights of the subsidiary proprietors, the quantum of the undivided share of each subsidiary proprietor in the common property, and the amount of contributions levied by the management corporation on the subsidiary proprietors of all the lots in a subdivided building. While the

literature has provided different methods of share value determination, all of them have their share of advantages, as well as shortcomings. The current practice is based on the guidelines on share value computation prepared by the Commissioner of Buildings. The method adopted in Singapore is the floor area basis for residential buildings and for commercial developments, the share value of a lot is the floor area of each lot in proportion to the total floor area of all lots within the strata scheme adjusted according to a fixed weightage.

Furthermore, given the fact that residential developments nowadays typically comprise different unit designs and sizes, lots within the same development will have different share values. Hence, when a strata scheme is terminated arising from a collective sale and parties have not reached agreement on how the sales proceeds should be distributed, it is submitted that the use of share value basis should be considered by the STB should use the share value as a basis. This approach would be similar to that of a resolution passed by the management corporation to terminate the strata scheme under section 81(5)(a) of the Land Titles (Strata) Act.

Paper 2

This submission is mainly concerned with the effects of clause 7 of the Bill which seeks to amend section 78 of the Land Titles (Strata) Act (LT(S)A). The approach taken is as follows:

- Paragraph A, the Introduction, considers the avenues available for the termination of a strata scheme under the present law. There is a brief discussion on the key features section 77 and 78 LT(S)A; it is necessary to consider these as clause 7 of the proposed amendment Bill will have an impact on section 78;
- Paragraph B suggests a re-wording of clause 7 to make it more readily understood. It also examines the effects of the clause;
- Paragraph C suggests a list of matters which must be specifically addressed by the Strata Titles Board before it orders a collective sale.

A Introduction

It seems to be commonly perceived that an insoluble problem arises where there is a lack of unanimity in a proposal of a collective sale. This perception seems to be misplaced, as there is already in existence under the present Land titles (Strata) Act (LT(S)A), an avenue for proceeding with a collective sale despite lack of unanimity. There are two sections in the LT(S)A which bear on this point.

(i) Section 77 of the LT(S)A

Section 77 deals with the variation of a strata scheme as a result of any damage or destruction of the subdivided building upon the application of any subsidiary proprietor of a lot in the subdivided building or the mortgagee or charge: or the management corporation.

In such a case, the court may, according to section 77(3), make an order to settle a scheme for the reinstatement or continued use of the subdivided building in whole or in part. Where appropriate, the court may reject an application for a variation and instead, direct that the application be deemed to be made under section 78, for the *termination* of the scheme.

(ii) Section 78 of the LT(S)A

- The following features of section 78 are singled out for mention:

(1) As in section 77, any subsidiary proprietor of a lot in the subdivided building, the mortgagee or chargee, or the management corporation may apply to court for the termination of the strata scheme. It follows that there is no pre-requisite of a majority, leave alone unanimity among the subsidiary proprietors, in order to be eligible to apply for termination of the strata scheme;

(2) the court is conferred a wide discretion as to whether there are "just and equitable" grounds for terminating the strata scheme;

(3) the order of court, if granted, may direct inter alia, the sale or disposition of the property.

- Section 78(1) elaborates that in arriving at a conclusion as to what is just and equitable" the following factors should be considered:

  (i) the scheme and intent of this Act;

  (ii) the probability of unfairness to one or more subsidiary proprietors if termination for subdivision is not ordered; and

  (iii) the rights and interests of the subsidiary proprietors as a whole.

- Section 78(3) read together with (ii) and (iii) above, provides the opportunity for the minority to have their say and explain their decision not to participate in the collective sale. In this context there are various issues which the court takes into account, including the physical and economic obsolescence of the building, how much inconvenience or hardship, (financial and otherwise) a termination of the strata scheme may cause etc. Only then may the court decide to terminate the scheme and *inter alia,* direct the sale of the property of the Management Corporation or even order a *variation* of the scheme under section 77 of the Act.

This section has been successfully invoked by parties selling a collective sale in circumstances where the development was badly in need of repairs involving large sums of money (which owners were not prepared to fork out), and there was a minority holding out on the sale.

B Clause 7 of the Bill; Amendment of section 78

(i) Suggested wording

The Bill proposes that section 78 be amended by the insertion of subsection (11). It is noted that the amendment to section 78 has been worded with three negatives and may initially appear a little confusing. Perhaps this is unnecessary. With respect, it is submitted that the subsection can be more readily understood if it was couched in the following manner:

"No application for the sale of all the lots and common property in a strata title plan shall be made under this section where an application has previously been made under section 84A(1) and the subsidiary proprietors' only reason for this application is that they:

(a) have not been able to satisfy the requirement under section 84A(1);

(b) have been able to satisfy the requirement under section 84A(1) but have not made an application to a Board under section 84A(1); or

(c) have been able to satisfy the requirement under section 84A(1) but their application for an order under section 84A has been refused by a Board."

(ii) Effect of amendment

- The amendment disallows applications for termination of the strata scheme under section 78, where for one of three reasons (subsection 11a-c) an application under section 84A has failed, and the subsidiary proprietors have no other reason to support the application.

- However, this gives rise to an anomaly if the following situation arises. The requisite majority may have made an application to the Strata Titles Board pursuant to section 84A which has proven to be unsuccessful. Subsequently, it is possible, even for a single subsidiary proprietor, (or any number of persons short of the percentage prescribed under section 84A) to make an application to the Court under section 78. This is the case, provided he/they has/have *some other reason* (i.e., other than those outlined in the proposed amendment, subsection 11 (a-c)).

- This *some other reason* may be that some of the owners refuse to pay for essential repairs to the building. Where the court finds it just and equitable to do so, it may order the termination of the strata scheme and the sale of the property.

- It seems ironic that where the prescribed majority could not succeed in an application under section 84A to the Strata Titles Board, it is possible for even a single subsidiary proprietor, (or any number short of the prescribed percentage) to obtain an order for termination of the strata scheme and sale if the court finds it just and equitable to do so. Is it the intention of the amendment that this alternative route be left available for parties seeking the termination of the strata scheme and an order of sale?

- While an unsuccessful application under section 84A is a bar to an application under section 78, (where subsection 11 (a-c) applies and the applicant has *no other reason*) the converse is not true. This means that an unsuccessful application under section 78 is *not* a bar to a subsequent application to the Strata Titles Board under section 84A.

- For example, where *inter alia*, the prescribed percentage under section 84A is met, there is the possibility that the Strata Titles Board may order a collective sale, despite the fact that the application to Court for termination of the strata scheme (and perhaps eventual sale) under section 78 had earlier been denied for reasons based on just and equitable grounds. This is indeed ironic. In view of this possibility, it is submitted that some specific provision should be included in section 84A which requires the Strata Titles Board to at least consider whether an application had earlier been made to the Court under section 78 of the LT.(S)A and been denied.

C Clause 8 of the Bill; Clause 84(5)

- With regard to section 84A (5) of the Bill, it is suggested that the following be spelt out as the matters which the Board must take into account before it makes an order for a collective sale:

(a) What is the state of repair of the property and extent of under-utilisation of the development, has the development aged' in relation to the changed environment;

(b) How should proceeds of the sale be divided? Should the apportionment be according to share value? Where all the units are identical in size, perhaps apportionment is less problematic; however where the units are of different sizes, could a separate assessment be made for each unit using say, the valuation method to arrive at a more equitable assessment?;

(c) Are there indications of collusion between owners and between the owners and the interested new developer? These may be minimised by insisting upon an open tender system or auction conducted by an independent property consultancy;

(d) Where the majority can be constituted by just one shareholder, the concerns of the minority should assume even greater importance;

(e) Scrutiny of the terms and conditions of the sale and ensuring *inter alia,* any of the following:

(i) that unit owners are given a reasonable time to vacate the property; or alternatively, they be,

(ii) allowed to remain there temporarily despite completion and transfer of ownership to the developer,

(iii) assistance be granted in the finding of comparable replacement property either temporarily or as an alternative;

(iv) offering the unit-owner a right of first refusal to a unit in the new development

Paper 3

(i) Part VA 84A(2)

This section allows the subsidiary proprietor to appoint ‘not more than 3 persons' to act as their authorised representatives, jointly and severally. Therefore the subsidiary proprietors can appoint 1, 2 or 3 representatives.

The introduction of the concept of `jointly and severally' is odd. "Jointly and severally" in Black's Law Dictionary (5th ed. 1979) refers to joint and several contracts and joint and several liability. Under joint and several contracts it states, `contracts in which the parties bind themselves both individually and collectively.' Under `joint and several liability' it states that a liability is said to be joint and several when the creditor may sue one or more of the parties to such liability separately, or all of them together at his option.

Therefore this concept is usually used in the context of liability to mean liability collectively and/or individually.

In the proposed legislation, the phrase "jointly and severally", appears to be used in relation to powers exercised individually and/or collectively by appointed representatives. This presumes the appointment of more than one representative. However, the phrase `jointly and severally' cannot be used where only one representative is appointed. It can only be used where more than one representative is appointed. As the appointment imports onerous trust obligations, it would be in the interest of the subsidiary proprietors to appoint more than one representative.

Where it is used for the appointment of more than one representative the phrase still poses problems. If the subsidiary proprietors appoint more than one representative they should want the representatives to act jointly. However, the phrase `jointly and severally' allows unilateral acts by a single representative. This would defeat the objective of requiring concurrence and allow for possible arbitrary conflicting acts.

Further, the appointed representatives are placed in a position of trust. The trust rule on unanimity requires trustees to act in concurrence. See ***Re Mayo*** [1943] Ch.302. Therefore the representatives cannot act individually. There is no question of them acting "severally". They must act jointly at all times.

In conclusion, firstly, there should be more than one representative appointed. Secondly, the representatives should be required to act jointly.

(ii) Part VA 84A

There are two references to `notice' in this section.

Firstly, section. 84A(4) allows for subsidiary proprietors and others with interest in the land to file an objection with the Board "within 21 days of the date of the notice served pursuant to this section". There is an express reference to a notice served pursuant to the section.

Secondly, section 84A(10) deals with the effect of "a notice sent by registered post under this section". Again, reference is made to a notice sent under the section.

Despite the 2 references to a notice under the Section there is no indication of when the notice is actually required. Presumably notice of any application to the Board has to be served on subsidiary proprietors and all interested parties.

It is therefore necessary to include a section to deal with the service requirements on all the interested parties.

(iii) Part VA 84A(5)(b)

This section empowers the Board to "call for a valuation report or other report and to require the subsidiary proprietors referred to in subsection (1) to pay for the costs."

The subsidiary proprietors referred to in the section would be the majority applying for an order to collectively sell the property.

Any application to the Board could result in either the Board approving the sale or denying it. If the Board approves the sale then the section requiring only the majority to pay the costs of the valuation would be unsatisfactory. All parties supposedly would have benefited from the sale. The Board would not approve a sale that places the minority at a disadvantage. Therefore there is no reason why the minority should not also be liable for the cost of the valuation report. The section, in fact, gives minorities holding out for more money a further incentive to hold out.

Therefore the majority should only be required to bear the cost of the valuation report if the Board denies the application. If the Board approves the application the cost of the valuation report should come out of the proceeds of sale.

Paper 4

A Section 84A - Collective Sale

Under the new section 84A to F the majority owners are required to enter into a conditional sale and purchase agreement with a purchaser before an application is made to the Strata Titles Board (STB) for a collective sale. The conditional sale and purchase agreement is also required to state the method of distribution of the sale proceeds.

(1) Requirement of a conditional sale and purchase agreement

The consequences of having a conditional sale and purchase agreement are as follows:

- The purchaser is required to be involved even before an order for sale is obtained.

- Changes in the terms and conditions of the conditional sale and purchase agreement resulting from mediation sessions before the STB would require the purchaser's concurrence.

- The purchaser's presence at the mediation sessions becomes inevitable.

However, it is not appropriate for the purchaser to be involved *before* an order for sale is obtained for the following reasons:

- The purpose of the Bill is to approve a sale despite the absence of unanimous approval from the owners.

- The STB will be mediating on the differences or concerns raised by the minority owners and this is not the purchaser's concern at all.

- The involvement of the purchaser at this stage would deter potential purchasers.

- Even if a purchaser decides to enter into the conditional sale and purchase agreement, the purchaser may choose to offer a significantly reduced price since it is still not known whether the sale would proceed.

- The minority owners would feel that it is inappropriate for the purchaser to be involved at this stage, as there could be no sale.

- The conditional sale and purchase agreement makes it necessary for the purchaser to support the majority's application for sale. It would therefore appear as if the majority owners and the purchaser are in collusion at the mediation session before the STB.

• The purchaser would only be involved in the application before the STB if the price offered meets the approval of the majority owners. Therefore, the minority owners may feel that the entire exercise under section 84A is merely to notify them that the majority owners have already done all that is necessary to proceed with the sale. This includes, finding a purchaser, and agreeing to the terms and conditions of the conditional sale, including a fair and reasonable price.

• The minority owners would be totally defensive at the mediation sessions and not be receptive to any suggestions by STB. For mediation to achieve acceptable results to all parties and for all parties to leave such sessions feeling that they have achieved a "win-win" situation, it is submitted that the views of the minority owners should be heard before any purchaser is found. Then, there would be no possibility (or even an appearance) of collusion between the majority owners and the purchaser since the purchaser is not in the picture at all when the terms of the collective sale are being set out before the STB.

• The purpose of the Bill is to ensure that the collective sale is conducted at arm's length, bona fide and with no collusion. An application to the STB for an order for sale of the property to the purchaser who has already been approved by the majority owners would go against what the Bill is seeking to protect.

Thus, it is submitted that the purchaser should be involved in the transaction only after the owners have obtained the order from the Strata Titles Board for the sale of all the lots and common property in the strata title plan.

(2) Stipulating the method of distribution of the sale proceeds in the conditional sale and purchase agreement

• Under the proposed new sections 84A to F, the mode of distribution of the sale proceeds will be contained in the conditional sale and purchase agreement with the purchaser.

• The formula to be used in the distribution of sale proceeds should be a matter which is confidential to the owners. There is no need for the purchaser to be a party to an agreement specifying the mode of distribution of the sale proceeds as the purchaser has no duty to ensure that each of the owners gets his respective share. The purchaser merely pays the total sale price in accordance with the terms of the collective sale agreement. The burden of ensuring that each owner gets his share of the sale proceeds is on the solicitor or marketing agent acting for the owners in the sale. Whether or not one owner is being paid more than another owner or how the mode of distribution is arrived at are matters between the owners themselves and as mediated or adjudicated by the STB.

(3) Case for using the current practice in the legislation

It is submitted that the current practice for collective sale with unanimous approval could work equally well for collective sales without unanimous approval.

The current practice for collective sale with unanimous approval is as follows:

- All the owners would have to sign a Collective Agreement binding all of them to the collective sale.

- The Collective Agreement would contain terms such as:

    - the reserve price,

    - the mode of distribution of sale proceeds,

    - the appointment of solicitor and marketing agent,

    - the method of sale,

    - the period of rent-free stay,

    - the indemnity from defaulting owners should the sale not be completed due to their default, and

    - the determination of Collective Agreement in certain situations.

- After the execution of the Collective Agreement by all the owners, the property will be offered for sale by public tender/auction.

- The owners would accept the highest price offered by any purchaser above the reserve price. In certain instances, the Collective Agreement would provide for acceptance of the purchaser's offer even if it is below the reserve price.

- It is proposed that the documents to be submitted to STB for their consideration should take the form of 2 documents, i.e. the Collective Agreement and the Tender/Auction papers, which will form the sale and purchase contract. The invitation to the purchaser to offer to purchase the property would only take place after STB orders the sale. The Tender/Auction papers, which will form the sale and purchase agreement, would incorporate the amendments reached through the mediation sessions between the majority and minority owners. The purchaser would not have to be involved in the application for the order for sale by STB and all the problems highlighted in section A(1) would be avoided.

- It is also submitted that the minority owners' fears of collusion between the majority and the purchaser would be best allayed if the sale took the form of an Auction. The minority owners could then, attend the auction and witness for themselves the transparency of the sale. An auction would also allow a

party who is related to any of the owners to purchase the property. Such a party would have to bid openly with the other interested purchasers and offer the best price, at arm's length, bona fide and with no collusion.

- Although sale by Tender could also equally bring in attractive bids, it may also lead to purchaser requesting for amendments to certain terms and conditions in the tender. Since the STB is only empowered to order the sale and not to determine the terms of the sale, it would be inappropriate to revert to the STB on the purchaser's changed terms. However, if Parliament should decide to leave it to the owners to determine the method of sale, it is proposed that the STB should be empowered to mediate or adjudicate any other matters relating to the collective sale not brought into discussion in the initial application.

- Furthermore, as the purchaser would be privy only to the sale and purchase agreement, the need for confidentiality under Section A(2) of the collective sale would also be addressed. In addition, should there be any other terms and conditions which should remain confidential information between the owners, such terms and conditions could be contained in the Collective Agreement, for example, the terms of appointment of solicitors and marketing agents acting for the owners in the sale.

The approach proposed above would seem to be similar to the approach in Hong Kong Special Administrative Region under their Land (Compulsory Sale for Redevelopment) Ordinance No. 30 of 1998. Under section 5 of the said Ordinance; the trustees of the sale could only proceed to sell the lots by public auction or other means (if agreed by all the owners) after an order for sale has been granted by the Lands Tribunal. Section 4(9) of the said Ordinance also provides for the trustees under an order for sale, the majority owners or minority owner to apply to the Lands Tribunal for directions.

B Section 84B(1)(d), 84B(2) - Lease affecting any of the lots in the strata title plan shall be determined on the date on *which* vacant possession is to be given to the purchaser of the lots and common property without prejudice to the lessee's rights against the subsidiary proprietor of that lot

- When making a decision under section 84A, STB should consider whether the minority owner is required to compensate any existing tenant in the event that STB orders a sale. Compensation should be paid to the minority owner for being induced to breach the tenancy contract with his existing tenant. It is possible that the majority owners may be liable to the minority owner for the tort of inducing the breach of contract.

C Sections 84B, 84E(9) and (10)

- The new section 84E(9) require proprietors of the flats who are deemed to have agreed to sell to produce the title deeds for the flats or the land to the person having conduct of the sale or to his solicitor. The new section 84E(10)

stipulates that if such title deeds are not produced, the person having conduct of the sale shall not be required to produce to the purchaser any title deed other than a certified true copy of the title deed or a subsidiary certificate of title.

- It is submitted that provisions similar to the new sections 84E(9) and (10) should be inserted under section 84B as these are provisions should apply upon an order being made under the new section 84A.

- In addition, there should be a provision allowing the Registrar of Land Titles and Deeds to dispense with the production of the title deed in such instance for the registration of any instruments in relation to the sale, in particular, the Instrument of Transfer and that such title deeds will thus be defunct/invalid after registration of the Instrument of Transfer to the purchaser of the collective sale.

D Additional comments

- It is submitted that the majority owners who apply to the STB under the new sections 84A to F should be allowed to register a notice of such application at the Registry of Deeds or Land Titles. This is to put all potential purchasers on notice that there could be a possible collective sale.

- Although this may render the unit less attractive to genuine homeowners, it would also mean that investors are willing to pay much more for the unit, having considered the possible capital appreciation of their investment. Such investors would most probably belong to the majority owners approving the collective sale.

- There could, however, be instances where such investors form part of the minority owners simply because they want an even higher reserve price for the collective sale. This may have resulted from the investors having paid a higher purchase price for acquiring the unit with collective potential unit.

- STB, as final arbiter, would then be able to consider the reasons for objecting to the sale, and take into account the fact that the unit was purchased at a higher price, with knowledge that there could be a collective sale.

- For the genuine homebuyers, the biggest investment in their lives would probably be the home in which they reside. Notification of a possible collective sale would thus serve to alert them to think carefully before entering into a contract to purchase the individual unit in the development which is subjected to a possible collective sale. Such genuine homebuyers, despite being notified of the possible collective sale, may decide to purchase the individual unit anyway and subsequently object to the collective sale. This is a matter the STB could also consider when deciding whether to order the sale.

Paper 5

Section 103 Jurisdiction to settle disputes with developers

The amended section 103 has removed entirely the STBs' jurisdiction to settle disputes with developers. The purpose of this amendment may be due partly to the fact that disputes with developers such as complaints on inherent or structural defects are more complex and likely to be protracted. They are therefore better handled by the courts. This is perhaps valid. However, there are also minor complaints against developers which could be easily handled by the STBs. These are simple maintenance defects in the common areas or facilities which should be rectified before handling over to the elected council at the First Annual General Meeting (AGM). During the period from the TOP (temporary occupation permit) to the First AGM, the developer is responsible for the management and maintenance of the common building.

It is submitted that STBs' should be granted the jurisdiction to settle disputes with developers before the expiration of the initial period or the First AGM, whichever is the earlier.

Paper 34A

Dated: 14 December 1998

Received: 15 December 1998

The Select Committee for the Land Titles (Strata) (Amendment) Bill

This is with reference to our telephone conversation this morning regarding the School's written representation on the above-captioned dated 7 September 1998. As spoken, I have refined the proposed wording for the amendment to section 78. I would appreciate it if you would make the following change to the relevant part of Paper 2.

Two alternatives are suggested below.

Please replace Paragraph B, (i) of Paper 2, found on page 4 of our written representation to you with the following:

"The Bill proposes that section 78 be amended by the insertion of subsection (11). It is noted that the amendment to section 78 has been worded with three negatives and may initially appear a little confusing. Perhaps this is unnecessary. With respect, it is submitted that the subsection can be more readily understood if it was couched in the following manner:

*"No application for the sale of all the lots and common property in a strata title plan shall be made under this section where the subsidiary proprietors' only reason for applying under this section is that they:

(a) have not been able to satisfy the requirement under section 84A(1);

(b) have been able to satisfy the requirement under section 84A(1) but have not made an application to a Board under section 84A(1); or

(c) have been able to satisfy the requirement under section 84A(1) but their application for an order under section 84A has been refused by a Board."

ALTERNATIVELY, the paragraph marked * above may read as follows:

"An application for the sale of all the lots and common property in a strata title plan shall not be made under this section where the subsidiary proprietors' only reason for applying under this section is that they...."

Thank you for agreeing to bring the above to the attention of the Select Committee. We appreciate your assistance in the matter.

Yours sincerely

Alice Christudason

Paper 35

From: Mr Yap Pett Chin
Blk 125 Geylang East Ave 1
#07-13
Singapore 381125

Dated: 7 September 1998

Received: 7 September 1998

Further to the recent invitation to the public on the Land Titles (Strata) (Amendment) Bill, I enclose the following comments for your consideration.

I would be pleased to attend before the Select Committee to elaborate on my views.

I believe it is fair to say that most Singaporeans attach great sentimental value to the home they grew up in or where they have lived a number of years. A person's home usually holds a lot of memories for that person. A home is not merely for shelter or a lodging house, but a place where most people feel most comfortable or relaxed. Hence there is the saying "there is no place like home". More fundamental is that home is inextricably linked to feelings for the country. When most people think of their country, it evokes memories and thoughts of their home. The slogan "Singapore, my home" frequently used during the celebration of National day speaks for itself. A piece of land may be a commodity but the house/ apartment/condominium built on the land which is a home to the people staying in it transcends pure economics.

The unique nature of land is reflected in the specific and specialised body of law governing land. Unlike other property such as goods, and intangibles like shares and stocks, each piece of land is unique and permanent in nature. Land, unlike most other property, is therefore not interchangeable. It is also significant that proprietory rights attach to land will bind not only the parties to it but are also capable of binding third parties.

I find it rather disconcerting that the proposed Sections 84A-F seem to treat land purely as an investment, an asset. The effect of the proposed Sections 84A-F undermines the historical notion that land is different and the principle of right to property. First, there is no distinction between residential and commerical developments. Secondly, the use of the term *"objection"* in Section 84A seems to suggest that the minority can have no justifiable reason for not wanting to sell and is hindrance to the majority who are agreeable to a collective sale. This is inconsistent with the spirit and intent of the Land Titles Strata Act ("the Act"). This can be seen by looking at Sections 13(1) and 41(8) of the Act.

Section 13(1) of the Act dictates that the *"common property shall be held by the subsidiary proprietors as tenants in common proportional to their respective share value and for the same term and tenure as their respective lots held by them"*. Simply put, all subsidiary proprietors have a unity of possession. Each subsidiary proprietor has the same equal right as every subsidiary proprietor to use and enjoy the common property. If a subsidiary proprietor cannot be deprived of his right to use and enjoy the common property, how then can a subsidiary proprietor be deprived of his right to possess and enjoy his home?

The fact that all subsidiary proprietors have equal rights and no one subsidiary proprietor should be given special privileges or discriminated can be seen from Section 41(8) of the Act. Section 41(8) states:

> *"Without limiting the generality of any other provision of this section, a management corporation may, with the consent in writing of the subsidiary proprietor of a lot, pursuant to a unanimous resolution, make a by-law in respect of that lot conferring on that subsidiary proprietor the exclusive use and enjoyment of, or special privileges in respect of, the common property or any part thereof upon such terms and conditions…".*

By coercing the minority to sell is tantamount to saying that the majority has got greater rights than the minority. Further, the requirement for a unanimous resolution with regard to any decision concerning common property and the lack for such unanimity in the proposed new sections when something as basic and fundamental as selling the units are concerned will make a harmonious construction of the Act impossible.

It is understandable when land is acquired by the state because of the need for public facilities e.g. roads, MRT, drains or for preservation of historic or cultural places. This is provided for in the Land Acquisition Act. The public interest comes into play here and the acquisition by the state is for the public good. But when the rights of a homeowner are impinged upon for pecuniary reasons by individuals for private commercial benefit, I am not sure that the value of a home can be measured by pure monetary terms.

Suggestions

Although Section 84A(6) has provided for mediation as an avenue for the dissenting subsidiary proprietors, there is no mention of specific extingencies that are to be taken account or disregarded by the Board apart from broad factors *such as "the scheme and intent of this section, the interests of all the subsidiary proprietors and all the circumstances of the case"*. Besides what would be the basis for comparing the decision of the majority which would rest on vested financial interests and the decision of the minority, which may be completely unrelated to financial interests?

Moreover, dissenting subsidiary proprietors may feel disinclined to express their feelings when the body in charge of the mediation is also the decision-making body. If the proposed Sections 84A-F are to be implemented, perhaps the tribunal which would be in charge of the mediation should be a distinct entity from the decision making body. All prior mediation is without prejudice as when a court case goes for mediation.

Another consideration is whether the Board is the appropriate and proper body to decide the interests of the minority. Perhaps subsidiary proprietors from other developments could be appointed as members of the tribunal as they would be in a better position to weigh the interests of the majority and minority. This would also make the dissenting subsidiary proprietors feel they are given a fair opportunity to voice their concerns to people who understand.

Conclusion

If homeowners are made to feel that, metamorphically speaking, their home can be taken away from them at any time. I cannot help but fear that this will inevitably reduce or weaken their link to Singapore as their home. This might be the undesired effect of the proposed Sections 84A-F if home owners should perceive their houses as an investment with only its appreciating value in mind. If we were to allow these proposed new sections, we-may become economic gypsies, travellers and nomads wilt places to live in but no home, who know the price of everything but the value of nothing. I therefore urge parliament to reconsider implementing the proposed Sections 84A-F.

Paper 36

From: Mr Chua Tiang Hee
Unit 4E Balmoral Crescent
Singapore 259894

Dated: 6 September 1998

Received: 7 September 1998

Balmoral Haven at 4 to 4E Balmoral Crescent

We are the owners of five out of the six units in the above development. We have read that the Land Titles (Strata) (Amendment) Bill only provides for developments of 10 lots or more. This would put us at a severe disadvantage and we would therefore like to request that the Select Committee recommend a review of this criteria. Our case is explained in the following paragraphs.

Our development

Balmoral Haven consists of six units of two-storey townhouses on a plot of land with an area of 35,482 sq ft. The development is more than 10 years old and is located at No. 4 Balmoral Crescent. The development has condominium status.

Under the Newton Development Guide Plan the site can be developed up to a plot ratio of 1.6 and up to 10 storeys. The existing units represent an existing plot ratio of only about 0.6. The site is therefore grossly under developed.

Background to collective sale

The proposed collective sale of our development was initiated as far back as early 1995. We will not bore the Committee with the details. Suffice it to say that because of a legal dispute over one of the units, the sale could not proceed despite several attempts.

The matter was reactivated again in early 1997 because the two parties with a dispute over one of the units came to a settlement in late 1996.

Owners started signing the agreement in March 1997. Before signing the agreement, one of the owners who we understand is from Hong Kong, asked us to consider an offer apparently introduced by her brother. We then entered into negotiations with this party, apprently also from Hong Kong, through their lawyer.

Owners finally agreed to the terms offered by this party at the end of April 1997. Despite several attempts to get a response from this party, nothing was heard. Finally in the first week of June 1997, our lawyers wrote to the other party to

confirm that all negotiations were off and that we would proceed to sell in the open market.

From the second week of June 1997 till mid-October 1997, we tried many times to persuade the owner from Hong Kong to sign the collective sale agreement so that we could proceed to sell the property on the open market by tender. Finally in Late October 1997 this owner replied through an agent representing her that she was not able to proceed with the collective sale for "personal reasons". No further explanation was given.

Our case

We do not understand why developments of 10 units or less are excluded from the ambit of the Bill. As can be seen from the above background, the proposed legislation would have prevented one party from being an obstacle to the collective sale. Had the proposed legislation been in place, our potential collective sale would not have been delayed from 1995.

From the government's stated objective to maximise land utilisation, our site is presently grossly under developed compared to the maximum of 1.6 allowed under the DGP.

Our site, at 35,482 sq ft, is not small and if developed to the maximum plot ratio it could provide for another 50 units averaging 1000 sq ft in floor area. In fact there are several other collective sales of smaller apartment sites that have taken place, for example:

Date	*Development*	*Land Area (sf)*	*No. of units*
Jan 95	Lincoln Mansion	12,669	10
Jan 95	Gochek Apartments	31,765	6
May 95	Ewe Boon Road	21,410	11
Jul 95	Miramar Mansions	28,000	16
Sep 95	Moulmein Lodge	13,003	8
Sep 95	Newton Mansion	27,857	28
Sep 95	Shanghai Court & Residence	21,485	20
Nov 95	Adam Garden	31,571	10
Dec 95	Fontana Gardens	29,450	12
Jan 96	10 & 12 Moulmein Rise	12,831	8
Feb 96	Balmoral Lodge	21,804	11
Mar 96	Belville Garden	34,005	12
Mar 96	Zhen Sheng Mansion	19,414	12
Apr 96	The Carmina	17,948	15
Apr 96	6 Sarkies Road	18,409	11
May 96	Yardley Court	26,000	20
Jul 96	Peck Hay View/Court	27,414	16
Aug 96	Lincoln/Surrey Road	18,748	16

Date	*Development*	*Land Area (sf)*	*No. of units*
Aug 96	Fort Apartments	24,041	14
Nov 96	Cairnhill Apartments	24,188	21
Nov 96	Galleria Apartments	22,142	18
Jan 97	Scotts Tower	32,726	32
Feb 97	Shelford Lodge	23,000	12
May 97	Chateau de Hollande	25,245	14
Jul 97	6 Jalan Mutiara	11,897	9
Aug 97	Draycott Drive	15.788	6
Aug 97	Balmoral Green	35,428	14

If collective sales are seen as a viable way for under developed land to be fully utilised, the above list would show that our land would contribute as much as, if not more than a significant number of collective sales that have already taken place.

We do not believe that the government assumed that smaller developments would have less difficulties in reaching consensus and would therefore not need the assistance of the proposed legislation. As the above background shows, one owner can still be an obstacle, regardless of the number of units in the development.

However, one issue that needs to be addressed in a smaller development is the criteria of 80% or 90% agreement by share value. Fortunately in our case, our development is more than 10 years old. Hence an 80% criteria would mean that at least 4.8 units, or 5 units in round terms, must be agreeable.

Had our development been less than 10 years old, the minimum would have been 5.4 units and this would not have made sense. Therefore for developments of 10 units or less, perhaps a fixed number should be applied e.g. so long as not more than 2 units disagree in the case of developments of 6 to 10 units, or some variation of this.

Our request

We trust that the above suitably explains that in terms of land area, our site can contribute significantly to greater land utilisation - as much as if not more than many other collective sales. We do not understand why our development size of 6 units should prejudice us. Certainly the background to our case shows that even developments of 10 units or less need the assistance of the proposed legislation.

We therefore hope that the Select Committee will give serious consideration to our case, see the merits in our arguments and recommend that the Bill be amended to cover cases such as ours.

If necessary we would be happy to appear before the Select Committee and answer any queries to help the committee understand our case better.

Yours faithfully

The owners of the following units at Balmoral Haven -

Chua Tiang Hee	Unit 4A
Sonia Raj Daswaney @ Kiran d/o Iswar Samtani	Unit 4B
Chan Chue Shing and Kok Soh Lui	Unit 4C
Kok Lee Kuen	Unit 4D
Hans H. Wilhelm Rahmann and Yasooda d/o Govindasamy Krishnan	Unit 4E

Paper 37

From: Mr Yeo Heng Moh, Mr Jack Au Chiang Huat and Mr Mak Yone Hoi
Maryland Park En-Bloc Sales Committee
1 Amber Gardens
#02-05
Singapore 439957

Dated: 2 September 1998

Received: 7 September 1998

We wish to support the above-mentioned Bill, specifically on new Part VA, clause 8 where the principal Act is amended by inserting, immediately after section 84, Part VA, COLLECTIVE SALES OF PROPERTY containing new sections 84A - 84F.

In addition, we would like to suggest that the 80% requirement be lowered to 70% and ".....to a purchaser under a sale and purchase agreement..... " replaced with ".....to a purchaser under a proposed sale and purchase agreement…."

The Bill will benefit our estate which occupies a residential plot of 22,922.9 sq. m. Its plot ratio can be almost doubled to 2.8 under the new DGP. Our estate consists of 3 blocks which were built 17 to 19 years ago.

The Bill will facilitate majority of the owners who are in favour of collective sale to push through the sale of our estate land.

We, the undersigned are willing to appear before the Select Committee to give oral evidence.

Yours faithfully,

Yeo Heng Moh	Jack Au Chiang Huat	Mak Yone Hoi
1, Amber Gardens	9, Amber Gardens	19, Amber Gardens
#02-05	#09-11	#05-23
SE 439957	SE 439958	SE 439962

List of owners who wish to support this Bill but not available to appear before the Select Committee:

(1)	Dr Sadhu P Rao	Blk 1 #15-05
(2)	Sadhu Renuka Rao	Blk 9 #12-11
(3)	Rudy	Blk 1 #06-07
(4)	Teoh Boon Chong	Blk 9 #02-17
(5)	Sunder J. S.	Blk 19 #09-23
(6)	Thng Ah May	Blk 1 #15-07
(7)	Chen Wei-Ning	Blk 19 #02-19
(8)	Eddie Sng CK	Blk 1 #18-03
(9)	Yeo Heng Moh	Blk 1 #02-05
(10)	Francis Heyzen	Blk 1 #14-03
(11)	Edward See C F	Blk 19 #08-25
(12)	Charles Tiong	Blk 19 #02-23
(13)	Bhajnik Singh	Blk 19 #02-21
(14)	Tan Fong Eng	Blk 19 #19-21

Paper 39

From: The Law Society of Singapore
1 Colombo Court
#08-29/30
Singapore 179129

Dated: 7 September 1998

Received: 7 September 1998

A Introduction

The Explanatory Statement to the Land Titles (Strata) (Amendment) Bill (Bill No. 28/98) ("the Bill") states that the proposed amendments to the Land Titles (Strata) Act (Cap. 158) ("the Act") facilitate enbloc sales of units in strata or flatted developments.

This Paper sets out some of the concerns and comments raised by members of the Law Society on the proposed amendments, for consideration by the Select Committee.

For the purposes of this Paper, the following expressions referred to in this Paper shall bear the following meanings:

"Application" means an application made pursuant to the proposed sections 84A, 84D or 84E in the Bill.

"Board" means Strata Titles Board as defined in the Act.

"Enbloc Process" means the process and procedures under the Enbloc Provisions.

"Enbloc Provisions" means the provisions under the proposed sections 84A, 84D, 84E and 84F in the Bill, whichever is applicable.

"Development" means in the case of the proposed section 84A, the building comprised in the strata title plan referred to therein, and in the case of the proposed sections 84D, 84E and 84F, the development in which the flats referred to therein are comprised.

"Majority" means those subsidiary proprietors or owners who constitute the percentage share prescribed in the proposed sections 84A, 84D and 84E in the Bill.

"Minority" means those subsidiary proprietors or owners who do not constitute the Majority and where applicable, includes the other parties (mortgagee, chargee or other person with an estate or interest in the land and whose

interest is notified on the land register) who have made an objection to the Application.

B Effect and Implications of Enforced Enbloc Sales

B1 Minister of State (Law) Professor Ho Peng Kee, at the second reading of the Bill gave 2 reasons for the proposed amendments:

(i) that the proposed changes would allow developers to take advantage of enhanced plot ratios and create more homes in prime areas:

(ii) that the enbloc process would help to rejuvenate older developments.

(The Straits Times, Monday 3 August 1998).

B2 However, the Enbloc Process has been perceived by many as a process of "forced sale" which could result in the oppression of minority interests and the derogation of personal rights. The rights of ownership of property should not be lightly deprived or curtailed, save in the name of "public good", as in the case of compulsory acquisition for public purpose. The law should not lend itself to be used to subjugate an individual's property rights and freedom of choice where there is no clear or exigent public purpose to be secured.

Particularly where residential property is involved, the ability of one group of owners to enforce the sale and disposal of the property of the remaining owners, severely undermines the sanctity and security of the concept of "home" and home ownership in Singapore.

B3 As the decision to sell enbloc is to be taken by the owners themselves, "public interest" is unlikely to be the motivation for the sale. In all likelihood, such decisions are driven by the greater profit margins to be made by a sale on an enbloc basis than by a sale on an individual unit basis.

It is submitted that financial gain cannot be permitted to be the sole or primary basis for allowing the Enbloc Process to be carried through, without the consent of all the property owners.

B4 It has been suggested that the judicial process afforded by the proposed amendments would help reduce the tensions raised amongst subsidiary proprietors/owners in attempting to obtain unanimous consent now required for enbloc sales.

It is submitted that the Enbloc Process may not diminish the likelihood of contention and acrimony between those wishing to sell enbloc against those who do not wish to sell at all. Owners who are keen to sell, may now seek to push other owners into forming a majority for the purposes of satisfying the Enbloc Provisions, and even when so formed, the Majority will

nevertheless resent the Minority for necessitating the making of an Application.

B5 To qualify for the making of an Application under the Enbloc Provisions, owners of units in any Development merely have to constitute a majority of the percentage specified. The provisions do not make any restriction on the type or condition of the development which may be affected by the Enbloc Provisions (save that they should have more than 10 lots or flats). Thus newer developments and developments which are structurally sound and well maintained, could become the subject of the Enbloc Process. This would contradict the principle of rejuvenation mentioned by Professor Ho.

It is suggested that the Enbloc Provisions should be expressly restricted to older buildings, whether in age or condition.

B6 Many Members of Parliament have at the second reading of the Bill expressed concerns about the need to protect the rights of the minority.

It is respectfully submitted that the proposed amendments, in particular the provisions relating to the powers granted to the Board, are not adequate in dealing with this very delicate balance between the rights and interests of the Majority and the Minority. This point is dealt with in greater detail later in this Paper.

C Extent of Application of Enbloc Provisions

C1 The Enbloc Provisions are expressed to apply to a "sale" to a purchaser, and the words "proposed method of distributing the sale proceeds" in the proposed sections 84A(1), 84D(2), 84E(3) in the Bill assume that the consideration for the transaction is monetary. This could be read to limit the applicability of the Enbloc Provisions to exclude other forms of arrangements which could be made between the subsidiary proprietors/ owners in a Development and a third party, for example, a proposal for joint redevelopment of the Development.

C2 The Enbloc Provisions also assume that there is already an intending purchaser and a conditional sale and purchase agreement. This would exclude a majority from applying to the Board for in-principle approval of a proposed scheme upon which they could offer by way of tender to interested third parties.

C3 It is submitted that the Enbloc Provisions should not be unduly restricted to strict sale arrangements for cash consideration. The provisions could be extended to give greater leeway to the development owners to negotiate different schemes and terms, and for the Board to assess the same on a case-by-case basis. Otherwise, the Enbloc Provisions in the Bill may have limited application only, and where they do not apply, the owners would have to resort to alternative measures (such as the Termination of Strata

Subdivision Scheme by Court under section 78 of the Act) for their proposed schemes.

D The Strata Titles Board

D1 The proposed sections 84A(7), 84D(5) and 84E(7) in the Bill provide that the Board shall order the sale if no objection is filed. The wordings make it mandatory for the Board to approve the sale (even if the Board has reservations on the transaction presented by the majority for approval), and gives the Board no discretion whatsoever to look into the merits of the application.

There appears to be a presumption or inference in favour of the Majority that their Application must be acceptable, unless the Minority proves otherwise. Should it not in the first instance, be for the Majority to satisfy the Board that their Application is just and fair? Otherwise, where is the protection to be afforded to the Minority by the Enbloc Process?

In contrast, section 78(1) (in respect of a proposal to terminate a strata subdivision scheme before the Court) expressly states that the Court must be satisfied that the proposed termination of is "just and equitable". The Enbloc Provisions make no mention that the proposed sale must be "just or equitable".

D2 It is submitted that for the protection of the Minority, whether or not any of them raise an objection, it should be expressly provided in the Enbloc Provisions that:

(a) the Board must review the Application to ensure that it has been properly made and notified to the Minority;
(b) the applicants (Majority) must explain and justify the Application;
(c) the merits of the Application must be given due consideration by the Board; and
(d) the Board must be satisfied that the transaction proposed is fair to all owners in the Development.

Further, the Board must be given the power even where there is no objection made, to reject the Application or otherwise to impose such conditions to their approval of the transaction proposed if and as it thinks necessary to ensure a fair and proper deal for all parties concerned.

D3 The proposed sections 84A(6), 84D(4) and 84E(6) set out the matters which the Board must consider in determining an Application as follows:

- scheme and intent of this section,

- the interests of all the subsidiary proprietors, and

- all circumstances of the case.

No other definitive language is given in the proposed amendments to guide the Board on how or what to assess in an Application made to them. It is submitted that it would not be right to leave it to the Board to search for its own solutions, the meaning and relative emphasis of matters to be considered.

D4 Whilst the proposed amendments in the Bill permit objections to be made to an Application, it gives no indication whether, what and to what extent if at all, personal interest issues of the Minority will be given consideration and assessed as sufficient to merit the refusal of an Application.

For example, will age, health and emotional attachment to the property of an owner, be given any weight at all in an objection raised? What about personal preferences such as location of the property or proximity to schools, friends and relatives, and personal difficulties such as finance, relocation and dislocation? In other words. how will an individual's needs and preferences rank against the dictate of a majority?

D5 The proposed sections 84A(6), 84D(4) and 84E(6) provide that if there is any objection and after having considered the case, the Board must either (a) refuse the application or (b) approve the application and make an order to proceed with the transaction. On a strict reading of the said sections. there appears to be no discretion for the Board to approve an Application subject to conditions or amendments. It is reiterated that the Board must be given the power to impose conditions to their approval to the transaction proposed.

D6 The proposed section 84A(8) empowers the Board to make "other orders and directions ... to give effect to an order made under subsection (6) or (7)". It is not clear how wide the Board's powers herein are intended to be. In contrast, section 78(5) sets out the types of directions which ought to be made.

D7 In the hearing of an Application, the powers of the Board appear to be restricted under the proposed section 84A(5) to mediation and calling of a valuation and other reports. It is suggested that the Board be given more general and wider investigative powers, which include mediation and calling for reports.

D8 Mediation under the proposed section 84A(5)(a):

D8.1 The Board is empowered to mediate between the parties, and thereafter to adjudicate on the Application (see proposed Sections 84A(6), 84(D)(4) and 84E(6)). The same Board is therefore to assume two roles ie. that of a mediator and an adjudicator. This appears to run contrary to the practice of the Courts and indeed, to the principle that the two must be kept separate so as to preserve the independence of the decision finally taken. The baggage of

emotive arguments or proposed settlements made by either party at the mediation stage should not be permitted to colour the adjudication process. Furthermore, it may become a point of appeal that the decision reached was prejudiced by certain information disclosed or compromises offered at the mediation stage.

It is submitted that there should be a 2-tier or separate approach to the mediation and adjudication process, and the members sitting at one should be different from those hearing the other.

D8.2 It is not clear whether it is mandatory for the Board to mediate between the parties if there is an objection. Further, the Enbloc Provisions set out no procedures or rules on the mediation process which the Board is empowered to carry out.

D9 Proposed section 84B - Orders of the Board:

D9.1 Section 84B refers to orders made under sections 84A(6) and (7). Orders are also made by the Board under section 84A(8), but there is no mention that such orders are also binding on the parties referred to in this section 84B.

D9.2 Subsection (1)(a) and (b) provide that the Minority and the successors-in-title and assigns of all subsidiary proprietors are bound by the orders of the Board. However, no mention is made that the orders are binding on the subsidiary proprietors who are the applicants in the Application (the Majority).

D9.3 Under subsection (1)(b), since an order will bind the subsidiary proprietor's successor-in-title, it is unclear to what extent an order will affect a mortgagee's or chargee's power of sale under a mortgage or charge.

D9.4 Subsection (1)(c) states that "the subsidiary proprietors of the lots referred to in section 84A(1)" shall "sell the lots and common property in accordance with the sale and purchase agreement".

- It is unclear whether the subsidiary proprietors referred to in this subsection mean the Majority who are the applicants in the Application in which the order under section 84A(6) or (7) is made. If so, then they cannot purport to sell the units not belonging to them and the order of the Board cannot be to empower them to do so. Rather, the order of the Board must be that the subsidiary proprietors referred to in subsection (1)(a) (the Minority) will join in the sale on the terms approved by the Board.

- That the sale of the lots and common property be "in accordance with the sale and purchase agreement" appears negates any discretion of the Board to impose conditions to their approval. This again raises the question of whether the Board has any such discretion.

It is submitted that subsection (1)(c) cannot stand as is, and needs to be revamped altogether.

D10 Position of tenant/lessees:

D10.1 A tenant or lessee of a unit in a Development subject to an Application cannot make an objection to the Application because his interest may not be "notified on the register for that lot" (see proposed section 84A(4) and 84E(5)).

He is not required to be given notice of the Application and therefore may not have any notice thereof nor be aware of the consequences of an order granted in favour of the Application.

D10.2 Yet, his tenancy or lease may be adversely affected by an order made by the Board approving the sale of the unit. The proposed section 84B(1)(d) states that all leases will determine on the date that vacant possession is to be given to the purchaser.

D10.3 Section 84B(2) preserves the rights of the tenant or lessee whose tenancy or lease is prematurely terminated under section 84(B)(1)(d) to compensation against his landlord. In the case where the landlord is a Minority, it is inequitable that he has to suffer liability to his tenant or lessee through no fault on his part but one created by the action of the Majority.

D10.4 It is submitted as follows:

(a) Tenants and lessees who have an interest in the lot and whose interests are not require to be registered against the lot, should:

(i) be served due notice of the proceedings [see **Regali Pty Ltd v The Proprietors - Strata Plan No. 31092** (Supreme Court of NSW, 30 May 1988, CCH Strata Title Cases 30-080)], and

(ii) be permitted to make an objection in the Application which affects them.

(b) Determination of the tenancy or lease should not be an automatic effect of an order of the Board approving the Application. It is suggested that the Board should be given

the power and discretion to make such orders with regard to tenants or lessees as the circumstances may require. Indeed, the Board must be directed to enquire into the position of tenants and lessees of the Minority.

(c) It should be incumbent upon the applicants (Majority) to make provision for the tenants and lessees of the Minority if the Application is to be approved.

D11 Costs:

Save that the applicants (Majority) are to bear the costs of the valuation report (see proposed section 84A(5)(b)), there are no provisions on the question of costs in an Application. Because of the subject matter of an Application, a Minority party should not be penalised in costs for making objections of a personal nature.

E Procedural Matters

El Proposed section 84A(3) in the Bill:

This subsection refers to "prescribed requirements" to be complied with, but there appear to be no clear requirements in the section. This may give rise to uncertainty whether an Application has been properly made.

E2 Service of notices etc on minority:

Indeed, it should be a "prescribed requirement" that notice of the Application and all relevant information in respect thereof be duly and properly served on the Minority (including tenants/lessees abovementioned), to enable them to file an objection.

There is no express obligation in the proposed section 84A, 84D or 84E, on the part of the Majority to serve notice on the Minority. It is noted however that the proposed section 84E(4) provides for the service of "the notice" on the landowner and parties having interests in the land.

[In contrast, see the provisions for service under the present sections 77(2) and 78(2) of the Act, as well as the proposed section 84F in the Bill.]

E3 Service of notices etc on majority:

Similarly, there should be a provision for the service of objections made by the Minority, on the Majority or their authorised representatives.

E4 Notices:

There is reference to "the notice served pursuant to this section" in the proposed section 84A(4), 84D(3) and 84E(5), but "notice" is not defined nor any requirement for service provided for.

It is submitted that the documents which are required to be served on the Minority (including tenant/lessees abovementioned) must include copies of the following:

- the application to the Board and all affidavits made thereunder,
- the sale and purchase agreement and all other relevant documents relating to the transaction with the proposed purchaser or third party.

E5 Authorised representatives:

Whilst the proposed section 84A(2) provides for the appointment of authorised representatives of the Majority, there is no provision for service of documents on them. The proposed section 84A(10) should be amended to include "deemed service" on the authorised representatives. It is further suggested that there should be one address for service on the authorised representatives.

E6 General provisions:

Many of the provisions applicable to an Application under the proposed section 84A are similarly applicable to Applications made under the proposed sections 84D, 84E and 84F. It is suggested that these provisions should be placed in a general section which apply to Applications made in the scenarios set out in the proposed sections 84A, 84D and 84E. The reading of the proposed section 84E(12) is particularly cumbersome, as it refers to section 84D(6) which in turn refers to various subsections in section 84A for applicability.

These general provisions would include:

(i) appointment of authorised representatives for the Majority - section 84A(2)

(ii) compliance with "prescribed requirements" and undertaking to pay the costs of the Board - section 84A(3)

(iii) service of notice of the Application and all relevant information on the Minority

(iv) appointment of authorised representatives under section 84C

(v) the powers of the Board and the effect of orders of the Board - sections 84B and 84C.

E7 Additional provisions:

In addition, there should be other ancillary rules covering, *inter alia;*

(i) substituted service of documents

(ii) service of documents outside Singapore

(iii) dispensation of service

(iv) service on Counsel

(v) system of pleadings

(vi) discovery and inspection of documents.

These rules would serve to create and ensure a more efficient and transparent system in the judicial process carried out by the Board.

E8 Objections:

E8.1 In an Application under the proposed section 84A, a "other person with an estate or interest in the land and whose interest is notified on the register for that lot" (see section 84A(4)) may file an objection to that Application. Similarly, in an Application under the proposed section 84E, a "other person with an estate or interest in the land whose interest is shown on the land register for that flat" (see section 84E(5)) may also file an objection to that Application.

However, in an Application under the proposed sections 84D, such "other person" is excluded. This appears to be an oversight and must be rectified.

E8.2 It appears from the proposed sections 84A(4), 84D(3) and 84E(5) that only a mortgagee, chargee or other person having an interest and whose interest is notified against "that lot/flat" may make an objection. The mortgage, chargee or other person having an interest in the lot or flat of an applicant (who is Majority party) may be good reason to object and it is submitted that they should not be excluded from so doing.

E8.3 The 21-day period for the making of objections by the Minority (under the proposed sections 84A(4), 84D(3) and 84E(5)) may be too short for them to put up substantive arguments before the Board, particularly if the Minority has not been privy to the proposed sale negotiations. It is submitted that there should be a longer period for objections to be raised.

E9 Proposed section 110 in the Bill - Representation before Board:

The amendment to the present Section 110 has omitted to make provision for the representation of the Minority and other parties affected by the Application. It is submitted the Minority must have similar rights as the applicants (the Majority) to (a) appear before the Board (b) be represented by counsel (c) examine witnesses (d) address the Board, so as to ensure a fair hearing for all parties involved.

E10 Right of appeal - Section 108 of the Act:

Section 108 of the Act only permits appeal to the High Court from an order of the Board on "a point of law". As the circumstances to be considered by the Board in an Application under the proposed Sections 84A, 84D and 84E, will usually be matters of fact, orders of the Board will often be grounded on findings of fact, and it will result in the orders of the Board being effectively non-appeallable.

Therefore, the procedural requirements for an Application before the Board must be clearly laid out so as to ensure that the concerns of all interested parties are fully presented to the Board and to allow for proper discovery and disclosure of all relevant facts and matters for the Board's consideration.

Otherwise, it is submitted that the present Section 108 of the Act must be amended in this regard to provide a right of review of a decision of the Board. It follows that the Board ought to be required to set out the grounds of its decisions in respect of any Application.

F1 Miscellaneous

F1 Proposed section 84E(2) - this subsection allows the prescribed percentage of owners to apply for allocation of share values for their flats:

- it appears that an Application under section 84E cannot be made unless and until the notional share values have been assigned pursuant to subsection (2), in order to determine whether the prescribed percentage for a Majority has been achieved.

- is the right to apply for allocation of share values under subsection (2) intended to be independent, or will such application be entertained by the Commissioner only if there is to be an Application to the Board under this Section? If the latter, how is the Commissioner to verify that the application is intended for such. What is there to ensure that the notional share values so assigned will not be used for any other purpose by the 25% owners who have applied for the same?

F2 Proposed section 84E(9) - it is not clear who the proprietors "deemed to have agreed to sell" are, as there is no deeming provision elsewhere in section 84E.

F3 Proposed section 84E(11) - in the proposed section 84E, the landowner is described in various subsections as "the proprietor of the land" but as "registered proprietor of the land" in subsection (11). This appears inconsistent.

Conclusion

From an overview perspective, it is respectfully submitted that the Bill does not give sufficient assurance or make adequate safeguards to ensure that the interests and concerns of the minority who will be adversely affected by the amendments proposed, are and will be given fair hearing, due consideration and protection.

We would urge the relevant, authorities to consider the substantive and procedural issues raised in this Paper, and to review and amend the Bill accordingly.

Paper 40

From: Singapore Institute of Surveyors and Valuers
20 Maxwell Road #10-09B
Maxwell House
Singapore 069113

Dated: 7 September 1998

Received: 7 September 1998

The Land Titles (Strata) Act which first came into operation in 1968 and amended several times over the years has greatly facilitated title registration and disposition of parts of a building as well as the management of such parts and the common areas of the building.

The Institute notes that the implementation and subsequent amendments of the Act have been very beneficial to the subsidiary proprietors of strata-titled developments as well as to our members who are property managers employed as managing agents for such developments.

The Institute feels that this Bill, which seeks to amend the Land Titles (Strata) Act providing for the better administration of the Strata Titles Board and facilitating *en bloc* sales of certain properties, would benefit the nation by encouraging the highest and best use of our scarce land resources. Widening of the scope of the Strata Titles Board will further enhance its ability to help resolve disputes between subsidiary proprietors and between the management corporation and subsidiary proprietors expeditiously.

However, the Institute feels that there are several issues arising from the Bill which the Committee may wish to consider and incorporate into the Bill. These are:

1 Reconciling the Housing and Developers (Control and Licensing) Act and the Sale of Commercial Properties Act with sections 7(14) and 7(15) of the Land Titles Strata (Amendment) Bill

Clause 3 of the Land Titles Strata (Amendment) Bill amends section 7 of the Land Titles (Strata) Act to enable the purchaser of all the units or flats in a strata or a subdivided building to sell to any existing flat owner a unit in the new strata development to be built, without the schedule of share values for the development being filed and approved by the Commissioner of Buildings. This is allowed if such a contract of disposal takes place before the legal completion of the *en bloc* sale.

Furthermore, the new section 7(15) provides that such schedule of strata units need only be filed within 6 months of the developer obtaining planning permission

from the competent authority for the proposed development. This requirement must be met before any other flats in the proposed development can be sold.

The provision under the proposed section 7(14) presumably caters to the situation where the owners of the existing development are obtaining new units in the proposed development in exchange for their existing units. Under this interpretation, the exchange of units would be treated as a "sale" for which section 7(1) applies. If this is indeed the intention, section 7(14) should specifically say so to avoid any doubt. The inclusion of new sections 7(14) and 7(15) appear to imply that section 7(1) deals with the case of a specific proposed development which has received planning permission. In actual *en bloc* sale negotiations, the intending *en bloc* purchaser is unlikely to have any specific scheme at such an early stage.

Moreover, it is noted that under section 4 of the Housing Developers (Control and Licensing) Act, a sale licence is required before the developer can commence selling the residential units prior to the issue of Temporary Occupation Permit for the development. In addition, there is a requirement that Building Plans have to be approved before the sale of any units in residential as well as commercial properties. The relevant provisions under the Housing Developers (Control and Licensing) Act and the Sale of Commercial Properties Act would thus have to be amended to reconcile with sections 7(14) and 7(15) of the proposed Land Titles (Strata) (Amendment) Act. This could be done, for instance, by adding a proviso under the relevant sections of the Housing Developers (Control and Licensing) Act and the Sale of Commercial Properties Act to the effect that these sections would not apply in the case of contracts of disposal as provided for under sections 7(14) and 7(15) of the proposed Land Titles (Strata) (Amendment) Act.

On a related but slightly different issue, the treatment of the tax position of the "sale" also needs to be clarified. In an exchange arrangement, the *en bloc* sellers contract to transfer title of their individual units to the developer. In lieu of, or in addition to, cash, the sellers receive a commitment from the developer that they will each receive one or more of several broadly defined units in the new development to be erected. Given the lack of vital information of the new units to be "sold "!exchanged to the subsidiary proprietors, a Sale & Purchase Agreement cannot be executed until all the requirements under the Housing Developers Act are fully complied with. Hence the question as to when the "sale" is deemed to take place will be relevant for the purpose of computing income tax on capital gains under section 1017 of the Income Tax Act.

2 Expiry date for an order made under section 84 of the Land Titles (Strata) (Amendment) Bill

Sections 84A, 84D and 84E enable flat owners of 80% or 90% share value in a strata development or share value in the land of a development with more than 10 units, to apply to the Strata Titles Board for an Order for the sale of all the flats and common property in the development. The application can only be made after the majority flat owners have entered into a conditional sale and purchase agreement. This Order for collective sale of the development would bind all

minority owners, mortgagees, chargees and other persons with an estate or interest in the land, and for the termination of a lease affecting any of the units on the date vacant possession is given to the purchaser of the property.

From the Bill, it appears that there is no expiry date to the Order and it is unclear as to whether the Order will remain effective even if the conditional sale and purchase agreement, which the majority owners had entered into prior to application for the Order, falls through for various reasons. Furthermore, as there is no expiry date to the Order, the subsidiary proprietors making the application under sections 84 may collude with a "purchaser" and enter into a sham "Conditional Sale and Purchase Agreement" in order to support the section 84 application. After obtaining the Order, the "purchaser" could then revoke the sale and purchase agreement. Such a situation would be inequitable and onerous to the minority dissenting subsidiary proprietors if the Order for collective sale is still binding indefinitely.

In view of the foregoing, the Institute is of the opinion that there should be an expiry date to the Order. The expiry date can be the earlier of the following;

(i) twelve months after the date of approval for the *en bloc* sale; or

(ii) the date of revocation of the conditional sales and purchase agreement for the collective sale.

3 Requirement for sale and purchase agreement as condition precedent for application to be considered

The Bill requires a written Sale and Purchase Agreement before an application to the Board can be considered under sections 84A, 84D and 84E. This is helpful in reducing spurious applications to the Board, and also helps to ensure that application to the Board is a "last resort" for the majority subsidiary proprietors to enforce a collective sale if all other avenues of persuasion are exhausted. This, we note, protects the interests of the dissenting minority. However, the Sale & Purchase requirement is onerous on developers/purchasers who may, as a result, be exposed to considerable risk when market conditions change drastically within a short span of time if the Sale Order is not expeditiously issued. While developers/ purchasers can limit their risk by attaching a validity period to the terms of the purchase, however such risk cannot be dismissed lightly. It may be appropriate for the Bill to specify the maximum time that the Board should take to reach a decision once the application has been made.

4 Determination of the quantum of compensation for lessees of a strata lot or flat sold under section 84

Section 84B(2) of the Bill provides for the lessee of a strata lot or flat affected by the Order for Collective Sale to seek compensation from the owner of the strata lot or flat. There may be a possibility of a dispute on the fair quantum of compensation to be given to the lessee.

The Institute thus proposes that for administrative expediency, the Strata Titles Board could be empowered to determine the fair compensation in the event that the quantum of compensation cannot be agreed upon amicably between the lessee and owner of the strata lot or flat, This assumes that the lease agreement does not provide for the appointment of an arbitrator by both parties to determine the quantum of compensation in the event of an *en bloc* sale of the development, and the parties are unable to come to an agreement on the quantum of compensation.

5 Representation before the strata titles board

The Institute is pleased to note that the re-enacted section 110 in the Bill allows a counsel or any other person as the Board may allow to represent the applicant and appear before the Board. The Institute fully supports the amendment as a wider ambit of representation is provided for in the re-enacted section 110. This would allow the most appropriate person to represent the applicants and to appear before the Board. In disputes regarding building defects, for instance, the Managing Agent or an appointed professional, and not necessarily a solicitor, would, in many instances, be more appropriate to represent the applicant before the Board, as the former is more technically conversant with the problems involved.

Feedback Submitted on Behalf of SISV by:

Dr Amy Khor

Mr Loke Siew Meng

Mr Tay Kah Poh

Mr Lim Gnee Kiang

Miss Kwang Heng Lee

Mr Lee Li Chuan

Associate Professor Lim Lan Yuan

Paper 45

From: Mr K S Chew
22 Jalan Kelawar
Singapore 249263

Dated: 8 September 1998

Received: 8 September 1998

Events of the financial crisis since early this year has shown that the above proposed bill is unnecessary and unwarranted, and an infringement of a person's inalienable rights on ownership of landed strata properties. I set out my arguments in point forms for your kind deliberation:

1 We are talking about private properties and not public housings, or acquired for a public purposes.

2 Even in land-scarce Singapore one more block of condominium apartments would not make much difference.

3 Here we are talking about interference in an area of property rights of the individuals.

4 In Singapore, 80% or more of Singaporeans are proud home owners either in public or private housing. Therefore where is the need for this draconian law to interfere into a matter which in English laws have been the preserves of the individuals since the Bill of Rights in the 15th Century was promulgated.

5 Being of private matter until now should be settled amicably by parties themselves without state intervention.

6 It would be a dangerous precedent for the Govt. to come now to start legislating to decide issues of property law since times immemorial has been the natural rights of individuals as pointed out in (4) above. Where will it end for the Govt. to stop legislating if it starts now to justify its action for intervention.

7 Surely the law of natural justice and individual Rights should prevail, otherwise, it will be another nail in the coffins of human rights. For if one has the freedom to buy or sell in anything. Be it property or services why must one be forced to sell one's property if one does not want to?

8 Are we going to legislate next to force one to buy your property or anyone else if one doesn't want to?

9 If we talk about protection of the minority on the one hand in many of our Statutes, does not this proposed Bill tantamount to oppression of the minority, the very basis principles Parliament has been Sworn to protect (the Constitution Art 12). Surely an owner in not selling his apartment is only exercising his rights as a property owner.

10 If this Bill serves to apply to Strata Titles and not landed property why not? Is this not an infringement of his Constitutional rights as provided under Article 12 of the Constitution.

11 By one "minority" not selling as in (9) how does this lead to oppression of the "majority". I would say the "majority" is govern more by greed and seeing their "profits" being frustrated than anything else.

12 There are other issues as to where the "minority" are reluctant to sell e.g. What is the situation in co-ownership where one wants to sell and the other does not? These are disputes on distribution of proceeds.

13 What is the situation where the minority is not prepared to sell because of oppression by the "majority" e.g. In a 60 units block with equal share value for each unit 10% of the owners or less has spent substantial amount on renovation to their apartment while the 80%-90% did not spend a cent on renovation. The 10% may want the 60 apartment, to be determined on a valuation basis by a Valuer while the 80%-90% wants the 60 apartments to be determined on the share-value allocated by the land office.

14 Minority owners living on higher floors and with unobstructed views and less noises would want a premium on their apartments. Surely these are valid reasons. after all developers do not sell all the apartments at the same price.

15 To say that the developers are buying the land and not the apartments for redevelopment is only haf-truths. If times are bad or not rise for re-development, the developers will shelf the project. This could vary from one to five yrs. In the meantime the developer will renovate to rent the property, until the market gets better.

16 In the present property glut (15) bears out very clearly. It also shows that there is no need for this Bill at all. It would be interesting to see what are the actual en-bloc sales for the last 6 months compared to last year.

Based on the above points would the Select Committee has another closer look and search their own conscious whether this Bill is necessary. If it is still necessary should the Select Committee consider extending the nos. of years under S84A. 84D and 84E to be increased from 10 to 15 yrs and to 20 yrs where 80% is required of the owners.

Also, because of the unfairness as pointed out in (13) to (15) there should be avenue for "minority property owners" to bring them up to the Strata Titles Board for a decision.

If they are still not satisfied they should have a right of appeal to the High Court for a final decision.

I would be happy to appear before the Select Committee to explain or elaborate the above if required.

Thank You

Yours faithfully

Kenneth Chew

Note: If the section on en-bloc sale is found not necessary, there may be exceptions where the majority can apply to the Strata Titles Board/Court for approval.

Paper 46

From: Mr Hong Kin Thong
38 Kim Tian Road
#10-03
Singapore 169262

Dated: Undated

Received: 12 September 1998

TRANSLATION FROM CHINESE

When the Land Title (Strata) Act suggests 80% of the owners can collectively sell the whole block of apartments, please consider the following situation:

If among the owners of the whole block of apartments, one or two of them hold the title to 70% of the entire development, these one or two owners seem to be able to decide the fate of the whole block of apartments. The new Act should see to it that these one or two owners do not sacrifice the interest of all the other owners for their own personal benefit.

I am presently residing at Kim Tian Plaza, The chief landlord, Lum Chang Development and Lum Chang Building owns 669/1000 strata lots. As a result, every time when the MCST convenes a meeting, the outcome was lop-sided. Therefore, whether attending the meeting or not is no longer important. (see attached)

ALL SUBSIDIARY PROPRIETORS/MORTGAGEES
38 KIM TIAN ROAD
KIM TIAN PLAZA
SINGAPORE 169262

MINUTES OF THE 8TH ANNUAL GENERAL MEETING HELD ON 27 SEPTEMBER 1997 AT 1500 HOURS AT LUM CHANG'S BOARD ROOM, 3RD STOREY, KIM TIAN PLAZA

ATTENDANCE

STRATA UNIT NO	NO. OF STRATA LOTS	NAME OF SUBSIDIARY PROPRIETOR	REPRESENTED BY
01-02 to 01-05 02-01 to 02-11	400	Lum Chang Development Pte Ltd	Mr Chin Chung Cheong Letter of Authority
03-00	269	Lum Chang Building Contractors Pte Ltd	Ms Lam Miew Leng Letter of Authority

IN ATTENDANCE

Mr Ong Lee Woei of M/s Tan Chye Chia & Looi representative of The Management Corporation's Solicitors.

Mr Edward C C Lee of M/s Edward Lee & Co representative of The Management Corporation's Auditor.

Mr Vincent Low & Ms Andelyn Yap, representatives of LCD Property Management Pte Ltd, Managing Agent of the Management Corporation.

Mr Vincent Low informed the Meeting that there were subsidiary proprietors holding 669 share value present out of the total share value of 1,000. As there was a requisite quorum for the meeting to proceed, the meeting was called to order at 3.00 pm.

Mr Chin Chung Cheong, Chairman of the Management Council, welcomed all the members present for attending the 8th Annual General Meeting of the Management Corporation Strata Title No. 1398.

Mr Chin also expressed gratitude to the out-going council members for their support and the good work done during the term. In addition. Mr Chin also thanked Lum Chang in allowing the Management Corporation for the use of the Board Room to convene the AGM.

MINUTES OF EVIDENCE

MINUTES OF EVIDENCE - *continued*

SELECT COMMITTEE ON

THE LAND TITLES (STRATA) (AMENDMENT) BILL

Monday, 30th November 1998

2.00 p.m.

PRESENT:

Mr Speaker *(in the Chair)*

Assoc Prof Ho Peng Kee

Mr Low Thia Khiang

Prof S Jayakumar

Mr Shriniwas Rai

ABSENT:

Mr Chng Hee Kok

Dr Teo Ho Pin

Mr Koo Tsai Kee

In Attendance:

Attorney-General's Chambers:

Mr Ter Kim Cheu, Head, Legislation Division.

Ministry of Law:

Mr Li Chong Jin, Assistant Director (Land Policy).

Mr Pang Khang Chau, Deputy Director (Legal Policy).

Ms Petrina Theo, Land Policy Officer.

Registry of Land Titles and Deeds:

Ms Foo Tuat Yien, Registrar of Titles and Deeds.

Mr Vincent Hoong, Deputy Registrar of Titles.

Paper No. 15 - Mr Ting Piew, 55 Irrawaddy Road, Singapore 329553, was examined.

Chairman

1. Good afternoon, please be seated. For the record, could you state your name and address? - *(Mr Ting Piew)* My name is Ting Piew. My address is No. 55 Irrawaddy Road, Singapore.

Chairman] Thank you. On behalf of the Select Committee, I would like to first of all express my gratitude for your written submission. We have invited you here this afternoon in order to clarify certain matters which you have raised in your submission. We will start with Prof Jayakumar.

Prof Jayakumar

2. Thank you, Mr Ting, for your submission and the various suggestions you have made. We have received many submissions with many different ideas and proposals. Obviously, all these will be studied carefully before we make a final decision. But for today, I would like to ask one or two questions of you and maybe my colleagues will have other points to raise. First, you have argued that the same consent level should be adopted regardless of the age of the building. I would like you to elaborate on the points that you have made in your paper because we have also received equally strong representations from others that we should be more liberal from their point of view of the ceiling. Some have suggested that 90% should be lowered to 80%, yet others have argued that in the case of flats which are over 20 years old, the percentage should be 70%; flats which are over 30 years old, the percentage should be 60%. Obviously, we have to strike at a balance in arriving at the final figure. Can you elaborate why you consider 90% to be a uniform blanket rule even if the flat is 30 or 40 years old? - *(Mr Ting Piew)* Sir, the way I see it, this new Bill we are talking about, we are on the threshold of making history and it is very, very important before we implement the new law that we take into account the very far-reaching effect that it will have on the interest of Singaporeans and others. I say this because this Bill will have the potential to take away the property rights from the individual owner against his will if some of his neighbours think so. I think we ought to be very very hesitant before we implement the new law because I do not think - I may or may not be correct, I do not say I am correct - that there is any moral authority or even legal authority as at this time that a minority owner's property can be taken away from him. It amounts to an eviction, if you like. It amounts to a forced sale of that person's property. That is why I think that, in my submission, I suggested that there should be no pegging of the minimum consent level to the age of the building. It should either be 80% across the board, or 90% across the board, whatever the percentage is. We should not have different consent levels and relate them to the age of the building because I believe that the minority

owners are entitled to equal protection of the law. And I believe that this is covered under the Constitution. If we were to say that for a building of a certain age, that is the percentage that governs and for another building of a certain age, another percentage governs, I think there would be unequal protection of the law.

3. You can be assured that all constitutional issues will be looked at by the legal experts in the Attorney-General's Chambers. But I just want to establish your point that regardless of the age of the building, you favour a fixed percent age requirement? - *(Mr Ting Piew)* That is my position, Sir.

4. Whatever the percentage that is eventually arrived at by Parliament, whether it is lower or higher than 90%, it should apply regardless of the age of the building? - *(Mr Ting Piew)* That is so, Sir. But I would further argue that the percentage should not be set too low. As between 80% and 90%, I have proposed that 90% be adopted and that would represent a reasonable level across the board.

5. We will of course consider your point. But I just want to be sure that you are aware that the effect of your proposal that, however dilapidated or bad state of maintenance of the building may be, under your proposal you still have to get 90%. That is the effect of your proposal? - *(Mr Ting Piew)* That is right, Sir.

6. I would like to take you to the second point which is that en-bloc sales should not involve redevelopment cases and that if there is to be en-bloc development, it should be an outright purchase in sale? Am I right? - *(Mr Ting Piew)* That is right, Sir.

7. I want to understand the point that you are making. Is it correct to say that the point that you are making is to ensure that the objecting minority is not put in a more invidious position, and they should have the freedom to insist they should be paid outright in cash? In other words, the majority proposing en-bloc development opt not to have the right to impose on the objecting minority a scheme where they are forced to accept a unit in a new development on the same site. They should not be forced. because that would be unfair. They should be entitled to receive the proceeds in cash. Is that your point? - *(Mr Ting Piew)* They should not be forced to participate in a joint development, a sort of joint venture agreement, whereby one party comes up with the land and the other party (the developer) comes up with the expertise and the fund for the construction. It should just be an outright sale, and that is that. Because it is outright sale, it does not involve all the associated details which are too many, and there are too many opportunities, once you allow that, for all sorts of hanky panky to take place. That is why I think an outright sale would be the most practicable.

8. I understand your point. But you are not going so far as to say that if the minority who objected to the idea of an en-bloc sale, but because the provisions in the law are going to come about, you are not insisting that they should not have the freedom to accept a unit in a redevelopment but they should not be forced? - *(Mr Ting Piew)* The possibility for the owners to come to an agreement as to

Mr Ting Piew (cont.)

whether or not to enter into a joint venture development project is not some thing which I believe, Sir, is addressed by the Bill and I have not addressed my mind to that. But for the purpose of the record, I am against a joint venture development to be covered by the new law.

Assoc Prof Ho Peng Kee

9. Mr Ting Piew, you said in your paper that an important point is that currently the Act does not set out the procedures which must be complied with. Of course, in the Second Reading speech, we have listed out all the various procedures which must be complied with. There are various ways in which procedures can be made known, one of which is through subsidiary legislation, which in fact is the thinking right now. But you have argued it should be fleshed out in the Bill? - *(Mr Ting Piew)* That is indeed, Sir. I did say in my paper that it should be spelt out in the Bill so that there are no equivocal terms. Everybody under stands what the legislative intent is as to proper procedure. The important thing to my mind is procedural fairness and accountability because a lot of disputes between neighbours have come about because of the way the whole procedure is carried out, which is not transparent enough. You can read in the papers that people complain about harshness and pressure tactics were used, and the people were not even consulted. The next thing they know, they were asked to sign a certain piece of paper to signify their consent. And if they withhold their consent, they would be threatened with all sort of things, legal action, legal cost, etc. I think that is very undesirable.

10. So, your point is that for the sake of certainty and transparency, you would make this recommendation that the proceedings should be spelt out in the Bill. I think we can consider that, although our point is that we had already decided on an approach which will make known the procedures in the subsidiary legislation. But you are proposing a case which you feel that not only yourself, but possible owners and minority owners will be happier with, in other words, setting out the procedures in the Bill. We can consider that? - *(Mr Ting Piew)* Thank you.

Mr Low Thia Khiang

11. You mentioned in your submission that you are worried that the Bill might turn the tyranny of the minority to become the oppression of the majority. You also further proposed that 90% be the threshold for an en-bloc sale. If your proposal of 90% is accepted as the threshold, do you think that if the Bill is passed, there is still a likelihood for the Act to be used by the majority to oppress the minority? - *(Mr Ting Piew)* To put it as simply as possible, I think that even if the 90% point is set, there will still be a possibility, theoretically, but it will be a safer margin compared with 80%, for example. It will be much safer. In my paper. I raised the idea of positive discrimination. If the en-bloc transaction is really worthy of support, I think the majority owners should not worry about

what is the percentage. The minority owners should support it. Because, in my own experience. I have encountered actual problems with regard to en-bloc transaction in the estate that I live in. And I have encountered pressure tactics that were used, and malicious letters were circulated, just to make life as unbearable as possible. The aim is just to make you sign the piece of paper to signify your consent and join in with the majority. A real example that I have encountered is that on the surface, there is 80% majority support, but the signatures of some of these majority owners who supported were derived through pressure tactics. You are put in a state of siege mentality. You feel persecuted by your neighbours. They show you faces. They write you nasty letters, misrepresent the truth, and all sorts of things. So, if you set it at 80%, it could be a state where 80% is the apparent level of consent support. But the real consent support would be less than 80%. Whatever percentage you set, the real consent level is bound to be something below the apparent consent level, because some of those who gave consent level support would have been procured through systematic pressure tactics. That is why I said that in order for the Bill to be more acceptable, not only do you do away with the pegging to the age of the building, but you also do not set the percentage too low. I think 90% would be more acceptable.

Mr Shriniwas Rai

12. Sir, I have two questions for the witness. Do you have your paper, Mr Ting? May I refer to page 3, the last but one paragraph? Let me read it to you: "I therefore propose that the notice to be served under 84A(1) must always be served personally ...". Would you agree with me that there may be some difficulties at times? Even court documents are allowed to be served by, what you call, substituted service. If, for instance, the man is trying to evade, then probably a newspaper advertisement or posting of the service at his last known address should suffice. Would you be agreeable to this? - *(Mr Ting Piew)* For litigation purpose, I do agree that that is one possible way of effecting service. Here, we are talking about a person's property rights.

13. There you also have the question of rights. It is more wider, in fact. We are trying to be consistent with the other practice, because the Strata Titles Board is going to deal with it. I am trying to fathom your mind on what is the rationale for your proposal? - *(Mr Ting Piew)* My purpose of suggesting that the mode of service should be personal service is to make it safer, as one of the steps for the implementation of this Bill. It is safer because if you are to adopt the postal service rule, there could be an injustice.

14. I am suggesting a newspaper advertisement? - *(Mr Ting Piew)* Even newspaper advertisements, Sir, I am afraid that there is still this possibility. I am not very comfortable with it. I would say that the notice be served personally on the person.

15. We will take your point into consideration. The second question is this. My colleague, Mr Low, has asked it. So have Prof. Jayakumar and Assoc. Prof.

Mr Shriniwas Rai (cont.)

Ho. My question is on your requirement of 90% and what if it is an open market condition. Let us say there are 20 owners. Everybody knows what it is going to be developed for. By insisting on 90%, you are putting a very high premium. In fact, it is quite a difficult position. Do you not think you should allow a bit lax position, say, 70-80%? 80% is what we are thinking of. I want to know your rationale. Ultimately, the Committee has to decide. We would like to know exactly, because there are other propositions put forward by other representors. Would you be happy with 80%? - *(Mr Ting Piew)* I would be happy with 90% and nothing less than that.

Prof. Jayakumar] Just one final point. Of course, whether it is 90% or 95%, there will always be a minority which will object. Your anecdotes about personal experience of pressure tactics and so on, we will have to take this into account because, as you have read the Bill, the Titles Strata Board has a role. And one of the roles before giving the go-ahead is to ensure that the process has been transparent and indeed a pegged percentage is being satisfied, they will have to be satisfied with the proposal. And if it is brought to the Board's notice that there has been apparent consent but not real consent, the Board can make its inquiries. So, on that score, your apprehensions would be addressed in one form or other.

Chairman

16. Mr Ting, thank you for coming here today to assist us. In a few days' time, we will be sending you a transcript of the proceedings. Can I ask you to look through the transcript and return it to us with amendments, if there are any? I would just like to remind you that you are not to publish your submission until the Select Committee has presented its Report to Parliament. Thank you very much? - *(Mr Ting Piew)* Thank you, gentlemen.

(The witness withdrew.)

Paper No. 16 - Mr Leong Weng Hon, Blk 319 Jurong East Street 31, #07-62, Singapore 600319, was examined.

Chairman

17. Good afternoon. Please be seated. For the record, could you please state your name and address? - *(Mr Leong Weng Hon)* I am Leong Weng Hon of Blk 319 Jurong East Street 31, #07-62, Singapore 600319.

Chairman] Mr Leong, on behalf of the Select Committee, I would like to thank you for your written submission. We have invited you here this afternoon in order to clarify certain matters which you have raised in your submission. Prof. Jayakumar, would you like to start first?

Prof. Jayakumar

18. Mr Leong, I would like to echo what the Chairman has said about thanking you for your submission. You have made several points and I would like to pick up one point for elaboration by yourself. Maybe my colleagues will raise other points. The point I wish to deal with is your proposal to have a different approach to the required percentage approval. At the moment, the Bill's approach is for strata developments of 10 years and less, 90%; for 10 years and more, 80%. You have recommended different gradations where for developments more than 20 years, 70%; more than 31 years, 60%, which is different from the approach taken in the Bill. I might also add that we have received various views. Some are supportive of the Bill, some are not supportive. In fact, one representor argued strongly that there should be no pegging to the age of the development. There should be just one uniform rule of percentage. If it is 90%, it should apply regardless of the age of the building. Can you comment on that? Should we delink the required majority from the age of the development? That is the first question. The second question I would like you to explain is why do you want so many different categories. Why can we not have two full categories, as proposed in the Bill? - *(Mr Leong Weng Hon)* As to the different percentages allocated to the different age of the property, firstly, this is to prevent abuses. For example, like some of those properties that are less than 10 years old, maybe 5 years, they are considered very new. In this respect, if you were to tear it down and go for redevelopment, in a way, it is a waste of resources. As the building gets older, certain structural defects start to take place. Likewise, some of the latest facilities like the SCV cables and all these things will not be put in place in these buildings which are older. There are these old buildings, especially those buildings that are in the region of 25-30 years old or beyond, which were built very long ago. In fact, all these old sites are considered to be very good locations or very choice locations. But as years go by, the management corporation of the estate neglects it and the place has more or less deteriorated to an extent whereby most of the residents staying there are elderly people. The younger

Mr Leong Weng Hon (cont.)

couples are not keen to stay there because the place lacks the modern amenities and facilities which these young couples want. Most of these old buildings, as I said, are in choice locations where a lot of infrastructure such as future MRT stations are situated and they should be given priority. If not, then it is a waste of public funds for building up all these facilities.

19. Looking at your four-fold categories, the difference between your approach and the approach in the Bill is really with your third and fourth categories. Because for buildings less than 10 years old, you are proposing 90%. Is that correct? - *(Mr Leong Weng Hon)* Yes.

20. And above 10 years old, it is 80%. But you would argue even a more liberal approach, in the sense of making it easier with regard to buildings which are more than 20 years old. Am I right? - *(Mr Leong Weng Hon)* Yes.

21. That is the difference between your thinking and the approach in the *Bill? - (Mr Leong Weng Hon)* Yes.

Prof. Jayakumar] Obviously, the Select Committee and Parliament will have to take into account how best to balance different views. There are some representors who are concerned about the interest of the minority who are objecting. Others, like yourself, are concerned about making it more onerous or difficult where, in fact, we should allow greater flexibility and greater facilitation of en-bloc development. So, it is a question of, eventually, having to strike the right balance. We will have to take this into account and make a decision later on.

Assoc. Prof. Ho Peng Kee

22. Mr Leong, first, let me thank you for your support of the Bill. In fact, your opening paragraph states that you fully support the Bill. I just want to bring up this point about your suggestion that the Bill should spell out a method of distributing the proceeds. As you are aware, in en-bloc sales, different types of development may be involved, it could be residential, commercial or mixed development, and also in terms of the ways in which the proceeds can be distributed, it can be through share values, valuation and size of the units. So there are many considerations on both sides. This means that if the Bill were to mandate one method of distribution, do you not think that it would in fact hinder the parties in coming to a decision by themselves, which may reflect their desires better and in that sense fairer? - *(Mr Leong Weng Hon)* I think it is better for the Select Committee to spell this out because a lot of these owners are not sure of exactly what is the best way of apportioning the proceeds. In a lot of times, when these owners talk to the neighbour he might find out that his particular unit is three square feet more than the other neighbour, and he would not want to get an equal amount. He would want to get something more and there would be no end to this, because in an en-bloc development, we need to have this element of give and take a little bit. If you were to stick rigidly to

the floor area or the share value, then it would be very difficult. I have a case here. My place is an old development whereby every owner owns a single share. The units range from 1,500 square feet to 2,002 square feet. Each and everyone owns one share. Definitely the bigger unit owners do not want to go by share value. On the other hand, the smaller unit owners do not wan(to go by the floor area because it is to their disadvantage. I guess it is better for the Committee to talk about it and maybe get some of these property agents to discuss and see how best they can come to a compromise.

23. That is exactly the point, because if the owners are properly advised by valuation experts and look at their respective cases, then surely, like you say, they should come to a compromise. Otherwise, if we say for the sake of certainty, the Bill sets out one method. But in fact your example shows that if the Bill sets out one method, it may be unfair to other majority owners who may want to go ahead, but because of this fact that now there would be no flexibility, they are unhappy? - *(Mr Leong Weng Hon)* I see.

Mr Low Thia Khiang

24. Mr Leong, would you consider a situation where the owners of a 30-year old condominium decided to upgrade the building and to keep up with the latest requirements like PUB electrical safety procedures, and if the owners do so, would you still consider that they should fall under the category of the threshold point for en-bloc sales of, let us say, 60% or 70%? - *(Mr Leong Weng Hon)* Firstly, you have to look at the plot ratio. The reason why we talk about this is because basically when the URA enhances the plot ratio for a certain site, they want to develop a certain site to a further extent so that that area can benefit from the supporting infrastructure, like MRT stations, whereby more people can benefit. If you were to upgrade it, you are not adding more units to the place, less people will benefit from it and at the same time not many owners can afford the amount to do the up grading because a lot of these old properties have problems like not having very much sinking fund. In fact, even for maintenance, some of these owners are delaying their payments for months. And if you were to ask them to fork out a sum of, say, anything from $30,000-$50,000, I think it is extremely difficult.

25. That is why I am referring to your proposal that the threshold of the percentage for the en-bloc sale be pegged to the number of years of the building, and the reasons stated by you were that "properties that are more than 30 years are in a bad state of maintenance and it does not make economic sense for owners" and "many of these old buildings would fail the current PUB electrical safety test." These are the reasons you gave why you think the older the property is the threshold for the percent age of en-bloc sales should be lower. My question is: if for some old buildings, although they might be 30 years old, if the owners decided to upgrade them, do you think they would still fall under the same threshold of percentage, as what you have proposed? - *(Mr Leong Weng Hon)*

Mr Leong Weng Hon (cont.)

I feel this should be so because, for example, the old buildings, a lot of the owners would not want to stay in the building when it comes to a very bad state. When they do not want to stay there, what would happen is that they would start to sublet to foreign workers. Eventually, it will come to a point whereby in the whole estate you will have half the owners subletting to workers and if I were a resident staying there, I would not feel safe about it. If I have a young family with my wife and kids staying there, I would feel very threatened because most of these old buildings are in a very bad state of maintenance most of the time. Even if you were to upgrade it, the people might not want to move in.

Mr Shriniwas Rai

26. Just one question. Earlier, Assoc. Prof. Ho has raised this question of the Board being given the responsibility of deciding how to distribute the proceeds. There is already established practice in determining your share in the development, ie, one share, two shares, or what ever shares you have. You are asking the Board to change that. Would it not create more problems? You have already established that you have got one share, and that is it. You are trying to suggest another method based on the area or different considerations? - *(Mr Leong Weng Hon)* As I was saying earlier on, for the newer buildings, I think the apportionment of share value is tied very closely to the floor area of the estate. All these older buildings which are 25 years old and beyond do not follow closely to the floor area of the unit because most of the old buildings were previously from a single title. They do not have a strata title. When the MCST Board was formed, they were more or less compelled to divide it and the developer just simply divided it accordingly. In this case, the share value for these older estates is not very representative.

Mr Shriniwas Rai] I get your point. That is all.

Chairman

27. Are there any further questions? If there are none, thank you very much for coming here this afternoon to assist us? - *(Mr Leong Weng Hon)* Thank you.

28. We would be sending you a transcript of the proceedings in a few days' time. Can I ask you to look through it and return it to us as soon as possible? I would like to remind you also that you are not to publish your submission or any extract of it until the Select Committee has presented its Report to Parliament. Thank you very much? - *(Mr Leong Weng Hon)* Thank you.

(The witness withdrew.)

Paper No. 1- Mr Mark Fong Wei Tsong, No. 2A Stevens Close, Singapore 257940, was examined.

Chairman

29. Good afternoon. Please be seated. For the record, could you please state your name and address? - *(Mr Mark Fong Wei Tsong)* My name is Mark Fong Wei Tsong. I live at 2A Stevens Close, Singapore 257940.

Chairman] Mr Fong, thank you for coming here this afternoon to assist us. We would like to thank you for your submission to the Select Committee, and we have invited you here this afternoon in order to clarify some of the points that you have raised in your submission.

Prof. Jayakumar

30. Thank you very much, Mr Fong. Your representation is in fact in two parts. In the first part, you have indicated why you are not in favour of the approach in the Bill. Nevertheless, you have proceeded in your second part to say that if the Bill is going to become law, you have certain suggestions to make. We appreciate that approach and today I would not be taking you on your first part because, under our Standing Orders, the Select Committee does not have a debate on the principles of the Bill, but rather on the details. That does not mean that your views have no persuasion, but that is not the work of the Committee. The second part raises certain points which I would like to raise with you. You have made an interesting proposal that when we consider the voting requirement which will enable the strata redevelopment to proceed, you would like the law to make a distinction between the votes of an owner who owns one unit and an owner who owns more than one unit so that if an individual owns more than one unit, he will in fact reduce the weightage of his vote, so to speak. Why should we do that? - *(Mr Mark Fong)* I believe it is very important that we differentiate between the circumstances and the needs of a home owner and a person who buys a property for rent, for profit. The thought processes of a person who buys a home are very different. I only have myself or my close friends to give an example of this. We do not look beyond the thought of how much we can make over how many years or terms like rate of return. We go in with one goal, which is to find a property which we want to turn into a home and that is the heart of the whole matter. Is it a property or is it a home? In my case, when I returned from studies from abroad, I had a choice of working in anywhere I wanted. I consciously chose Singapore. And part and parcel of that decision was that I found the place I wanted to live in to build a place for me and my family. I believe that, in this situation, my motivation for that property is not just dollars and cents, it is not just a title deed. It is a place where I see long-term potential. I see a long-term view to it. By letting this law go through without that distinction causes unnecessary anxiety for people like me. Because we do not know, through a fluke of a vote, or through a

Mr Mark Fong (cont.)

peak in the property market, we could lose our home. The point is if we lose our home, it cuts the heart of the whole matter, why we are staying here in Singapore. I understand that we have this need to attract foreign talent, and we have a need for people to come back to Singapore to work. And part of that reason is founded on the concept of what is a home. If we wanted to look at anywhere to live in this world, it does not really matter whether this Bill goes through without amendment. I think that the Committee should think through this distinction of whether the owner is a landlord, an absentee-owner, which I call him, or whether he is an owner-occupant, because there is a world of difference between both motivations for buying a piece of property in Singapore. I hope that answers your question, Minister.

31. We have to accept the fact that the motives and objectives of various individuals purchasing one or other properties, whatever the property, can be diverse. You will agree that there is a great deal of subjectivity in this. You may well be right that some are motivated by a desire of a home; others may be motivated by considerations of investments. And you will agree with that. Some may have a mixture of objectives. For short-term, they may want to rent it out in order to satisfy their loan requirements. But they may indeed want to live there in 10 years' time or 15 years' time, or to allow their children to live there. So there is a whole multitude of reasons why a person may purchase a property. Would you agree with that? - *(Mr Mark Fong)* Yes, I do. I think we should differentiate that from the onset.

32. If we were to distinguish, not only would it be a difficult exercise for the legislature, but it would also be contrary even to the existing system in the strata titles law, because based on existing practice and procedures in the law, as it stands, all decisions on strata title developments are decided by share values. I believe you are aware of that. Major works, like improvements in amenities, renovations, can proceed, if not more than 25% of the votes cast at the meeting object. So the existing scheme of the law, which is not unique only to Singapore and elsewhere, is that there is no differentiation between owner-occupiers and rented properties. You are aware of that? - *(Mr Mark Fong)* Yes, I am. But may I just make a point here? It is one thing when using a 25% versus 75% law over something that is not as critical as block improvement. But it is hard to justify using it for something as important as whether a person can continue or not continue living in his home. I believe a lot of properties here are freehold, and I believe, again, on that there should be certain rights. If a person is going out to pay a premium to own a freehold property, then he should have a sort of guarantee that he cannot lose his property because of a vote of his fellow neighbours, let alone neighbours who do not live in the block.

33. How would you deal with somebody who were to take objection to your approach, if he is not occupying it at the moment? He is the owner. If we were to ask you, Mr Fong, why should

your proposal be accepted, because it is his intention in a few years' time to live in the place. It is his intention to use the place for his old age. It is the intention for his children who are now young to move into the premise later. There are various different permutations of owner-occupation, even if we accept your principle that a person who has decided forever not to occupy the place, he should be distinguished. But these things are very transient, they can change. The point I am making to you is the Select Committee has to work within the ambit of existing well established principles, which at the moment are share values, and to depart from that we have to be satisfied that there are good reasons. I am not saying that we are taking a decision now. This is the reason we have called you to probe you on your thinking. Because, in effect, it would make a fundamental distinction between the rights and responsibilities of ownership in strata developments where an owner who is not an occupier will have less rights than an owner who is an occupier. And will it work out in practice? Because even an en-bloc sale is in the offing, and your proposal is accepted, and if the deal was very attractive, the owner occupier will make suitable arrangement to terminate the lease and move back, and be owner occupation. So he can exercise the vote? - *(Mr Mark Fong)* I believe that there is no law that is so perfect that there are no loopholes. I think the ingenuity of a person to exploit these loopholes is only limited by how desperate he wants to make a profit from this, and I do not think that can happen. But I think on the surface of it, such a scheme will not have much of an objection. Because I think at the heart of it, people can understand that when I talk about a piece of property as a home as opposed to a form of revenue. I give an example. If I have two shirts, and one shirt I need to wear, and the other one I can give it away as a gift, the importance I place on the second one, which is not vital to my survival, will be very much different.

Prof. Jayakumar) By the same token of reasoning, you will concede that a shirt is different from a property! I think Prof. Ho Peng Kee has some questions.

Assoc. Prof. Ho Peng Kee

34. Mr Fong, you have proposed that instead of the current position of requiring unanimous consent for 10 units or less, that this should be shifted back or higher, to 20 units or less. Just briefly, in essence, what is the rationale for this? - *(Mr Mark Fong)* I do not have any statistics to back me up. But from what I have seen, most smaller developments are done below three floors at multiples of three. In other words, most blocks are 1, 2, 3 floors and a four. In other words, most of the units will be in permutations of 9, 1.2, 16 and so on. The absolute number of developments in Singapore with 10 units or below is really a small minority, so much so that this exemption, I do not think, protects enough developments that fall under this numbering. I do not have the resources of organisations, but I am sure if you were to check, you will find that most units are in permutations of 12, and 10 will be a very, very small absolute number of such developments.

Assoc. Prof. Ho Peng Kee (cont.)

35. A number of other representors, in fact, have argued the other position, that the percentage should also apply to 10 units or less. Would you change your position? Or would it make a difference in your argument if I told you that, in fact, about 47% of all strata developments, either freehold or 999 years, in Singapore have 10 or few units? - *(Mr Mark Fong)* No. Then, it still would not change my position, because the principles still stand, I believe, of the differentiation between an owner and an owner occupant.

36. That is back to the first point. But really in terms of this other point that I am addressing, why 10 or 20 units, in fact, the Bill, as it now stands, will sift out this percentage which from a viewpoint of utilising land may not be such a good thing, because indeed some of these smaller developments are older developments, and the potential for new units, as a result of redevelopment, is even greater than the larger developments? - *(Mr Mark Fong)* So you are saying that for the sake of improving the general living, the yield from land, we should go ahead with this. My counter-argument to that would be that if this proposal goes through, it would actually be a discouragement for people to improve their blocks. People with smaller developments would most probably say, let us not put money to repaint, rebuild, let us wait for some developer to offer us money to buy us out. Because I have been in actual situations where the whole meeting had been diverted from, should we pass three moves to improve the block, to a discussion of, should we not just sell it and forget about improving the place. There is no incentive for small blocks to improve themselves, if everyone feels that rather than go through the effort of improving the place, they should just make a quick buck and sell it all off.

37. That is another different issue altogether. But in terms of the point you are trying to make, I am just letting you know the figures. Because your premise is you feel that there are not many small developments in Singapore. But in truth, there are more than 40%? - *(Mr Mark Fong)* I have got to admit I am surprised it is that high. That's all.

Chairman

38. Any other questions? If there are no further questions, I would like to thank you, Mr Fong, for coming here to assist us this afternoon. In a few days' time, we will be sending to you a transcript of the proceedings. Can I ask you to go over the transcript and make amendments, if there are any? May I also remind you not to publish your submission or extracts of your submission until the Select Committee has presented its Report to Parliament. Thank you very much for coming? - *(Mr Mark Fong)* Welcome.

(The witness withdrew.)

Paper No. 17 - Mr Ng Wai Hong, Management Corporation Strata Title Plan No. 849, 327 Bukit Timah Road #01-01, Bukit Timah Mansions, Singapore 259715, was examined.

Chairman

39. Good afternoon, please be seated. For the record, could you please state your name and your address, and the position you hold in your organisation? - *(Mr Ng Wai Hong)* I am Ng Wai Hong. I am the Secretary to MCST 849, which is Bukit Timah Mansions. My residence is *26*Jalan Kelawar, Singapore.

Chairman] On behalf of the Select Committee, thank you for your written submission on the Land Titles (Strata) (Amendment) Bill, We have invited you here this afternoon in order to clarify certain points that you have raised in your submission. We will start with Prof. Ho Peng Kee.

Assoc. Prof. Ho Peng Kee

40. Mr Ng, earlier on, a representor in describing, I suppose, an experience he knew of, talked about this tyranny of the majority. In other words, he talked about majority owners using unfair pressure tactics to try to get minority owners to come on board. But looking at your paper, you have the opposite experience. You have difficulty in convincing a minority owner to come on board. So it would appear that there is also the reverse situation - one minority owner can hold up the express desire of the majority? - *(Mr Ng Wai Hong)* Because of their arrogance and their wealth.

41. How did the majority owners feel? - *(Mr Ng Wai Hong)* Very frustrated.

42. Very frustrated and very helpless because the current law requires 100%? - *(Mr Ng Wai Hong)* Yes. Even if we do come to a decision, we know that the decision will not be a fair one. If, for example, they were to decide to sell the property, they will have in their interests to sell it to their own organisation or a branch of their own organisation. And the price they would offer would generally be below market value and it would impinge on our sense of justice.

43. So in your case, Mr Ng, the majority owners were all very sincere. You all did what you thought was fair, you tried very hard to get the minority owner on board, but still all these were futile? - *(Mr Ng Wai Hong)* Yes. I think the submission spells out our experience with them. But I guess it does not tell us the actual situation when I spoke to the lady who was in charge.

44. So the essence, Mr Ng, is that for many people like yourself who are majority owners who really want to sell and are quite prepared to discuss with the minority owners, this Bill will be helpful? - *(Mr Ng Wai Hong)* Yes, this Bill certainly will be helpful, except for clause 8 which spells out that only

Mr Ng Wai Hong (cont.)

developments with more than 10 units can benefit from the Bill, thus leaving us out entirely because we are just 10 units.

45. So you feel that the percentage requirement should also apply to developments which have less than 10 units? - *(Mr Ng Wai Hong)* Yes, it should. Or if not, then the Minister in charge should have certain prerogatives or powers built into the Act to evaluate the situation and make a decision.

46. This is one of the points I think the Committee can consider whether or not to extend the percentages to developments below 10 units? - *(Mr Ng Wai Hong)* Thank you.

Mr Shriniwas Rai

47. Just one question. You said that the Minister should be given the power. But you are aware that there is a Strata Titles Board. Which would you prefer - the power to be given to the Strata Titles Board or to the Minister? Or you would leave it to the Committee? - *(Mr Ng Wai Hong)* Definitely, we will leave it to the Committee to decide. They are in the best position to evaluate the situation. But from my point of view, the best thing is to leave out the words "developments with more, than 10 units". The second best thing to do is to give the power to the Board or the Minister in charge.

Mr Shriniwas Rai] Thank you.

Prof. Jayakumar

48. I understand that you have had a personal experience with the development that you are talking about. But for a moment, if you are able to divorce the discussion from that particular development or experience because you could eventually be living in a different condominium, for example. The law that we are going to enact, with or without various amendments would affect all kinds of strata development. I would like to get away from this label of tyranny of the minority and oppression on the majority. Obviously, the purpose of the Bill is to facilitate en-bloc redevelopment in the sense that we are getting away from the existing scheme and the Act which makes it very difficult for unanimous consent or application to the court. The question before us and, eventually, Parliament, is to decide what is a good balance. You are of course influenced by your own experience about developments which are 10 units and below. But putting that aside, do you think the approach in the Bill which says that for developments which are 10 years or less, 90% majority, over 10 years, 80% majority, strikes a fair balance? - *(Mr Ng Wai Hong)* There are two things. The first thing is how do we set the 90% majority, how do we set the 80% majority? It is just a decision. Similarly, for 10 units or more, or 10 units, or less than 10 units, it is just a matter of where you draw the line.

49. No. As I have just said, for a moment, forget about the 10 units or more than 10 units or less. But the 80% or 90% majority, I take it you would like to be made applicable to developments less than 10 units. You would like that

approach. But what is your view on this 80% or 90% requirement? - *(Mr Ng Wai Hong)* I think it is fair in the sense that, disregarding the 10 units and more, you also take into consideration the age of the development. So if, say, the development is 20 years or older, then maybe you would decide on 70% majority. I do not know. I think it is fair. It is just like our income tax which is based upon a graduated scale. As we hit the higher level, we are taxed more. Similarly, for this approach, I think it is a very fair approach.

50. So you have no difficulty with pegging the majority requirement with the age of the development? - *(Mr Ng Wai Hong)* No problem, except that why should it be for more than 10 units only?

Prof. Jayakumar] We will look into that. Thank you.

Chairman

51. Are there any other questions? If not, thank you for coming here to assist us this afternoon. We will send you a transcript of the discussions in a few days' time. Can I ask you to look through it and return it to us? - *(Mr Ng Wai Hong)* I do not know whether I should mention this particular company that we are dealing with. For 13 years, I have been running this condominium, because I am an owner there. I feel obligated. If nobody wants to run it, somebody must be found to run it. For 13 years, since the Management Corporation was started, this particular subsidiary proprietor has not lifted a finger to help us. What they want is something done for them free. Recently, I received a letter from them. They should know very well what we have in our building. They asked whether our car parks system, our lifts, our "decam" system, which I do not under stand what it is, are Y2K compliant. To my best knowledge, all our equipment, if they are automated, are run on a daily basis with no year limit that would stop operating once you reach year 2000. This is because our equipment are not computer controlled. It is a simple condominium. What we have are an automatic gate and some lights that switch on at night. So I ignored that letter. Then came another letter which said that "If you don't take action, we will hold you liable for any monetary loss." I find this not really friendly. That is all I am prepared to say.

52. All right. We will take note of what you have stated. As I said earlier, we will send you a transcript and I would like to ask you to look through it and return it to us, with amendments, if there are any. I would like to remind you also not to publish your submission or any extracts of it until the Select Committee has presented its Report to Parliament. Thank you very much? - *(Mr Ng Wai Hong)* Thank you, Sirs.

(The witness withdrew.)

Paper No. 19 - Mr Ng Yuen, 53 Jalan Dusun #13-02, The Sapphire, Singapore 320374, was examined.

Chairman

53. Good afternoon. Please be seated? - *(Mr Ng Yuen)* Good after noon, Sir.

54. For the record, could you state your name and address? - *(Mr Ng Yuen)* My name is Ng Yuen. My address is 53 Jalan Dusun #13-02.

Chairman] Mr Ng, thank you very much for your submission to the Select Committee on the Land Titles (Strata) (Amendment) Bill. We have invited you here this afternoon in order to seek clarification on certain points that you have raised in your submission. Prof. Jayakumar, would you like to start first?

Prof. Jayakumar

55. Thank you very much, Mr Ng Yuen. In declaring your interest, you have said you are a lawyer and that you have acted for owners in a successful collective sale. Is that collective sale that you are referring to the one that you have described in greater detail in your paper? - *(Mr Ng Yuen)* Yes, the one in page 1.

55A. Just out of curiosity, what would have happened had the few of the owners not joined in to contribute a part of the respective shares to top up the dissenting couple's share? That is in paragraph 2 of page 2 of your submission. That is how you solved the problem, right? - *(Mr Ng Yuen)* That is right.

56. Because the wife wanted a larger share and that was blocking up the collective sale. So some of you got together and you sacrificed part of your proceeds -? - *(Mr Ng Yuen)* The Committee's.

57. Was it the entire Committee or some of the Committee members? - *(Mr Ng Yuen)* Some of the Committee members.

58. And so you met her requests or demands and then the sale went through? - *(Mr Ng Yuen)* Yes.

59. Had that action by some of the owners not taken place, would the collective sale have gone through in other ways? - *(Mr Ng Yuen)* I would think that, on balance of probability, I think not because they were negotiating for a year and, for one year, that couple has been holding out. So I do not see them caving in just within another few months. They can hold on indefinitely.

60. The reason I asked the question is to lead up to a broader question concerning the approach which we should take in the Bill. Obviously, we can take a variety of approaches with regard to the role of the Strata Titles Board. One approach could be for the Strata Titles Board to be very interventionist in respect of various objections, grievances and complaints that any particular unhappy minority owner may have. The approach taken by the Bill is that the Board's main function

is to satisfy itself of the transparency of the process by which the majority adduce evidence of their majority consent, that it must be at arm's length, there must be no fraud, no conflict of interest, and so on. Once it is satisfied, then the Board does not get into the nitty-gritties of individual owner's complaints? - *(Mr Ng Yuen)* Yes.

61. Is that approach one that you would recommend? In other words, let the majority sort out the problems, as you seem to have done in this case with individual areas of unhappiness. It is part of a negotiating process and let the owners deal with this, or should the Board take upon itself these functions? Can I have your comments? - *(Mr Ng Yuen)* I would think that the first step should be taken by the owners. And I think the present drafting achieves that, and that the owners themselves would come up with a collective sale agreement which would set out how they intend to distribute, not only amongst those who have consented but also including distribution to those who have not. I would think that usually if there are objections from those who have not consented, it would be over the distribution of the sale proceeds. Then, I suppose at the end of the day, the Board would still have to decide whether the method of distribution is fair, and if so, put into effect, and if not, how to vary it to make it fair and reasonable. If you ask me whether it is proactive, I think it has to be a little bit of both, almost like what the court would do if an issue is posed to the court to decide.

62. It may be argued whether the distribution of proceeds is fair? - *(Mr Ng Yuen)* Yes.

63. You have commented at the bottom of page 2 where you have said, in a nutshell, you agree with the course that we are taking. This is your point (4). You said, "We are not talking about greed for money to spend frivolously ...". Of course, we are not here to debate the broad principles of the Bill. But, because some of the representors whom we are going to hear have argued that in a collective sale, it is about greed! Since they have made a point which seems to be completely different from your point, would you like to comment on that? - *(Mr Ng Yuen)* Yes. Because from what we can see, as service providers to an en-bloc sale, a lot of proprietors who participate in en-bloc sales and when they succeed, they want to use the proceeds of sale to upgrade to a better home environment. I think this is laudable because it is part of our public policy to give everyone a stake in the country and so on and so forth. It is quite different from wanting the money just for the sake of money to spend frivolously, to gamble, or to do this or that. I think all Singaporeans aspire towards a bigger, better home. I think that is the course which the Government can advance to the public.

64. One final point. Again, out of curiosity, what happened after the collective sale went through in respect of the development which you were involved in, where the collective sale finally went through because you found an ingenious, if not, expensive way of dealing with the objecting couple. Have you redeveloped the premises? - *(Mr Ng Yuen)* Yes, the purchaser was a developer and he purchased it to redevelop, and I understand he has applied for planning permission, although we do not act for the developer.

Prof. Jayakumar (cont.)

65. How many units were there in the original development? - *(Mr Ng Yuen)* 16.

66. And what is the proposed new development? - *(Mr Ng Yuen)* That I do not know. All I know is that it was a high-rise development, probably double or more units because the original plot ratio was about 1.4 and in that development, it could take 2.8.

Assoc Prof Ho Peng Kee

67. Mr Ng, you have set out certain other configurations in your paper. You are asking whether the Bill also applies to them. As you know, the Bill applies to outright sales. The points you made are quite interesting but just to let you know that we are confining the Bill to outright sales, as opposed to possible joint venture developments and I think for good reason, because if it is a joint venture development, there is an element of risk involved which will also affect the minority owners. If they continue to have a stake in it, then putting aside the question of risk, whether making them still part of this communal living when they do not want to be part of it, communal living has broken down, that will really add insult to injury? - *(Mr Ng Yuen)* I take your point, Sir. But I would like to point out, at least in one of the scenarios, it would be an outright sale of part of the common property, which would not be possible under the present drafting of the Bill.

68. This is your third proposal where there is excess common property and that you want to sell the excess common property for development? - *(Mr Ng Yuen)* Probably more to the second scenario where on page 3, second last paragraph, the last line says, "the owners seek to sell only part of the common property (without the existing apartments)."

69. I will ask my officials to study this. But whatever it is, this is not part of the Bill. But if you do make any valid points here, then the officials can study and see how they can be implemented if such is the policy? - *(Mr Ng Yuen)* I wonder whether I should add something. I was just thinking that most of the time, the objection to such a Bill is that people think because they own the whole of a unit or apartment, they are entitled to some kind of sovereign rights, like the home is a man's castle or something to that effect. In this second scenario, where you do not even sell the unit, you are just selling part of the common property which is jointly owned, that objection does not even apply. I would think that if this Bill is passed, it should allow people to sell part of the common property. All the more so, the public policies and the reasons given in page 2 would support such a sale, and the objections would not even apply. I thought I would like to point that out.

Assoc Prof Ho Peng Kee] We will take your views into consideration.

Mr Shriniwas Rai

70. I just want to ask one question. May I refer to the last paragraph of your

submission? You have made an interesting proposal. Let me read the middle of the paragraph: "For the developer's comfort the Bill may also provide that the Board has no jurisdiction to force the developer/purchaser to waive any term. In the event that the dissidents' objections are proven valid and the developer/purchaser refused to waive the objectionable terms, the Board should have jurisdiction to refuse to grant the order only." Could you tell us what is your rationale for putting in this proposal? - *(Mr Ng Yuen)* The rationale is that if we make a developer a party to the proceedings before the Board, it will enable the developer to indicate to the Board at the end or near the end of the proceedings whether he is able to waive some of the terms and conditions which a minority may object to. But that is to assist the owners and not to prejudice the developer. I suppose we should not have a case where the Board overrides the developer's decision and say, "You must waive this, or you must waive that."

71. That is why I am concerned as to how the Board is going to face this issue. What would you suggest? - *(Mr Ng Yuen)* I have contemplated that in the event that there is an objection to certain conditions in the sale and purchase agreement and the developer says, "Well, I will waive those conditions.", then, there is no problem for the Board. The Board simply orders that the sale and purchase agreement be put into effect, minus those objections. But in the event that the developer refuses to waive it, I suppose the Board would then have to decide whether the objections were valid in the first place. If it is not valid, then it would be overridden by the Board. If it is valid, then the whole sale would have to be rescinded.

Chairman

72. If there are no other questions, thank you for coming here this afternoon to assist us. We will send you a transcript of the proceedings. Can I ask you to go through it and return to us with amendments, if there are any'? In the meantime, I would like to remind you not to publish your submission or any extracts of it until the Select Committee has presented its Report to Parliament. Thank you very much? - *(Mr Ng Yuen)* Thank you very much.

(The witness withdrew.)

Paper No. 31 - The following representatives from Messrs Rodyk & Davidson, 9 Raffles Place, #5501, Republic Plaza, Singapore 048619, were examined:

Mr Norman Ho, Partner.

Mr Justin Wee, Legal Assistant.

Chairman

73. Good afternoon, please be seated. For the record, could you please state your names, addresses and designations in your organisation. - *(Mr Norman Ho)* I am Norman Ho from Rodyk & Davidson, Advocates and Solicitors. I am a partner. *(Mr Justin Wee)* I am Justin Wee from Rodyk & Davidson. I am a Legal Assistant with Rodyk & Davidson. Our office is at Republic Plaza at Raffles Place.

Chairman] On behalf of the Select Committee, thank you for your written submission on the Land Titles (Strata) (Amendment) Bill. We have invited you here this afternoon in order to clarify certain matters which you have raised. We will start first with Prof Jayakumar.

Prof Jayakumar

74. Thank you very much. First, I would like to refer to your opening paragraph where you said that you have acted in more than 30 cases of en-bloc sales. of which more than 10 have been successfully completed. Could I know over what period or how many years these 10 cases have been successfully completed? - *(Mr Norman Ho)* I think it is roughly about two years. I think we started with one of the very first case of en-bloc sale for Newton Mansion and en bloc transactions lasted until about two years ago.

75. I think it is good for us to meet with those who have had dealings with this kind of en-bloc sales. You have 30 cases. Ten have been completed, and the other 20 are pending, I guess. Without going into details or names of the developments, since you have had this experience with 30 cases, 10 of which have been completed, would you be in favour of the general approach in the Bill which pegs the majority consent to the age of the development of the strata title development, ie, 80% or 90% as the case may be, whether it is 10 years or more or 10 years or less? In your experience dealing with these cases, do you think the Bill has struck a fair balance because, ultimately, it is a question of balance. Either we make it too easy, or we stick to the present regime which is unanimous requirement or application to the court. May I invite your comments? - *(Mr Norman Ho)* Sir, generally the Bill addresses a lot of concerns of the individual owners. If the Bill has been passed, I think that probably most of these cases would have gone through. But on the mechanics of it, whether it is 10 units or more, or if it is more than 10 years, I think it is something which is quite different. I mean our submission would have been very different because, for example, without going into details,

my view is why restrict it to over 10 years or less than 10 years. Why must it be developments of more than 10 units?

76. Let us pause for a while and delink the two issues. 10 units and below, we can treat it as a separate issue. Let us take the issue of the majority consent being pegged to the age of the strata development. So my first question is: do you have any difficulty with the approach of pegging the majority, whatever it may be, with the age of the strata title development? - *(Mr Norman Ho)* Majority is necessary because there is always a deadlock, so we need a majority. But the age of the property is a concern to me. Because a lot of owners are not too concerned about the age of the property as he may have just bought it last year, for example, and en-bloc sale comes next year. It is just a matter of one year. And a lot of these owners do not hold the property for 10 years. So the age is not so important to them, but definitely there must be a percentage. Otherwise, there will be a deadlock, if it is 100%.

77. Do I understand you correctly then that your preference would be to have a majority of votes that is required because, obviously, you need it, but you are not happy with pegging it to the age of strata development? - *(Mr Norman Ho)* That is right.

78. When that would mean that the majority of 90% or 80% as prescribed in the Bill, but it is applied regardless of the age? - *(Mr Norman Ho)* That is right. If there is a good majority, say, 90%, for example, all the owners are able to make a decision themselves, I do not think there is a problem. It is not a question of how old the property is. Because we have actually gone for en-bloc meetings where properties are relatively new and they are interested in having an en-bloc sale. In fact, we have done properties which are less than 10 years, and all the owners were willing to go ahead. So I do not see the magical line for the 10 years actually.

79. That is interesting because some others have argued that a building which is 10 years and below is still "new", and we should require unanimous consent for such developments. And anything in respect of majority should apply only to buildings which are over 10 years. But, as I said, it is a question of balance which the Select Committee will have to consider? - *(Mr Norman Ho)* Sure.

80. As for the question of 10 units and below, I believe, my colleague, Prof. Ho Peng Kee, will pursue that with you. I have one other question which really goes to the concluding paragraph of your submission where you say, "We also propose that the owners of landed property may apply to the Board for redevelopment." I would like you to elaborate on that because you would surely know that there is a fundamental difference between strata title development and landed property. Because the owner of a landed property owns not only the building but also the land which is clearly demarcated. Whereas in respect of strata development, there are several distinguishing features. Firstly, the fact of communal living in a strata development with shared common property and corresponding obligations to manage and maintain it. Secondly. there is no ascertainable plot of land to which a subsidiary proprietor can claim that this belongs to

Prof Jayakumar (cont.)

him, because the land is owned in common with all the subsidiary proprietors. Thirdly, the law on strata title development has clearly established the principle of majority decision? - *(Mr Norman Ho)* Yes.

81. As practising lawyers, you are aware of these fundamental differences between landed property and strata development? - *(Mr Norman Ho)* Sure.

82. And also the fact that the Strata Titles Board has no real jurisdiction over landed property. I am curious as to why you make this proposal which is really outside the terms of reference of the Committee. But since you have made it and you are lawyers who are dealing with en-bloc development, you must have a reason for making this proposal? - *(Mr Norman Ho)* There are various issues raised by you, Sir, relating to the difference between strata title and property with land. Actually, it is observed by us and we know the difference. But then in our practice, we have quite many cases which involved landed property. They see that the plot ratio is enhanced. The property is good for redevelopment. Why not also join in the bandwagon where they can obtain a better enhancement? So they have actually appealed. I know various Members of Parliament have raised this issue. So we are quite concerned. We just want to bring it up and ask: has it been left out in the Bill itself? Has it not been addressed? Because the public do not see it that way. Many times, for various en-bloc sales like Paterson Road and even in Peach Garden, we have members of the public not understanding and asking, "Why is it my neighbour can do a condominium development whereas I can't?" So we are just bringing up issues that you may like to address. *(Mr Justin Wee)* Sir, if you do not mind, I am not suggesting that the principles concerning landed property should be fitted within the Land Titles (Strata) (Amendment) Bill, because it is like fitting a round peg into a square shape. As Norman, my colleague, has suggested, I think it is important. Since we are making fundamental changes to the law concerning land under the Land Titles (Strata) Act, I thought this may be an appropriate time, since the market is not very good now. It is quite soft and en-bloc development probably will not come back in the next 2-3 years, in view of the soft market. So it may be a good time and since we are going to do a revamp of the law in this area, maybe you should look into landed property because, as Norman has stated, I have attended countless number of meetings of developments along Paterson Road and Lengkok Angsa, for example, there is redevelopment potential there. However, certain owners whose units are situated in critical points of the development just hold out and say, "No, I am not going to let go unless you give me $2,500 per square foot per plot ratio." This is a price that most people would feel that it is daylight robbery. We are raising these issues not to say that you have to put it in the Land Titles (Strata) Act, but perhaps more for further discussion on whether owners of landed properties can appeal to the Board at the same time for resolution of such en-bloc matters. similar to apartment owners.

Prof. Jayakumar) I should make it clear that the intention behind the Bill clearly is to limit itself to strata developments. And, as explained by Prof. Ho Peng Kee in the Second Reading of the Bill, the rationale is linked, in fact, to the very nature of strata titles development, but we have taken note of your point.

Assoc. Prof. Ho Peng Kee

83. Just one or two follow-up points. You would agree that the legal rights of a landed property owner are different, in that the owner of a landed property has got more absolute rights, stronger rights, because he owns everything? - *(Mr Norman Ho)* Right, defined rights.

84. The other point is this. Would you not agree that for older developments, there will more likely than not be a larger number of owners interested in an en-bloc sale? - *(Mr Norman Ho)* From my experience, it works both ways. For older property, a lot of older folks are there and they want to stay there. For example, Kim Lin Mansion, it was almost impossible, because a lot of the owners have been there since the apartments were first sold. So they were not willing to move out.

85. That is the question of the personality of the people living there. But the fact that it is an older development means that probably larger repair bills are needed. People are more prepared to move out to newer developments. Would you not agree with that? - *(Mr Norman Ho)* Yes. *(Mr Justin Wee)* Maybe if I could add, Prof. Ho. Of course, technically, older developments should have people who have stayed there longer. But I could have bought a unit in Kim Lin Mansion just yesterday, because I got it at a bargain and I may have put in $200,000 worth of renovation in it. And I am most definitely not willing to move out just because the majority wants to kick me out of my apartment. That point may be relevant also.

86. 1 did not say that in older developments, the people there tend to be older. But the fact is that an older development, all things being equal, probably requires larger repair bills. So it is more likely that you get a larger percentage of people who would say, "For such an old development, rather than sink money to rebuilding it, we are prepared to sell en-bloc, get the economic benefit and then buy something newer", which is one rationale for differentiating between older and newer developments. In other words, using the age criterion, which you earlier on have argued should not be the case. But you would accept that this is a plausible, defensible and valid reason why we need to have a cut off point, whether it is 5 years, 10 years, 15 years, 20 years, or whatever. There is, in terms of approach, a reason why older developments may be treated differently than newer ones? - *(Mr Norman Ho) Yes,* looking at the development itself without any consideration, for example, of age per person, how long they have stayed there, I think that is very important. Because in an en-bloc meeting, one of the very important issues brought up is always how much is the repair bill. If they are going to do repainting, how much it is going to cost? Another $200,000. Things like that have happened for Paterson Mansion and quite a few, at least five to

Mr Norman Ho (cont.)

eight of the properties, which we have dealings with. So these are issues.

87. The other matter would be developments with 10 units or less. I think you have argued in your paper that even for developments with 10 units or less, this percentage should apply. It should cover developments with 10 units or less. Before you tell me why - I am sure you must have your reason - I just like to let you know that other representors have argued the other way round, that the unanimous consent requirement should in fact be lifted higher to 20 units. In fact, one representor said 50 units. I would like to hear your views as to why you feel we should lift this for 10 units or less? - *(Mr Justin Wee)* Perhaps I will just use a practical example to illustrate. I think you may have heard this from a director of Knight Frank, Francis Lim. We deal with the property owners of Balmoral Haven. There are six units there and typically this is one of those case scenarios. There are six units sitting on a plot of land which is about 43,000 square feet, a condominium status sort of land. However, we have one unit who is holding back and two other units saying, "OK, I want everyone else to agree first before I agree." So we have a typical scenario. I do not know. This is my suggestion because I have been approached by an undergraduate who is doing a paper on en-bloc sale. This is my suggestion. If you insist on 80% rule for such a development, this development is more than 10 years old, which means that you need only 80%. 80% of six units, that is at least 5. You need at least 5 out of 6. I am suggesting: could we have a staggered kind of percentage? I cannot imagine there are a lot of developments with only about 5 units. Maybe let us start with 5. So we got to have 4 out of 5. If it is a 6-unit development, we have 5 out of 6. If it is a 7-unit development, we have 6 out of 7. So long as at each stage there is a majority above 70% or even close to 80%, say, 8 units. We are talking about 6 out of 8. So there is 75%. For 9 units, we are probably talking about 7 out of 9. Maybe we can have this staggered percentage, so as not to rule out completely the hopes of these owners who genuinely want en-bloc sale. Because the background of this whole revamp is that land be freed for redevelopment. In land scarce Singapore, I can see the justification. I myself stay in a huge old development and I can see the reason why, because you have walls you need to repair and lifts you need to repair. I can see the reason. But, certainly, for such a small development, 6 units in this case, their hopes of an en-bloc sale should not be ruled out simply because they have only 6 units there.

88. Your point really is that, in a nut shell, the purposes behind the Bill would be better served if even for these smaller units, particularly older ones, which are sometimes on very large land areas, the need for unanimous consent should also be lifted? - *(Mr Justin Wee)* Yes.

89. Another substantive point, before I just take one or two procedural points, is this. You have argued, Mr Wee, that instead of the current position where the

terms and conditions have all been completed and finalised and then permission is to be sought from the Board, whether in the first stage, the interim stage, even before the terms are fully firmed up, they should come before the Board and ask for in-principle approval? - *(Mr Norman Ho)* Before you go to that, can I add on to what Mr Wee had said earlier? From my experience, for some of the older properties, they have only about five or six units and the land is very large even for condominium development. I think the criteria should be that if that piece of land is sufficient for condominium development, as determined by URA, then I think it should go under the Act itself. Because if it is five or six units only, but the land is really big for development of, let us say, 50 units of condominium, I think it is not so much of whether it is six units. The guideline should be that the land is big enough for condominium development which serves the public, because 50 units can be built on this piece of land. If it is big enough, then it should be a certain percentage. I think it will serve it better.

90. But what is the cut-off? What is big enough? - *(Mr Norman Ho)* URA has certain guidelines for condominium development, how big it is supposed to be, 43,000 square feet or 44,000. At least we can say that if it is lower than that, you cannot build a development which is for condominium purposes, you cannot fully utilise the land. Therefore, the cut-off point is there. It would probably serve the public better.

91. Whatever considerations, your basic point is that the purposes of the Bill would be better met if we reconsider this point about requiring 100% for 10 units or less? - *(Mr Norman Ho)* That is right.

92. How about this other point that I have just mentioned, Mr Wee? There is some concern about this time factor that if you require all the terms to be firmed up, you do not know how long the Strata Titles Board may take, and there may be new terms being introduced through mediation and so forth. Let me under stand you. Your main concern really is the time factor? - *(Mr Justin Wee)* Let me clarify. I think you are referring to item No. 3 at page 2 of my submission. Our concern is this, having handled en-bloc sales ourselves. We are talking more in terms of a tender. I have done private treaty situation, but we will leave that aside. Before a tender can be conducted, the owners need to get their act together. They need a collective sale agreement, joint-sale deed. Looking at new section 84A, the heading reads: "Application for collective sale of parcel by majority of subsidiary proprietors who have made conditional sale and purchase agreement". By "conditional sale and purchase agreement", we assume this is an agreement with the developer subject to consent. This means, for example, in a development less than 10 years, 90% of the owners have agreed we sign a conditional agreement to sell to ABC company pending approval of the Board. I am speaking from a developer's point of view. I think that is quite a bit of uncertainty. That is one thing. When there is uncertainty, they do not pay as well. For example, in a normal project, say, about 120,000 square feet area, the tender fee could amount up to $1 million. If, for example, there is this added uncertainty, because it is conditional upon, which

Mr Justin Wee (cont.)

means there is a likelihood that the Board may not grant the approval because of sonic strenuous objections by certain parties, then the developer will come in and say, "No, I am not really willing to take a ride. The market may move up and move down." Then they say, "Okay, I will just throw in maybe $100,000 as compared to a million dollars." I think it is also this uncertainty on the part of the owners. Before we even launch for tender. rather than put in the tender document, this whole sale is going to be subject to approval of the Board, why not we get our act together first? The owners with 80% approval, trying to reach 90%, will have to apply to the Board. The owners will have to come up with a certain fund to pay for the application. Once they obtain the approval, they go for tender. This is more clear-cut. The owners know for sure that they are able to sell and the developers know for sure they can buy. Of course, I am not saying that the Board will always reject their approval. By the look of it, more often than not, I would think that if an application goes up to the Board, the Board will probably approve it, so long as the minimum requirements are there.

93. Your point is really the uncertainty as to how the Board will act, but over time, with experience, the parties will know the thinking of the Board and the approach the Board will take. As we have stated in the Bill, and also in my Second Reading speech, the Board basically wants to ensure that the transaction is bona fide, at arm's length. In fact, you have also suggested in your paper, in so far as section 84 is concerned, I think the two points are linked, that more should be fleshed out so that some of the factors the Board may consider, which may result in the transaction not going through, should be set out. If this indeed is the case, section 84 can be amended to put the Board's thinking on a clearer plane, and also an assurance that the Board will, in terms of deciding, act as expeditiously as possible, of course, with the owners' agreement. Will that meet your concern? - *(Mr Norman Ho)* Yes, it would. *(Mr Justin Wee)* Just to satisfy my own curiosity, I would like to know why is it that it is drafted so that you need a conditional sale and purchase agreement before getting the approval. Why cannot it be the other way round?

Assoc. Prof. Ho Peng Kee] The condition, of course, is on condition of getting the Board's approval so that the thrust really is to get the owners to get their act together, and clarify all the terms. In so far as the Board's role is concerned, it is to look at all the terms as decided by the owners' and the purchaser. So it is a matter of balancing. Because we do not want the Board to override the majority owners' consensus. So they would come together, settle their differences and then come before the Board with the proposal. Then the Board can look at it. Of course, if there are minority owners who want to dissent, they can lodge their dissent. This is a clearer approach. Over time, from the Board's operation, you will see that the Board will act expeditiously. One view which I think you have expressed is that, if this is dragged on too long, then there will be the unwinding of the transaction. If the Board knows that this is your concern, and it will indeed act expeditiously, that will satisfy your concern. Let

me just take one more point, which is section 78 -

Prof. Jayakumar

94. If I can chip in, before Prof. Ho goes to another point. Of course, there are various approaches that can be taken. We could have taken your approach, which has been urged on us by some other representors. But the net result of adopting your approach which, shall I describe it as "in-principle" approval or "provisional", whatever label you want to *give,* is almost invariably the Strata Titles Board will have to be involved in two exercises. Because after the in-principle approval there may be changes and variations in the final deal that is initially arrived at, and I am quite sure you will have to come to the Strata Titles Board again. So the approach taken in the Bill is, let us try out this system first. It is a neater, simpler approach where the Strata Titles Board is involved initially in one exercise where most, if not all, of the details have been sorted out by the parties concerned. Your other approach is possible and I am not saying that your arguments are not sound. But because it is going to involve the Strata Titles Board, and presumably everybody else, in two rounds of discussions with the Strata Titles Board, we prefer this approach for the time being? - *(Mr Norman Ho)* Having heard your explanation, I can see your concern. However, in acting for these owners in en-bloc sales, I notice a lot of owners do not want to sign because there is uncertainty. And to add on another uncertainty, I am very sure even more would not sign. That is from the practical point of view because many owners, for no reason, will say, "I want to be the last to sign." And they will be asking you, "Have you got this consent? Why can't you write for the consent first? Why don't you write to the Strata Titles Board first?" I am quite sure a lot will be writing to the Strata Titles Board even if there is no provision here. Because we are pushed very hard. We have to do things in anticipation many, many times. The owners are not going to sign because they say that at the end of the day, "We are incurring cost, we are coming down for meetings, at the end, the Strata Titles Board may just disagree with us to allow us to proceed with en-bloc sale." This may be one of the practical problems.

95. You will agree, of course, that the final decision has to be taken by the owners, and not the Strata Titles Board? - *(Mr Norman Ho)* Yes, of course.

Assoc. Prof. Ho Peng Kee

96. Just this point about section 78 which you have said currently drafted appears to be ambiguous. I take your point because, in fact, other representors have made the same point. Our officials will look at it and come out with a re-draft that will clearly reflect the intention which is, in fact, reflected in the explanatory statement? - *(Mr Norman Ho)* One point we like to know is also the project account scheme. For new developments, the buyers have to pay to a project account. But for an en-bloc development, the purchase price of the new unit is offset from the en-bloc owners' sale price. I am selling this property for $500,000, you are billing us for $1 million,

Mr Norman Ho (cont.)

we want to offset, but we do not have to pay to a project account. Under the present system of the Housing Developers' Rules and the Act itself, we have to pay to a project account. This is one of the issues that we have to address also.

97. Is this point in your submission? - *(Mr Norman Ho)* I think we have missed out on that part on the payment to a project account in our submission.

Prof. Jayakumar

98. With your permission, Mr Chair man, can I suggest that they send in a further note to elaborate on the matter? - *(Mr Norman Ho)* Sure.

Chairman

99. I think that is a good idea, and we will circulate it to Members? - *(Mr Norman Ho)* We will do it later today.

Mr Shriniwas Rai

100. I have one question for Mr Ho, although it is not in the paper. Some proposals have been made that instead of going to the Strata Titles Board, the dispute should go to the High Court. As a lawyer, the Committee may be interested to know your view. Are you happy with the existing provision as is provided in the Bill? - *(Mr Norman Ho)* I do not think it is a problem of going to the Strata Titles Board or whichever, as long as it is an independent body, because cost is involved, and the reason for going to the Strata Titles Board is that there is no finality in the agreement. So it is going to be very difficult to go to court and have a dispute. It will cause very bad blood among the neighbours because I have even seen fights during en-bloc meetings. So it would be very difficult to say that if you do not agree, I am going to bring you to court. I do not think it would be practical to say that this matter would be resolved by the court.

101. Mr Ho, you will be interested to know that the Strata Titles Board takes a more mediatory role? - *(Mr Norman Ho)* Right.

Mr Low Thia Khiang

102. Since you are involved in quite a lot of en-bloc sales, I would like to know this argument in opposing the amendment to the Strata Titles Act that some owners, due to sentimental reasons, do not want to sell their unit because to them a home is probably more than just a property to make profit. Based on your experience, what is your comment on that? - *(Mr Norman Ho)* Without these amendments, when I go for a meeting, if some owners come and say that for sentimental reasons they do not want to sell, I am more than happy because I can stop my job there and explain to the owners that there is no Bill and there is nothing they can really do about it. Because this is a wedding gift, for example, and I think that we can approach very far. As solicitors, we are not there to push the case. We are there to facilitate and make sure that the agreement goes on and everyone is

happy. We also see a lot of unreasonable owners, who do not give any reason and who object only at the very last minute. We can go for 25 meetings and at the last meeting they say, "I refuse to sign because I have got some sentimental reasons" without giving any reasons at all. That is very difficult for everyone. When you say sentimental reasons, that is something really relative and abstract, which we do not really know. If the Bill is drafted in a percentage-wise term, I think it is very fair because you are not only looking at sentimental reasons but how to enhance the value of the land. Because of land scarcity, you are going to make maximum utilisation of the land itself. It is not only for a sentimental reason. Otherwise, everybody can say it is for a sentimental reason. I think that is the reason why you are looking at this Bill yourselves. There is a personal interest as compared to the public interest of having more buildings and enhancing the value. Beyond certain measures, I do not think we can really look at sentimental reasons. Sometimes, of course, sentimental reasons do count and we do persuade them as solicitors. Yes, they have a sentimental reason. It is a gift from the father who has just passed away. I do not think we should push further. I do not mind people coming right upfront, but it is only people who, after 25 meetings, come and tell us that it is sentimental reasons, and you know that their reason is just simply that they do not want to go on with it. That is all. We cannot question their thinking and the best is having this 80%, 90%, whatever. I think it is much easier for us. *(Mr Justin Wee)* Maybe just to add on. This is purely my suggestion. If, for example, a person has particular sentimental emotions attached to a particular apartment, maybe it may help if it is provided in the Bill that there is an exchange scheme where upon redevelopment, the developers give them a unit back in exchange plus consideration for rental subsidies during the two or three years of construction. That may help somewhat to ease the sentimental attachment. It may be to that particular old unit, but it is all a matter of balancing. I am also thinking ahead. Maybe we can even have a prescribed form of sales and purchase agreement, so that for sentimental reason, yes, but that will be one reason which cannot be overridden at all costs. Because if there is a sentimental reason, then, maybe that person should accept the exchange scheme. But, very often, for those who are not genuine sentimental people, they will say, "Oh, no, no. I think I want cash upfront." So maybe by doing that, you can weed out the not-so-real from the genuine "sentimental" owners, *(Mr Norman Ho)* This problem actually has been encountered by us because in an earlier en-bloc development, we do not have this provision to say that the developers are obliged to give them a first option to purchase. But because we come across, almost in every en-bloc sale, someone will come back to say, it is near his mother-in-law's place, or this place he really likes. So we have a clause in the agreement that developers must compulsorily give them the first offer to buy back this property. This is in the interim before this Bill is passed, to cater for the situation. If for sentimental value, they like this area, we will tell the developers that they

Mr Norman Ho (cont.)

must give them the first choice to buy at the first launch, at the first market release.

Prof. Jayakumar

103. In other words, even with this Bill, that practice can continue where the majority owners can try to accommodate the strongly felt desire of an individual to be in that particular vicinity, or even in that particular development'? *(Mr Norman Ho)* Yes. Most of the time you can because, having drafted the clause, it is very easy. Most of them say it is sentimental value, or near their children's schools. It is very easy. But then you are having very difficult people who do not want to explain to you and say this is the reason. So, actually, like what Justin says, we can weed out who are the people who are genuine.

Mr Low Thia Khiang

104. There are others who argue that by amending the Act, it will take away the rights of individuals in owning a freehold property. It is supposed to be freehold. So, as a lawyer, what is your view on that argument? - *(Mr Justin Wee)* I am not on either side. I try to be as impartial as possible. But, as a lawyer, and even as a layman, you will be aware that there are certain laws in Singapore which take away your rights as well, amongst others, compulsory acquisition for the North East line. There are people who are affected. Let us put it this way. I think most Singaporeans are quite adaptable. And, of course, speaking from a lawyer's point of view, we have been in law school, it is the sanctity of land, if it is a freehold estate, that means you can live there forever and forever. But buildings do have defects, they do crumble after 20 or 30 years. I have come across, for example, the upgrading cost can amount to easily five figures, not just for only the paint job, you have got to change the lifts, service the roads, the electricity, the gas pipes, if there are any gas pipes. It can go up to $20,000 to $30,000. For an old couple, for example, who does not have an overdraft line, it is very difficult to come out with this $20,000 or $30,000. Sometimes they may go into debt just simply because they have to upgrade. So I am just looking at the other side. But coming back to the question, I would think, yes, it is definitely an erosion of property rights in Singapore as far as owners of freehold land and 999-year land or estate in perpetuity are concerned. However. I think there is an overriding principle here, being the freeing up of such valuable land for use in the future. For example, Aspen Heights is a nice development. I am just giving an example. It is brand new. But, you never know, five or 10 years down the road, URA may come out with a new redevelopment plan for that area with a plot ratio of 3.1. There is redevelopment potential. Does it mean that the owners there who own 999-year leasehold rights will have their rights eroded? I think there has to be a balance with the need to free up land. If the majority feels that this is a good approach, the majority cannot be (hat wrong. There are very greedy people, but sometimes there are also sensible people as well. *(Mr Norman Ho)* I think the easy argument is, as what Prof. Ho has said also, if you are talking

about strata titles, especially landed, it is different. Landed property is very peculiar because you own the piece of land, whereas if you are actually tenants-in-common of the whole piece of land, you only have a share. So you have to take the decision of the majority. And majority in this case maybe 90%, 80%, which is good. Because I think that you cannot have just one owner blocking the whole thing who says that he refuses to sell for no reason. That is why I understand why this is called strata title. But our concern is, because having done one-third of our en-bloc sale on landed property, I can see the people with landed property asking why we give preference to the condominium owners. But they do not see the legal basis of this Bill itself. But it is true because, basically, they have a share of the land itself, and only a share, and they do not own the whole piece of land. So it is a much easier argument if you say it is condominium development.

105. Could I say, based on the argument of the difference between landed property and strata title property, both are freehold, the owner who owns a strata title property actually has lesser right, in the sense that it is strata title. The free hold status of a property in the condominium has, relatively speaking, lesser value than the landed property in that sense, because they are different. Secondly, Justin Wee referred to the other laws like the Land Acquisition Act. I think a lot of people can understand the Land Acquisition Act, because the land or properties are acquired for public good, for instance, building the North East line, whereas in this particular case, it is giving out of an individual right in favour of the majority who wants to sell the property. You can say that, well, we freeze up the land, because Singapore is land scarce. But, on the other hand, there is a question of profit that is involved. So, in your view, do you think it is justified and balanced in this particular case for the amendment of the Land Titles (Strata) Act to weed out the rights in favour of the sale of property by the majority? - *(Mr Norman Ho)* If I may answer, I think this question is not the public right against a private individual's right, but it is a group of individuals, and one trying to be difficult and wanting to exercise his right to say that he has got this perpetual right not to sell. Justin's submission, I think, rightly qualified by you, says it is for public purposes. But what I am saying is that when it comes to a standstill, when there have been owners, one out of 36 not agreeing (in fact, we had one case, a divorce case, half did not agree out of 36), we are all jammed. And they tried to be difficult because they wanted more money for matrimonial settlement. So how are you going to do it? It is not just not wanting to sell because there is sentimental value. Coming to your question about whether landed property has better rights than condominium, I stand corrected by Prof. Ho. The point is that a landed property is defined as a piece of land, and you can know it is your land. But it is no way for you to be able to cover a condominium and say this part of the swimming pool belongs to me, and that part belongs to my neighbour. That is why you have a share. It is because of the configuration and the way it is structured, you cannot say that you have a piece of land. This is why the certificate of title will say I out of 1000 shares, for example. It makes it easier. This is the better reasoning why

Mr Norman Ho (cont)

the majority can ask the minority to join the en-bloc sale, whereas a landed property owner can well understand that this is his defined land, he can do what ever he wants to do with it. I think when anybody is buying a condominium, the solicitor should have told him that he does not own any part of this land, he must remember that. It is quite obvious, and it is implied, they should know too.

Assoc. Prof. Ho Peng Kee

106. That is the point. In an en-bloc development where space is created to create more units, and sometimes it can double or triple the number of units, is there not also a public benefit that accrues to the country as a whole in creating more choice homes, because many of these developments are in good areas, not just for Singaporeans now but in the future? - *(Mr Norman Ho)* I think that having gone through so many en-blocs sales, they do not see it as a benefit for creating more homes for Singapore.

107. You did not hear my question. It is not so much the participants involved, but is there or is there not, the fact of the matter? - *(Mr Norman Ho)* The fact of the matter, of course, there is. But, as I said, basically, with the owners, it is how much money they are getting and nothing else.

108. But you do not deny that there is a public interest that accrues because of the aggregation of the number of new units created, as a result of better utilization of land? - *(Mr Norman Ho)* Yes, I do agree. For example, places like Balmoral Road, which have done quite a few en-bloc developments there. River Valley, for example, some of the houses are very, very old. Because the roads have been broadened and access to transportation is good, there is no reason why we have these old houses fronting these major roads.

Mr Low Thia Khiang

109. Mr Norman Ho, based on your experience, would you say that the more home units can be created for Singaporeans, the more profitable it would be for the owners who decided to sell the units en-bloc? Is that usually the case? *(Mr Norman Ho)* I do not really get your question.

110. The higher the plot ratio is allowed, Prof. Ho was saying that actually you create more units for Singaporeans. So, in that case, the higher the plot ratio, the more units you can build and, in turn, create more homes for Singaporeans. The owners who decided to sell en-bloc will get better profits. Is it generally the case? - *(Mr Norman Ho)* Generally, it is not. The determining factor is not just the plot ratio alone, because like how depressed the market, like it is today, we go for an en-bloc sale, I tell you that nobody will buy. So a lot of other factors are involved. Of course, the higher the plot ratio, generally you can sell for more because the new developers can actually build more units. But, then, for the new development, now they are not even bidding for it. For our last few en-bloc sales in August last year, no one bid for it. At one time, it was like there were so

many bids for every en-bloc sale, and there was no problem. So I think it is not a factor of how higher we can build, but the valuation done by the developers themselves, whether it is worth the value. Because I can tell you, all the en-bloc sales which we have acted, I am quite sure the developers who bought them all lost money if they sell today. And I would say 70% have lost money already, because a lot of these en-bloc sales, like Clementi Shopping Arcade, they bid so high, it is incredible, and there is no way they can sell that kind of price with the new units. They probably have lost a lot of money. So to answer your question, I think there is little relevance actually.

Chairman

111. All right, if there are no other questions, gentlemen, thank you for coming here this afternoon to assit us. We will send you a transcript of the proceedings in a few days' time. Can I ask you to look through it and return to us. In the meantime. I just want to remind you not to publish any of the evidence you have given or the documents you have submitted until the Select Committee has presented its Report to Parliament. Thank you very much? - *(Mr Norman Ho)* Thank you. We will give you our paper later.

(The witnesses withdrew.)

MINUTES OF EVIDENCE

Thursday, 3rd December 1998

2.00 p.m.

PRESENT:

Mr Speaker *(in the Chair)*

Mr Chng Hee Kok	Assoc Prof Ho Peng Kee
Prof S Jayakumar	Mr Koo Tsai Kee
Mr Low Thia Khiang	Mr Shriniwas Rai
Dr Teo Ho Pin	

In Attendance:

Attorney-General's Chambers:

Mr Ter Kim Cheu, Head, Legislation Division.

Ministry of Law:

Mr Li Chong Jin, Assistant Director (Land Policy).

Mr Pang Khang Chau, Deputy Director (Legal Policy).

Ms Petrina Theo. Land Policy Officer.

Registry of Land Titles and Deeds:

Ms Foo Tuat Yien, Registrar of Titles and Deeds.

Mr Vincent Hoong, Deputy Registrar of Titles.

Mr Bryan Chew, Senior Assistant Registrar of Titles.

Paper No. 25 - The following representatives from Collective Sale Committee, Kum Hing Court, MST Plan No. 245, c/o 28 Tomlinson Road #04-32, Singapore 2478540, were examined:

Mr Nga Thio Ping, Chairman.

Mrs Goh Guan Siew, Member.

Chairman

112. Good afternoon. Please be seated? - *(Mr Nga Thio Ping)* Good afternoon, gentlemen.

113. For the record, could you please state your names, addresses and the positions you hold in the organisation that you represent? - *(Mr Nga Thio Ping)* My name is Nga Thio Ping. I live at 28 Tomlinson Road #04-32 and I am the Chairman of the Collective Sale Committee. *(Mrs Goh Guan Siew)* I am Goh Guan Siew. I own a unit in the same property. But, presently, I am residing at Blk 104 #08-283, Bukit Batok Central.

Chairman] Thank you for your submission to the Select Committee on the Land Titles (Strata) (Amendment) Bill. We have invited you here this afternoon in order to clarify certain points that you have raised in your submission. I will start with Prof. Jayakumar.

Prof. Jayakumar

114. Thank you very much for submitting your views. We understand the particular experience that you have had. Naturally, the work of a Select Committee and of Parliament would be to enact a law which strikes a right balance between different interests and we have not been able to draft the Bill for any one particular case. I am sure you understand that? - *(Mr Nga Thio Ping)* Yes.

115. But, nevertheless, the experience that you have described is an interesting illustration. May I ask, before I proceed to the specific substantive points that you have raised, what is the status of the proposal for collective sale as of now. You have described the problems you have had? - *(Mr Nga Thio Ping)* As of now, the whole proposal has been in limbo and we have tried many times - verbally and through written notes - to request for a face-to-face meeting with the developer-owner concerned. And in all instances, we had been rebuffed, with perhaps the only word that came about being through proxy - that as and when the time is due. this matter would be discussed. But actually, in one simple word, it is one big frustration.

116. If the Bill is enacted into law, from the facts that you have described, I take it that it is not going to give you great comfort because the two individuals who had objected would own more than the required number? - *(Mr Nga Thio Ping)* Yes, indeed.

117. Therefore, I take it that some of your recommendations here are

Prof. Jayakumar (cont.)

prompted by your own experience? - *(Mr Nga Thio Ping)* Yes.

118. Let me take one of your proposals. You recommend that the 80% or 90% requirement which, at the moment, is based on share values should be changed to one based on the percent age of the individual owners. That is the first point you made. Together with that, you have made another point that if we make it a percentage of individual owners, then it should be regardless of the number of units they own. On the first point of pegging it to the percentage of owners, I think you will appreciate that the approach the Bill has taken is within the existing legal regime of strata titles, which is that approvals which are required for many other purposes under the Act are dependent on share values. This is the established law. So for Parliament to change it to a percentage of individual owners would be contrary to the existing scheme. Are you aware of this? - *(Mr Nga Thio Ping)* Yes. If I may make a personal observation. Laws are basically man-made and can also be amended by man in a likewise fashion provided there are merits to it.

119. Indeed. So the question is whether there are sufficient merits to make such a major change from the established system because you say an owner can be a subsidiary proprietor of a smaller unit and another owner who may have larger premises, according to your proposal, would be put on the same footing. That is why the existing law proceeds on share values. So we need to have very good grounds before we change that. But I want you to elaborate if you think that there are very good grounds. I also want to know your reasons for suggesting that it should be regardless of the number of units. I take it that it is because, in your experience, the one or two owners who objected own multiple units. This is quite interesting as we had an earlier representor who made the same observation but for other reasons, because the multiple owners had wanted the en-bloc sale to proceed. So it is double-edged? - *(Mr Nga Thio Ping)* That is indeed a stick in the works.

120. It can work the other way too. In other words, because of your experience, you ask us to adopt this. But if you were to adopt it, it can work the other way too. Next, your proposal is that the percent ages which the Bill requires, 80% or 90%, as the case may be, you would have a further category where buildings which are more than 20 years old you would suggest 70%. Can you explain why you made that recommendation? - *(Mr Nga Thio Ping)* If I may come down to all the three points here. Once again, we appreciate the opportunity that has been given to us to present our case. It is very conceivable to have housing developments by individuals on land inherited or purchased through their own means. And for a financial reason, the developer could release a certain percentage for sale and hold the rest under that person's ownership. It is also very conceivable for such an owner over time to have peculiar or legitimate reasons of his own, or some times - to be queer - by not wanting to upgrade nor renew the property or to maximise the property's full worth. It is not unreasonable to say that some of these instances could include a person

who is very tired about the whole thing. He thinks he has enough money, he does not need any more excitement of a new development, the hassle and the hullaba-loo. He could just be displeased with somebody. Or he could even take it as a matter of protest against some legislation or powers by not wanting to cooperate. As for our estate I am not, at this moment, sticking a particular label to this particular developer as to what is the reason. But it is very reasonable and possible that there can be such develop-ments where the developer says, "Don't bug me. I am happy as I am. I have found a new religion." Then what happens to the estate? And in our case, I have a 27 year old estate that is rotting in many places, even after the completed cosmetic upgrading which amounted to just over $2 million. Even more is required. The rubbish chutes and sewerage pipes may now be required to be hacked out and replaced. So under these circumstances, what do we do then? Yes, in share value, we are terribly outvoted. But all in all there are about 57 owners in the estate, I may be wrong by one or two digits. Of the 57 owners, this developer is but one of them. Only a very small number - and I think my last count was about four - was not keen about it. One is because the lady is blind and she is familiar with the place, which we fully understand. But the others gave sentimental reasons and *feng shui.* The actual number of owners is just overwhelming. But going by share value, then all of us would just have to go into sunset with the developer - if he so decides that he would like to just ride into sunset, and let his lawyer take care of all other things as and when he expires. On common law and common logic, we find that we have been very much short changed. *(Mrs Goh Guan Siew)* If I can just speak a little bit here. The wishes and interests of the majority of the owners should take precedence, as I believe is intended by the Bill. But because of peculiar situations, the majority of the owners find ourselves falling through the cracks of whatever legislation we have. As a result, the wishes and interests of the majority have no place in the equation. We of course are very concerned to find some equitable solution. *(Mr Nga Thio Ping)* A further point is that, in our situation, we happen, fortunately or unfortunately, to be occupying a rather prime location which, if released for development, will bring in substantial gains for everybody, with no exception.

121. For myself, I can understand and sympathise with your predicament. But as I said, the Committee will take into account the various suggestions made. We cannot legislate for special cases, but all the points that are made to the Committee will be considered. But I have one other question before my other colleagues may want to ask you ques-tions. You did not consider going to the courts? - *(Mr Nga Thio Ping)* We would rather not go to the courts as yet.

122. Why? - *(Mr Nga Thio Ping)* We may. But then it will be no holds barred and everybody's sentiments will be worked up and they will be putting up their fortresses. At the moment, I have taken a deliberate decision - at my disadvantage, because I have been much misunderstood by the others who are wondering what am I doing when the whole thing is in limbo and nothing is heard about it - I have actually taken a

Mr Nga Thio Ping (cont.)

deliberate decision to show deference to this gentleman in not wanting to open the issue.

123. In other words, you could have gone to the courts. That was an option open to you, but you did not because of the acrimony? - *(Mr Nga Thio Ping)* The acrimony that will come about. I thought that this person, an elderly gentleman, if treated with respect, will hopefully, through persuasion over time, come round.

124. Let me ask you one final question. Whatever your views on the final outcome of the Bill, whether it meets or does not meet your particular problem, the approach taken in the Bill is, for cases which come up with objections from the minority or others, it will be the Strata Titles Board which will try to mediate some of these problems. Some representors have told us that it should not be the Strata Titles Board, it should go to the court. Can I have your views on that? - *(Mr Nga Thio Ping)* I think going to the court, with due respect to the lawyers here, is something which is not in our culture and we agree that it is generally best avoided. If this were to be America, then there would be no problem. Every man will just find his way, get his lawyer and fight it out in the courts. But I think that would be a waste of funds and goodwill. If I may add, the way we see it, in respect of Kum Hing Court itself, there is every possibility that such a situation could also be seen in developments elsewhere now or in the future. As I mentioned, all it takes is just one individual with some good fortune and a piece of land, that is big enough for development? - *(Mrs Goh Guan Siew).* I think even right now ours is not the only one. *(Mr Nga Thio Ping)* Across the road, over the other side, probably, it is the same situation. I do not know whether they wrote in. I did not speak with any of them on this matter.

125. I understand. In the end, it is a question of balancing the interests of competing parties? - *(Mr Nga Thio Ping)* If I may carry on, now or sometime in the future, there can be one or more individuals who will carry out a development and sells off a minor portion or half a portion of it so as to get the funds to finance his or her development. And then for one reason or another after that, he just did not see the sense of optimising the worth of the asset, which is not a problem for a rich man. But for us salaried workers, that is a tragedy, because there are people who are hoping earnestly to be able to realise the extra worth. And they are not doing this because they want to go round a world trip. They do this, I know for sure, for reasons of wanting to provide better medical care and be able to retire. I have one neighbour whose daughter is now in Boston University and his son has just completed his `A' levels. He has been struggling all this time. He kept encouraging me that he hopes he could have this windfall so that he could retire and continue to support his children in the university. As the Chairman, hearing such things, encourages me. These are not wealthy people. All Singaporeans are supposed to be good stewards of their assets because if we are not, Potong Pasir would still be vegetable farms. I grew up in Potong Pasir. But because we are all

good stewards, it is not a sin or crime to optimise our assets, especially if it is optimised without shortchanging some one else.

Prof Jayakumar] We understand your argument and your strong feelings on this. But I should give my colleagues time to ask other questions.

Assoc Prof Ho Peng Kee

126. Just a follow up on what you have said. You have recounted that the experience has been a frustrating one and so the wishes of the majority owners have been frustrated. They were not greedy people. They have good reasons for wanting to go for en-bloc sales, particularly because the estate is old and needs a lot of repairs. From some of the other submissions, and sometimes when people talk, they tend to say that the minority owners who hold out are the elderly retired people who do not want to move out. But in your experience, from what you recounted, there are also among the majority owners elderly retirees who actually want en-bloc sales? - *(Mr Nga Thio Ping)* Yes, I can name them actually. I have a nominal roll here.

127. I think there is no need to, but I thought I would highlight this point so that we cannot typecast either side. But your case brings out very clearly, from what you have said, you have got real life example of a group of people who are not mercenary, just motivated by money or who are greedy but who sincerely wanted to redevelop the development? - *(Mr Nga Thio Ping)* Thank you for highlighting this point. One gentleman has since passed away. He is the brother of a Minister whom all of us have every reason to be grateful for. And that nice gentleman, I have actually spoken to him over the phone, who encouraged me, has passed away. There are also at least two of us whose mothers have passed away recently. They had been bedridden over many years and were incurring expenses. They could do with extra funds to give them extra comfort and care. I can name them if you want to but I do not think I want to do. Among them, it may sound trivial, apart from this developer, are about four of the last Mohicans who are holding out. One of them has not lived there all these years but yet she says that she wants to hold on to the unit because it is near the hotel belt. She takes great delight that restaurant staff recognise her because she takes frequent and regular breakfast, lunch and tea in these hotels. Here we have people pining for extra funds so that they can retire and provide for their children and we have one individual like her. And we have another one who says nothing else but just *"feng shui"*. I am not prejudiced nor trying to sneer at somebody's religious belief. There is also another owner, a highly successful professional with multiple properties elsewhere who would not budge other than to say "do not disturb me". And I have tried calling that person but he would not return my call. I have tried even writing letters. You get such situations. Of course, there is, among the persons I mentioned earlier, a lady who is blind. Our intention here was, upon clearing with the rest, to do our utmost to find a suitable unit which would provide a better environment for her. Then we would have our 100% to move

Mr Nga Thio Ping (cont.)

on. That was our plan, and we were close to the number when this route was blocked from us.

Dr Teo Ho Pin

128. Mr Nga, based on what the Minister has mentioned, this amendment actually does not amend the share value principle in the existing Land Titles (Strata) Act. I think you understand that the whole amendment has nothing to do with share value. That is why we empahsise that the share value is still the same as seen from that point. The other point which you mentioned in your representation in page 6 item (3) is that for developments over 20 years, you suggested a lower percentage of 70%. Maybe you can let us know what is the concern, why for developments of 20 years and above, you lower the percentage from 80% to 70%. Is it because of, as you said, maintenance problems or is it a dominant owner problem? Essentially, your development is still governed by the Land Titles (Strata) Act and there is still the Building Control Act to take care of the conditions of the building. Even if it is a dominant owner refusing to upkeep the development, there is still an avenue for you to make a representation under the Building Control Act to get the place maintained in a reasonable and acceptable condition. Maybe you could let us know why you want to bring it down to 70%? - *(Mr Nga Thio Ping)* As the estate gets older, this is just pre-empting a situation, there could be some people who, having been there for so long, may no longer want to move for a variety of reasons, such as sentiments, familiarity, etc. Sometimes, these few individuals can make all the difference. But I say that again in the context of a run-down estate, everything can be rebuilt. One way is to put it up for en-bloc sale and maximise and enjoy the windfall. The other way is to hold on to it and continue to pump in money. *(Mrs Goh Guan Siew)* We may have difficulty even if we want to pump in money because if we have to pay $25,000 per year, a dominant owner would have to pay $25,000 times 45. Then he could easily say no, and we are all stuck with it right now, like spalling concrete and seepages. *(Mr Nga Thio Ping)* Of course, we can take the person to court. But, again, it is taking up money and time, and getting everybody worked up. If I may come back to the point about the share value. I do not think we are insisting that the share value be qualified with an additional phrase of individual owners. The point is that we are appealing to the Select Committee that for a situation like this, we can tap on your wisdom. You are all very much more accomplished in knowing ways on how to come up with the right mechanism or instrument to address such situations equitably. A person with no legal training will say that it is simple. Instead of share value, put in individual owners. I am not legally trained. For those of us who are, I am confident that if we look into it, there must be some better instruments, out of a sense of natural justice and fair play, so that situations like this can be speedily resolved without having to go to court. Our case may not be unique. It can very well repeat itself elsewhere. Then all of us, plus the State, will be held ransom by a person's whims and fancies.

Mr Shriniwas Rai

129. Mr Nga, you talk of fair play, natural justice and equity. You may be aware that in company law, there is a similar provision. The shareholding decides on the voting. Your proposition, in fact, is asking for a departure from this established practice? - *(Mr Nga Thio Ping)* I must first stress very clearly that I am not against land owners or wealthy persons. No way.

130. No. I am talking of fair play and equity? - *(Mr Nga Thio Ping)* If we were to say fair play, the situation might perhaps be different if the property has been released for sale, and a buyer Mr X comes along and buys multiple units. But in this instance, it is not the case. It is the developer who is holding back a certain number of units and drawing on the resources of buyers to buy a number of units, possibly to ease his cash flow or some other reason. And after that, the developer does not want to sell. We are not gunning after the developer. We are suggesting that in such a situation and there is one suggestion that I raised here. If the developer would put his holdings back into redevelopment, then perhaps certain provisions could be made whereby he is not taxed on the income. Then it is a win-win situation for all.

Mr Shriniwas Rai] That is all, Mr Chairman.

Chairman

131. All right. I think there are no further questions. May I thank both of you for coming here this afternoon to give us your views. In a few days' time, we will be sending you a transcript of the discussions. Can I ask you to go through the transcript and return it to us with amendments, if there are any? I just like to remind you that in the meantime, you are not to disclose or publish your submission until the Select Committee has presented its Report to Parliament. Thank you for coming this afternoon? - *(Mrs Goh Guan Siew)* Thank you very much. *(Mr Nga Thio Ping)* Thanks once again for the opportunity.

(The witnesses withdrew.)

Paper No. 26-Mr Supardi Sujak, Blk 508 Pasir Ris Street 52, #07-171, Singapore 510508, was examined.

Chairman

132. Good afternoon. Please be seated. For the record, could you please state your name and address? - *(Mr Supardi Sujak)* I am Supardi Sujak. My address is Blk 508 Pasir Ris St 52, #07-1.71, Singapore 510508.

Chairman] Mr Supardi, thank you very much for your submission to the Select Committee on the Land Titles (Strata) (Amendment) Bill. We have invited you here this afternoon in order to seek clarification on some of the points that you have raised. Prof. Jayakumar, would you like to start first?

Prof. Jayakumar

133. Thank you, Mr Supardi, for your representation where you have given some suggestions which we will have to consider. Can I ask you to look at page 6 of your submission? Can you please read the top paragraph for us? - *(Mr Supardi Sujak)* "If there is a 100% agreement to the en-bloc, there is no problem. The price will not be the main issue. However, if there is a handful of owners who dis-agree with the sales, then we have to go one step further. The minority may make up 25% of the ownership. It may make up 30% of the ownership. It all depends whether we go by per unit or base on strata-areas, as some owners have smaller units. Therefore, my proposal is, if there is a handful of owners not keen with the en-bloc sales, we have to make sure that as long as the law allows for the sales to take place, it will only go through if the price fetch at least more than 50% based on the value price of a unit sold individually."

134. Thank you. I have one or two questions arising from this. First, whether it is unit or "strata area" which is the term used, the Bill is taking the approach of share values, precisely because one unit may be smaller and another unit may be bigger and so on. So I take it that that is not a problem for you. But I want to pursue this point that you have made, that it will go through only if the price is of a certain figure. The approach we have taken in the Bill is to provide certain minimum procedures as to how en-bloc sales can proceed. Because under the present law, it is very difficult. We want to facilitate en-bloc development, but we have to have enough safeguards written into the Bill so that there will be a good balance between the interest of the majority and the interest of the minority. So we have written in proposals for the percentage that is required, 90% or 80%, as the case may be, depending on whether the age of development of the units is beyond 10 years. But we have not pre-scribed what the quantum of the price would be, because it will vary and the circumstances can be very diverse. But from what you have proposed here and in an earlier paragraph, I take it that we should write into the Bill a requirement as to what ought to be the minimum price. Why should we do that in the Bill?

Our approach is to leave it to the parties to sort out what is the price on which they are able to persuade as many owners to come on board. If the price that they are working around with whichever potential developer is not attractive, it will not garner enough votes. So the approach of the Bill is, rather than the legislature prescribe what is the attractive price which should allow the sale. we leave it to the parties. Between that approach of leaving it to the parties to work out their agreement on the price, and your approach to write it in, would you not agree that the less interventionist Parliament is the better? We leave it to the parties to decide. What are your comments on that? - *(Mr Supardi Sujak)* I agree with that statement. The main point is that when we have an en-bloc sale, we must let market forces to prevail. Maybe if we have some kind of percent age, for example, if times are bad, 30-50% could be profitable. When times are good, 30-50% is not a good price. So it should be more than 50%. As what you have mentioned, with less intervention, the owners could work out their own pricing. I think this is something that we should go along with.

135. In other words, you are making an observation, but you are not suggest ing that we should write it into the Bill? - *(Mr Supardi Sujak)* Yes, Sir.

Assoc. Prof. Ho Peng Kee

136. Mr Supardi, in page 4 of your submission, at the very top, the sentence you say, "If we respect the opinion of the small minority owners, it will be unfair to the large majority owners who are ready to sell off their properties?" Can you, very briefly, elaborate on why you say that? - *(Mr Supardi Sujak)* Basically, before an en-bloc sale takes places, definitely, there should be a handful of owners who know that at that going price, it is time to make the sale. Probably after a few negotiations, they manage to have a majority of owners who are keen on the sale, and there are minority owners who will not agree to it. The point is that when I mention that the large majority owners are ready to sell their properties, it means that they know that it is the best time to dump their properties and get the value they want. And if they were to wait for another six months or one year, they may never get the opportunity. So it is basically an opportunity that comes along the way, and that opportunity is derived from the factor which is to sell the properties.

137. In other words, the timing is assessed to be right. The price is assessed to be right? - *(Mr Supardi Sujak)* Yes, Sir.

138. The majority owners, in reality, want to exercise their rights over the common property, which is part of the strata land. But then they are denied this by the minority who say no? - *(Mr Supardi Sujak)* They are exercising the right according to an economic decision. Of course, the minority will not agree to it, because most of their factors are not based on economic decision but based on emotional decision. That is why you have the conflict. Basically, it is more on the economic decision that they are exercising for the sale to take place.

Dr Teo Ho Pin

139. Mr Supardi, can I refer you to page 5 of your representation concerning board of appeals and how far they can safeguard the interest of the small minority owners? You mentioned about fair price and how the board of appeals can ensure that the interests of minority owners are protected. In the amendment Bill, in new section 84A(5)(b), the Strata Titles Board has the power to call for a valuation report or any other report. This is one mechanism in this amendment Bill to protect the minority owners. I think your concern has actually been addressed in the amendment Bill. This is just to let you know. When you call for a valuation report, it is done by international firms outside or even approved valuation firms. Normally, it is based on market conditions and the property itself. It is just to let you know that the amendment has actually addressed that concern of yours. Do you agree with that? - *(Mr Supardi Sujak)* As long as the board of appeals ensures that the prices are within the jurisdiction of the market forces, I think that should be the fair price. If you go along that line, that should be OK.

Mr Shriniwas Rai

140. Mr Supardi, I have one question following on what my colleague, Dr Teo, has asked. You mentioned board of appeals which is the Strata Titles Board. There has been some suggestion that we should refer this matter to another tribunal, namely, High Court. We would be interested to know your view. Would you prefer the matter to go to the Strata Titles Board or to the High Court? - *(Mr Supardi Sujak)* I think we stick to the current practice which is not complicated.

Chairman

141. Are there any more questions? If there are none, I would like to thank you for coming here this afternoon to assist us. In a few days' time, we will be sending you a transcript of the discussions. Could I ask you to go through the transcript and return it to us as soon as possible? I just want to remind you again that until the Select Committee has submitted its Report to Parliament, do not release or publish your submission or extracts of it. Thank you very much? - *(Mr Supardi Sujak)* Thank you.

(The witness withdrew.)

Paper No. 10 - Assoc. Prof. Tan Sook Yee, Faculty of Law, National University of Singapore, 10 Kent Ridge Crescent, Singapore 119260, was examined.

Chairman

142. Good afternoon. Please be seated. For the record, could you state your name and your address? - *(Assoc. Prof. Tan Sook Yee)* My name is Tan Sook Yee and the address is Faculty of Law, National University of Singapore.

Chairman] Prof. Tan, thank you very much for your submission to the Select Committee on the Land Titles (Strata) (Amendment) Bill. We have invited you here this afternoon in order to clarify certain points you have raised in your submission. Can we start with Prof. Jayakumar?

Prof. Jayakumar

143. Thank you very much, Prof. Tan Sook Yee. I am glad to see you here, firstly, on a personal note because we were both colleagues at the National University of Singapore. Also from Parliament's viewpoint. I think you have appeared before us on previous other Select Committees on Bills, and you have given useful inputs. I want to thank you also for having submitting your views. Your submission makes it clear that you are really not in favour of the approach in the Bill and you think it is not necessary the way it is drafted. We could, of course, have a big debate on the main principles but I think you know that the Select Committee does not have a replication of the debate that takes place in the Second Reading stage, and we do not really debate the main principles. But I still welcome your presence here because you are a well known expert on property law. Even if you are not in favour of the basic approach, I think we could tap on your knowledge and see how, if we take the approach in the Bill, we can refine and improve it, and clarify some areas which you are not happy with. Of course, as I said, we do not want to debate on the fundamentals, but before I go to my question on the courts or the Strata Titles Board, I just want to clarify that we do have common grounds on certain matters. Yes, land is a unique matter, property rights are important, but you would admit that there is, in our law, a definite distinction in concept between landed property rights and a strata titles flat. There is a distinction in the concept of the rights? - *(Assoc. Prof. Tan Sook Yee)* Yes, there is a small distinction between rights of owners of landed property and rights of owners of strata titles. In so far as the owners of landed property are sole owners, or if they are not sole owners, then they are tenants-in-common with another, but together they are sole owners of the property and they have complete rights as to how to deal with it. although the rights of user are limited by the law. But in respect of owners of strata titles, their rights as private owners are certainly more circumscribed because they are subject to the bye-laws of the strata titles plan, and also of the Land Titles (Strata) Act. But, if I may say, they are nevertheless owners of private property, as distinguished from HDB flat owners.

Prof. Jayakumar (cont.)

144. Indeed. I guess it is a purely subjective evaluation as to whether you describe the differences as small or big, though one might be justified in saying that the difference is big in that in the case of landed property a person owns both the land and the premises which are identifiable and is free to dispose of it without consultation or agreement with any other party. Whereas in the case of strata titles, to put it in layman's term, he does not own an identifiable part of the land as being his but he owns it in common with the other subsidiary proprietors as far as the land is concerned. You would concede that? - *(Assoc. Prof. Tan Sook Yee)* Yes, but he is the sole proprietor of the delineated airspace.

145. Airspace? - *(Assoc. Prof. Tan Sook Yee)* Yes, which is his lot.

146. So he does not have sole ownership of any delineated land? - *(Assoc. Prof. Tan Sook Yee)* No, he cannot have.

147. So it is more than a small difference for some people indeed? - *(Assoc. Prof. Tan Sook Yee)* In that sense, yes. But the distinction is because of the nature of the property. One is airspace delineated, and the other is land.

148. Indeed. Another question developing from your main argument is, would you not agree that the right to property or property right is not just the right to hold on to the property but it also includes the right to freely alienate the property. As a proposition, do you agree with that? - *(Assoc. Prof. Tan Sook Yee)* It is one of the basic rights of ownership. The right to alienate is recognised as one of the basic rights of ownership.

149. Therefore, if I were to pose this question that it may not be fair for the law to allow a small minority to frustrate the exercise by the majority of the right to alienate, a balance has to be struck? - *(Assoc. Prof. Tan Sook Yee)* Yes.

150. If it is the right of the minority not to alienate, it must be the right of the majority to alienate. So the whole exercise in this legislation is about striking a balance. Would you not agree that a balance has to be struck? - *(Assoc. Prof. Tan Sook Yee)* Yes, but I can see that the balance can be struck in yet another way.

151. Indeed. We can debate about the balance being struck, but the point I am putting is that the Bill's approach is not to deny one or other of the rights completely but it is trying to strike a balance? - *(Assoc. Prof. Tan Sook Yee)* At first, I thought that was the case, that the minority owners would still have a glimmer of a chance of preventing the sale from going on. I would not call it "frustrating". I think that is rather emotive from my point of view, but rather preventing it from going on because of their personal reasons. However, after I read the speech of the Minister of State, Assoc. Prof. Ho Peng Kee, at the Second Reading where he described the procedures before the Strata Titles Board, I got the impression that the Board cannot decide as to whether or not to approve the sale but simply to ensure that the minority owners would get a fair price. He seemed to be directing our attention

to the powers of the Board in that direction which, I must confess, caused me some consternation because the wording of the particular clause of the Bill itself gave me the hope that the Strata Titles Board, or whichever agency was hearing it, could mediate and in mediation take into account the interests of the minority owners and, in that context, look into the whole question of whether the sale could go on.

152. We can take that issue out separately as to how much a role ought to be given to the Strata Titles Board, whether we keep it at a level which has been described in the Bill and in the Second Reading speech, but the question I posed was prompted by your paragraph 4.1 where you, *inter alia,* said that you would submit that "the maximum utilisation of land is not such an overriding need that the rights of ownership of private property should be ignored." So I want to put it to you that rights of property and rights to ownership encompass both the right to hold on to the property as well as the right to alienate? - *(Assoc. Prof. Tan Sook Yee)* Yes.

153. So we have to strike a balance between the two. That was the point I was putting to you? - *(Assoc. Prof. Tan Sook Yee)* Yes.

154. I would ask my colleague, Assoc. Prof. Ho Peng Kee, to take on this other aspect which you touched on his speech. But I would like to move on, if I may, to the question that you have addressed as to which is the proper body which should handle disputes. You have advocated that it should be the courts and not the Strata Titles Board? - *(Assoc. Prof. Tan Sook Yee)* Yes.

155. But the arguments and the illustrations you have given in your submission seem to me not directly relevant to the exercise which this Bill directs because it is one thing to vest jurisdiction in the courts to adjudicate disputes on property rights and interests where you are balancing one owner's interest against another. But the kind of disputes which we may envisage coming up under this Land Titles (Strata) (Amendment) Bill's approach is a wide variety of objections, differences of views and disputes where the body, either the courts or the Strata Titles Board, would have to balance the interest of the majority and the minority, and they also have to take into account personal considerations. We have had now two sittings of the Select Committee and we have heard various kinds of problems which have arisen. Only just before you arrived, somebody talked about objections on the basis of *feng shui.* There may be personal, emotional reasons, disputes on the quantum, and we have heard one case where a couple about to be divorced held up, and it was the wife who wanted more money, and so on. Therefore, we envisage that the nature of the objection that is going to come up will not be legal but the inherently non-legal issues, ie, personal and emotional issues. Therefore, the approach taken in the Bill is that these are best handled not by the courts, because the courts deal essentially with legal issues, but to entrust this in the Strata Titles Board which, we felt, require mediation and it may be better to be settled upon by members of the Strata

Prof. Jayakumar (cont.)

Titles Board who represent a cross section and have expertise in dealing with this, and they will gain expertise in dealing with this. So I would like to put it to you that, given what I have said, these kinds of problems are better referred to the Strata Titles Board, which will involve itself in mediation rather than the courts, which are more suited for legal disputes. Can I ask you to comment on that? - *(Assoc. Prof. Tan Sook Yee)* I take your point that the Strata Titles Board is a type of specialist tribunal. Hitherto, the specialisation has been of a technical nature, rather than of human emotions and feelings. Of course, one can so make up a Board with personnel that might be more attuned to such problems as social workers, or whatever, in place of engineers and architects. Of course, one could. But, then, the point that you make is that the courts only deal with legal issues. I do not think that is always the case. In the case of awarding of custody of children and the case of marital break-up, they do not just deal with laws, they deal with raw human emotions and human needs. I know I am in favour of legally trained people. I think I might be excused for that. But I do think that the legal training does help one to have a better perspective and would make one more objective when faced with such clashes of interest. Therefore, taking this one step further, a judge who has had many, many such years of experience in dealing with human matters would therefore feel more attuned to these problems.

156. So, am I correct in understanding that your concern is not so much with the institution but the persons who are going to deal with it? - *(Assoc. Prof. Tan Sook Yee)* Yes.

157. So if - I am not saying I can guarantee that - the majority of the Strata Titles Board members were to be drawn from the ranks of legally trained persons, your objections would be less strong? - *(Assoc. Prof. Tan Sook Yee)* Less strong. But then, you see, judges have attained a certain stature. They have the requisite experience. You cannot compare their experience with that of a lawyer who is qualified, let us say, for three or four years. He is a lawyer, but he has not got that number of years of living, let alone working. And most of these cases, I think, will bring up issues that are certainly not necessarily law, but really basic human feelings, and these should be treated sensitively and fairly.

158. Our intention is really not to load the courts with this, not because we do not think the courts can handle it, but rather it may be better over a period of time to have a body which will develop the expertise in this and therefore save the courts considerable amount of time which can be spent on other cases, criminal and civil cases, and it is in line with the trend, both here and elsewhere. For example, Parliament has decided to have a Tribunal for the Maintenance of Parents. So I take note of the point that you have made, which is essentially the person must have some experience in dealing with these issues. And if we were to have a Strata Titles Board that has enough people with that kind of experience and qualifications, I take it that you would not be so uncomfortable? - *(Assoc. Prof. Tan Sook Yee)* Yes.

Prof. Jayakumar] Thank you.

Assoc. Prof. Ho Peng Kee

159. Just to follow up on this point. Given the nature of some of these disputes that may come before the Board or whatever tribunal, that they go to the heart of the matter - emotional matters, would you not agree that the more informal setting of the STB would lend itself better to looking into such matters? - *(Assoc. Prof. Tan Sook Yee)* I agree totally. But, currently, the High Court is also involved in mediation in certain situations, and so I think there are various ways where you can perhaps get a High Court Judge to handle the matter, but not necessarily in a formal High Court hearing.

160. This would go to the earlier point that the Minister has made, that is, it would mean additional work. You are creating another process where no doubt there is mediation in High Court, but it is done by the Registrar. So here in the Strata Titles Board, we have got already an existing pool of experienced lay people of diverse backgrounds, looking into possible objections which may not only be matters of the heart but matters of valuation, for example, and they are professional valuers who will do a better job than a court? - *(Assoc. Prof. Tan Sook Yee)* I agree. In terms of valuation, certainly valuers and surveyors and real estate people would be more attuned to these matters. And I would think, ideally, it should be a tribunal chaired by a High Court Judge, sitting with valuers, surveyors, whoever.

161. In terms of emotional matters which come before, let us say, the Board, you have said just now that you would have hoped for a surer method where there is greater certainty as to whether or not the objection will be upheld. On what you said, I have focused more on the price and objective criteria in my speech? - *(Assoc. Prof. Tan Sook Yee)* Yes.

162. But given the wide diversity of possible objections, if they come before the Board, if we go into looking at these subjective matters, would that not, first of all, create a lot of uncertainty, and, secondly, indeed, unhappiness, because how would the Board decide if your reason for wanting to stay there is genuine or not? I say this because we have heard many representors, both yesterday and today, particularly lawyers who dealt with en-bloc sales, who have dealt with very difficult minority owners. One representor, in fact, yesterday said that they could have 25 meetings, everything was going all right, and at the last minute, perhaps because the price was no good, they would give some flimsy reason. So that is the sort of thing that may come before the Board which will be an invidious task, if the Board looks into these matters with the purpose of not so much mediation. The Board will, indeed, look into these matters and try to mediate, and our experience is that the Board itself currently already mediates and the success rate when the Strata Titles Board mediates is fairly good. That is number one. Number two is, again, from experience culled by representors, the parties themselves also try to address some of these concerns, for example, if a person wants to live in the area. A lawyer yesterday told us that a clause giving a

Assoc. Prof. Ho Peng Kee (cont.)

right to first refusal in the agreement has become quite commonplace. There were two or three examples where majority owners chip in, if a person says, "I paid a higher price because I bought it more recently. I put in more money, because of renovations." So many of these are settled in this manner. If we say the Board also looks into all these, with a view to deciding yes or no, rather than mediation. I think one concern would be that it will lend itself to a lot of uncertainty. As reflected by a lawyer yesterday, greater certainty is better, so that when they come before the Board, they will know on what basis they can make a good case. Would you comment on that? - *(Assoc. Prof. Tan Sook Yee)* The way you put it is indicative of this, that once 80% or 90% have agreed to sell, then the rest have no more say. They can only argue as to price. If that is the case, why do you not come out and say it openly, rather than give one the impression, under the current wording, as I read it, that the minority still have a chance of staying the whole proceedings?

162. Do I take it, Prof. Tan, that actually what you are unhappy about is that you see some incongruence between the wording of section 84, as presently worded, with what we have said in Parliament is the approach? - *(Assoc. Prof. Tan Sook Yee)* Yes.

163. So that if we amend section 84 to, for example, set out the approach in a clearer way, you would be less unhappy? - *(Assoc. Prof. Tan Sook Yee)* I would be less unhappy in that it would be much clearer and should a case come before the courts as to whether the Strata Titles Board has power to do this or not, we do not have to resort to section 9 of the Interpretation Act; all that kind of a hassle would be unnecessary. That is my point. However, that does not mean that I agree that what you have proposed is the right thing to do. But, I think, on this ground, we cannot meet and we cannot talk about it anymore.

Prof. Jayakumar

164. I agree with what you have said, that the particular section needs to be looked at again whether there is sufficient clarity in giving effect to the intention of the Act. The intention, in short, is what was said by Prof. Ho, that the Board would really leave it to the parties to decide as much of the agreement. But the Board comes in as a check to ensure that there is no fraud, no collusion, no conflict of interest, that they have taken due diligence in arriving at a price or valuation report, and so on. But, if they have objections, we will have to look at the objections. And what precisely will be the criteria on which the Board will be able to stop it ought to make clearer. But having said that, I also take note of your point that if the drafting is met to take care of that point, you still have your main, in principle, problem with the Bill? - (Assoc. *Prof. Tan Sook Yee)* Yes.

165. Thank you? - *(Assoc. Prof. Tan Sook Yee)* The position then would be, I think, similar to that of the Tenants' Compensation Board with regard to the recovery of rent controlled buildings, because that is very clear. The sale goes on, the redevelopment, etc, the plans are

approved, the recovery will take place, you only come to the Board for quantum. Then I think your Strata Titles Board would be a more appropriate body.

Mr Chng Hee Kok

166. Prof. Tan, currently if 100% of the owners are in agreement, then there is no problem. The present law is quite applicable. So the purpose of this Bill is to take into account disagreements of minority owners. Going by your argument, if the Strata Titles Board does more than what the Minister of State has said, do you not think that 100% of the cases on en-bloc sale will go to the Strata Titles Board, because there will always be minority owners? - *(Assoc. Prof. Tan Sook Yee)* Perhaps. But he owns that piece of property.

167. In other words, the purpose of this legislation is to make sure that every body goes to the Strata Titles Board? - *(Assoc. Prof. Tan Sook Yee)* Or to have his case heard. I also feel that it does help to assuage feelings if they can be ventilated before a proper body. And it may be that the minority owner may accept a decision more if it came from on high.

Dr Teo Ho Pin

168. Prof. Tan, I have three clarifications to make concerning your representation. One is that you mentioned there is no demonstrated need for the proposed amendment in the Bill. How do you come to this conclusion? Is it because, based upon the past historical transactions and the existing provisions in the Land Titles Act, you have arrived at this conclusion, or you have also considered the future that there is a need to have this amendment? That is the first question. The second question is concerning the right of individuals. Do you see a distinction between the right of a landowner and the right of a strata titles owner? Is there a difference between these two groups of house owners? My understanding is that a strata title owner has a kind of community obligation, called community right, when the person first purchased that property. Because he or she knows that is a community, it is a strata title, they share certain common property. There is a kind of community obligation, which is much more different from a landed property which is individual obligation and individual right. So maybe you can enlighten us on what you see as the difference in the right between a strata title and a landowner? - *(Assoc. Prof. Tan Sook Yee)* I have forgotten your first question. So I think I better address your second question.

169. Fine? - *(Assoc. Prof. Tan Sook Yee)* If I may address your second question. I think we have touched upon it earlier.

Prof. Jayakumar] I asked that question.

Dr Teo Ho Pin

170. So you agree that there is a difference? - *(Assoc. Prof. Tan Sook Yee)* There is a difference, of course.

171. So there is a community obligation as a strata title owner? - *(Assoc. Prof. Tan Sook Yee)* But the community obligation is to live and use the premises

Assoc. Prof. Tan Sook Yee (cont.)

in a manner which does not upset, offend your close neighbours and to use the common property which you own in a manner which takes into account of other people's rights of ownership of the same property. So in that respect, it would be more restrained than the right of an owner of his own house standing on his own land. It is the rights of user that are more restrained, not right of alienation. Here, we are talking about this basic right of alienation, when to alienate, at what price, if at all.

172. How about the demonstrated need for the proposed amendments? - *(Assoc Prof Tan Sook Yee)* That was your first question. I would have thought, with respect, that it is for the Minister who is moving the Bill to show that there is a need to invade (emotive word) this basic right of ownership and not the other way round. However, as I said in my submission, there are existing provisions for terminating the strata titles. All these proposed en-bloc sales have not seen fit to utilise these ways and go before the court and argue their case in court. There are ways. They have not done so. Why have they not done so? I have heard when an en-bloc sale was being negotiated, there were rumours of a Bill coming through. They held back and said, "Let Parliament do it for us." So I feel that the current existing legislation must be used and only when it is found to be not enough, not effective or it is too slow, then because of this land scarcity or whatever, we have the proposed legislation. Why should we take it so slowly? Why am I advocating such a step-by-step procedure in regard to amending this? It is simply because we are dealing with a basic right of ownership. What do people work for? They work for a car, a house. They cannot afford a house. They can afford a piece of delineated airspace. They choose a private development, not a better constructed HDB development, because it is private, they have these rights, they think, and then suddenly comes this and they can be forced to sell their property.

173. My last question is on the age of the building. You said you are quite concerned about the 10-year requirement especially and it is a waste of resources. Do you think that, based on the pace of our society, our aspirations and the needs of the people, although technically the lifespan of a building could be up to 60 years or 90 years, but, because of the pace of our society, there may be a need to shorten the so-called functional life of a building. In your opinion, if it is not 10 years, what would be a good time period which you think would not lead to any perception of real loss or waste of resources? - *(Assoc Prof Tan Sook Yee)* I am not ducking the question, but I think this is a matter for specialists like surveyors and valuers. But I would have thought that, even in our fast paced life, 10 years is a very short time. I would have thought that a good guideline might have been the guidelines used by the HDB in their upgrading programme, ie, buildings of, say, 20 years, or whatever, as a guide line. And that is only for upgrading.

Prof. Jayakumar

174. But I think we really should in this Select Committee get away from

emotive terms like "invading". If one has been "invading' the rights of ownership, then the majority can say you are "invading" their rights to alienate. I would like really to approach this from your expertise as a property law expert. From the point of view of the Government, without using emotive terms, I would like to say that it has really nothing to do with the Government not respecting individual rights of ownership or individual rights of alienation. What we are really doing here is that, in land scarce Singapore, we have to make choices on how to allocate our land resources. So it is really a question of choosing what is in the best interest of the community and what is in the best interest of balancing both the majority and minority interests. In the end, a balance has to be struck. So in that sense, would you not agree that property ownership in a strata development can be said to have a dual aspect, in this sense the subsidiary proprietor is the sole owner of his flat? - *(Assoc Prof Tan Sook Yee)* Yes.

Prof Jayakumar) But tenants-in-common of the common property together with all the other subsidiary proprietors. So really what we are trying to do here is to give both these aspects proper regard so that one should not overwhelm the other. From my point of view, and I would like to put it to you, there is no reason why the right of a subsidiary proprietor to hold on to his flat should always override the rights of other subsidiary proprietors to freely alienate the entire development because all of them collectively own the entire development. So there are two ways then to look at it. But, of course, if you view it as you are invading my rights of ownership, then there is another contrary viewpoint which can be put. So it is really striking a balance and having a proper perspective between the two. And the question that we have to address is whether 80% or 90% majority strikes a right balance. Of course, in our view, it is not easy to get the majority. So this is the nub of the problem as far as the approach of the Bill is concerned.

Mr Low Thia Khiang

175. Prof. Tan, I would like to seek your opinion on the issue of ownership versus share value. It is not in your submission. But I would like to seek your opinion on that. A representor argued that ownership should be used, instead of share value, in computing the required percentage of threshold for collective sale. The reason is that there may be a case where a developer or a few minority owners might hold a number of big units, although they are minority owners, but they actually have majority shares based on share values. So what is your opinion in using share values in calculating the threshold for the percentage required for collective sales? - *(Assoc Prof Tan Sook Yee)* Actually, if my memory serves me right, under section 78 where the court orders, or when the property is damaged, I think the basis of sharing the proceeds is on share value, and there is an absence of any basis for distribution of proceeds in this Bill. It is left to the people involved to work it out among themselves. I think this really is a difficult thing because, in the early days, as I understand it, share values were distributed in not too scientific a method so that the share values need not reflect the actual size, importance, or cost

Assoc Prof Tan Sook Yee (cont.)

of the flat itself. So there may be a problem there if you left it with share values. On the other hand, if the share value allocation was done on a more scientific and rational basis, it probably is in the later developments, then I think share value allocation is fair.

Chairman

176. If there are no further questions, Prof. Tan, thank you very much for coming here this afternoon to assist us. We will be sending you a transcript of the discussion in a few days' time. Could you look through it and return it to us as soon as possible? - *(Asoc Prof Tan Sook Yee)* Yes, of course.

177. I just want to remind you that before the Select Committee submits its Report to Parliament, you are not to publish your submission or extracts of it. Thank you very much? - *(Assoc Prof Tan Sook Yee)* Thank you.

(The witness withdrew.)

Paper No. 31 -The following representatives from the Association of Property and Facility Managers, do Singapore Institute of Surveyors and Valuers, 20 Maxwell Road #10-09B, Maxwell House, Singapore 199591, were examined:

Mr Wan Fook Kong, President.

Mr Jordon Neo. Vice President.

Mr Tan Yew Teck, Council Member.

Chairman

178. Good afternoon. Please be seated. For the record, could you please state your names, addresses and the positions you hold in the organisation you represent? - *(Mr Wan Fook Kong)* My name is Wan Fook Kong. I am the President of the Association of Property and Facility Managers. My address is No. 1, Toh Tuck Terrace, Singapore 596658. *(Mr Jordon Neo)* My name is Jordon Neo. I am the Vice-President from the same Association. My address is Blk 13, St. George's Road #23-260. *(Mr Tan Yew Teck)* I am Tan Yew Teck, Member of the Association of Property and Facility Managers. My address is Blk 716 #10-365, Hougang Ave 2.

Chairman) Gentlemen, thank you very much for coming here this afternoon to assist us. I would like to thank you for your submission to the Select Committee. We have asked you here this afternoon in order to seek clarification on some of the points that you have raised. We will start with Prof. Ho Peng Kee.

Assoc. Prof. Ho Peng Kee

179. Thank you, Mr Chairman. First, let me just touch on one matter which, besides yourself, other representors have also highlighted. This is the point about the need to also amend various other Acts to cater to situations where the subsidiary proprietor who wants to remain in the area either exercise the right of first refusal or enters into a contract to buy a unit in the new development. I think your point is that there is a need for further amendments to various Acts before this could be done. I want to assure you that we have taken that into account. The officials will be liaising with the Ministry of National Development with regard to the amendments that need to be done. The second point is the point which other representors have also raised. This is on breaching the cut-off before an en-bloc sale can proceed. Under our scheme, the criterion is share values, ie, 80% or 90%. In your submission you have argued that, particularly for mixed developments, we should be doing more and in particular you mentioned two alternative approaches. We have also looked into that. The point, first of all, is that the use of share values in determining this cut-off point is quite consistent with the current position, where under the Strata Titles Act, we look at various other decisions that can be made under the Act, whether it is for renovations, building amenities or things to be done, they are based on share values. This is also the position in other

Assoc. Prof. Ho Peng Kee (cont)

countries. Unless a case can be made up very convincingly, in fact we have also discussed this with other representors before, the inclination is to retain this approach which probably reflects the level of ownership of the various owners in the land. Maybe you would like to comment? - *(Mr Wan Fook Kong)* I think with regard to the question of the 80% or 90% and relation to share values, what prompted us to add an additional condition is, as it were, vis-a-vis the number of lots, the example which you gave in terms of maintenance and collection of service charges, and so on. These are specifically for the purpose of management and maintenance of the common property. In terms of dealing with the common property per se, I think that is not an issue. We go along with share values. But here we are also talking about compelling people to dispose of their lot itself. That means we are going beyond common property per se. Please bear with me if I give you this particular example - I am not suggesting that this developer has done it, in fact, he has not done it, but just as a case for illustration. In the case of Centrepoint, for example, if I am not wrong, there are 66 apartments on top of a podium of retail units. The developer roughly owns about 75% because he owns the bulk of the retail units for rental. In effect, therefore, if he were to buy over a few residential units, for the sake of discussion, to reach the 80% cap, then technically he can say that he will go for an en-bloc sale as he has already reached the 80% share value. The concern we have is that if all the user types are the same, then it will not be so critical. But because of the different distribution of share values, vis-a-vis retail and residential, then it could end up becoming quite lopsided because the retail is 5:1. That was our concern.

180. Mr Wan, thank you for your explanation. I think you have brought up one case which has worked in a certain way. The problem is that we have taken an approach which, in principle, can be defended generally. But in particular, when you talk of mixed developments, even in terms of the types of mixed developments, the mix can also vary. You can have some developments where there is a large majority of commercial units, offices or shops and a smaller number of residential units; and the reverse can also happen; a large number of residential units and a smaller number of offices and shopping units. What we have done is, also like you, apply it to quite a number of these projects and we have found that it does not work evenly. Once you put in other factors like the number of owners or categorise each type and also further require a percentage, depending on where you lie on this spectrum, you can have a situation where one or two owners can actually hold the rest to ransom. An example will be if you have a large number of offices and commercial units and a small percentage of residential units. So if you say, all right, besides the 80% or 90% overall, you also require 75% of each category. If your residential owners are only 6 out of 30, 75% of 6 is a very small number. One or two persons can actually block the entire sale from going through. That was the problem that we were faced with? - *(Mr Wan Fook Kong)* But you can also have the other situation whereby you could have 75% on

the total number of lots. Even if you have 10 residential apartments and 90 retail unit lots, 75% also remains. Therefore, as long as you have got 75 lots, it could be all from the retail or it could be some from retail and some from residential. My rationale basically is that the scheme is not only just to benefit the controlling interest but also there is a fair number of individual owners who are actually supportive of the scheme.

1.81. We take your point. Like I said, this point has been debated also earlier on. Of course, when we look at specific instances and in fact we have many representors who came because they have personal experiences, for example, their own developments. We hear them out and, in many cases, we sympathise with them. But it would be difficult to fit the law just to ensure that their positions or requirements are met. We would take your submission in that light. You have made your point but for every case that works well, there is a flip side where it will not work well. Our response will be to take this as a general principle approach and see how it works. Another good suggestion that you have made is for the need to hold a meeting before an en-bloc sales goes through. Could you just elaborate a little bit on that point? - *(Mr Wan Fook Kong)* One of the experiences that we have is that some times, at a meeting, interested parties can come together. Before you hold a meeting, you obviously have to get it very structured, you know what you want to discuss and what are the issues to raise. That agenda goes out. The parties receive it. They come to the meeting with certain specific issues they want to discuss, raise them, agree or disagree and at the end of it all, you get a consensus as to which direction or what terms and conditions you need to come to an agreement. I also notice that in the Bill, there is a provision to nominate three representatives. That meeting can also decide the role of these three representatives, what can they agree or disagree, and what happens if the three do not agree on a particular matter that is to be settled. So the general meeting resolution can resolve all these. The other reason why we also advocate a general meeting is that if the decisions are passed by way of a by-law, that by-law has to be filed with the Commissioner and any prospective purchaser who is interested in that development will be notified that there is a resolution which has been passed and this development is currently the subject of an en-bloc sale. Then when I buy, I make a conscious decision knowing full well I want to be a party to that en-bloc sale. What we are trying to avoid is a situation that somebody, in good faith, buys the property and three months later, finds out that it is the subject of an en-bloc sale. In fact, one other adjustment to that which we are debating, which has not been specifically mentioned, is we are even suggesting that the certification under section 54(1)(c) be slightly amended because this section at the moment deals principally with financial elements. When a prospective purchaser intends to buy a property, he wants to know whether there are out standing service charges, etc. We are even suggesting that section 54(1)(c) should specifically address this particular matter whether or not there is a resolution passed dealing with an en-bloc sale so that a prospective purchaser would have notice of it. That was the rationale behind this.

Assoc. Prof. Ho Peng Kee (cont.)

182. The basis for your submission is to improve the procedures so as to make it more transparent so that more people would know and there is less likelihood of a minority owner being left out or caught in the dark. The thrust of it is good. We can consider this although what is needed to be done at the meeting is something which our officials would look at, not necessarily all that you have asked for. They may not ask for formal resolutions, for example, or the 80% or 90% may not be reflected in that manner. But the holding of a meeting is basically an opportunity for everybody, including minority owners, to come together. Good may come out of it because minority owners may express why they are unhappy and out of this there could be discussions and some give and take which may result in the transaction going through. The next point is about unhappiness of a minority owner who is a lessor. He has got a tenant in his premises and so he says, "Look, ask the Strata Titles Board. This is an objection. Please come and settle this, to decide on whether the claim by the tenant is fair or unfair." You made that submission in your paper"? - *(Mr Wan Fook Kong)* Not in that way. What we are saying is that in order to facilitate the transaction, working on the assumption that most people would want the en-bloc sale to go through, hence the 80% or 90% requirement. What we are trying to do is to reduce the pain to the minority who is reluctant to transact. What we have tried to do is to try to analyse what are the possible reasons why somebody would not want to transact. The emotion or the sentimental side of it is something we cannot address. So we have taken that out of the equation totally. Somebody does not want to sell because he does not want to sell and there is nothing we can do. We are concerned about those cases where people would be happy to go along provided that they are not put at a financial disadvantage. One cannot assume that in every en-bloc situation, everybody would end up with a plus, especially when there is a downturn. In a way, it is already good that this Bill comes out at this point in time because we do not get this euphoria that every time there is an en-bloc sale, everybody makes tons of money, which may not necessarily happen. In that situation, what we are trying to do is to reduce the pain to the minority who is forced to sell. What we have argued is, if somebody is compelled to sell his property and he is required to do so in the national interest for infra structure works, etc, most people by and large are prepared to go along. As a property owner, I am aggrieved. Of course, I am upset. But when you think of the bigger picture, you say, "Well, so be it. You need the MRT line. My property is in the way, cut." But here you have a situation where people are compelled to sell their property for the benefit of a specific group of people. We can talk about the national resource and so on. We actually have some other ideas about that which we have not raised as we did not want to moralise the issue. We are trying to see how we can operate and implement the Act as it were. To make it less painful, what we are saying is whether there is a direct cost to this chap, so that there is a level playing field and the compensation to the tenant should be taken into consideration because that can be identified. We are also suggesting some novel ways, maybe we can cap it,

so that the tenant would not be unreasonable and try to exploit the situation and hold the guy to ransom. The other way also is that because some people may be required to redeem their mortgage early, there could be a penalty imposed by the financial institutions for early redemption. I think this should also be costed in, to be fair to them. Our idea really is to take the total sales price, less all these costs which can be identified and evidenced. The sales proceeds can then be distributed in whatever formula. We can talk about share value, market value, whatever it is, so that it is a level playing field and the pain is not that severe.

183. Mr Wan, the approach taken by the Bill is to leave as much to the parties as possible. That is why we do not mandate, for example, a method of distributing the proceeds. The assumption is that the majority owners are all reasonable people, like-minded. If there is no collusion, arm's length transaction and they come together, they will arrive at a solution. They will take an approach which will give the greatest benefit to the greatest number of people. So, like the situations you have mentioned, once we say that the Board should have a greater say as to how proceeds are distributed, taking into account individual circumstances, once you cross that Rubicon, then there may be a host of other circumstances. I just renovated my house recently. I spent more money buying my unit. Or I bought it more recently, there fore my profit is less. That may present problems. Having said this, I think your earlier point is that nobody should be put at a financial loss. Nobody should be compelled to sell when he is out of pocket and loses money. I think that is a valid point, which, in fact, is reflected in my Second Reading speech where I said that, in some exceptional circumstances, the Board may intervene. And I did mention that this is one of them. Will it make you happier, for example, if a point like that is reflected in the Bill to make it clear? -*(Mr Wan Fook Kong)* Yes, it would, but I think it would open other areas of concern. For example, if a chap is not out of pocket, then we also need to define what is his cost. Does it include the cost of finance which he has incurred? Does it also include legal cost and stamp duty? Where do we draw the line?

184. Your view is that we should not put this specifically in the Bill? - *(Mr Wan Fook Kong)* Yes. If I may respond to your point about other issues being raised like renovation cost, etc, although I can understand that we try to give the Strata Titles Board as much leeway as possible, and I am not suggesting that we regulate everything, because then it does not make sense, what we are suggesting is that we assist the Board by providing guidelines to the Board. When you distribute sales proceeds -

185. No, the approach is to give the parties as much flexibility as possible, not to give the Board as much leeway, because then there will be much uncertainty? - *(Mr Wan Fook Kong)* Yes. But if you give too much freedom to the parties concerned, you could end up with a situation and this is our concern. The chaps who are unwilling to sell, the minority 10%, will be the chaps most aggrieved. That is why they object so vehemently, for example. But 90% say, "We are quite happy." Then this 10%

Mr Wan Fook Kong (cont.)

will be placed at a very severe disadvantage. If the guidelines have been set out, like, for example, when we talk about sales proceeds and this is the dilemma that we had when we discussed it among ourselves, how should you distribute sales proceeds? Because, what are we selling? We are selling the lot which is basically an individually owned private property. And if you sell your flat, you normally say market value, what I can get for it. On the other hand, you are also disposing of common property. And when you dispose of common property, your sales proceeds are by way of share values. So the two are actually not consistent. Then what do we do? The reason why this has puzzled and concerned us quite a bit is because sometimes two properties with exactly the same share values can have dramatically different market values. Then, is there a guideline? What do we do?

186. That is your point, is it not? There are so many considerations, so many possibilities. If you mandate one approach, it will be unfair to the other people. Again, we work on the basis that the parties have come together for a common cause as long as there is no collusion and the transaction is at arm's length and bona fide. If the method of distribution is unfair, it puts a minority owner in a disadvantageous position, compared to a majority owner in the same position, then the minority owner can raise an objection, because there will be, in a sense, oppression. The point is that no system will make everybody happy. So, what approach do we take? The approach is that we work on the basis that if they come together and there is no collusion, it is an arm's length, bona fide transaction, then the sale should go ahead? - *(Mr Wan Fook Kong)* Prof. Ho, what guided us was that before the introduction of the Bill, when an en-bloc sale takes place, in effect, we really talk about the value of the property. So far, most of the en-bloc sales have really been centred on residential units. The variations are not so dramatic. But this is not to say that commercial buildings cannot have an en-bloc sale. It can also happen. If you are taking the view that I am selling my shop, then normally we are guided by what is the value of the shop, rather than what is the share value. What we are really trying to say is to set the dimension and say, "OK, you should do it by way of market value." Because a shop on the ground floor and a shop on the seventh level, you are talking about dramatically different prices. I think it is the principle that we are trying to establish, and whether or not we can go along with that.

Dr Teo Ho Pin

187. Mr Wan, i just want to add on to that. The amendment is mainly to facilitate en-bloc development. It is very difficult to achieve 100% equitable distribution of the sale proceeds. In the first place, property owners may have bought units at different times. When they bought at different times, the profit of each owner is different. So there is no way to achieve a 100% equitable distribution of the sale proceeds. The Bill is

silent with regard to distribution of proceeds, and it is mainly to allow for flexibility. If the owners feel that the distribution should be by what you have suggested, ie, market value apportioned accordingly, then so be it. If not, then they will fall back on the fundamental, which is the share value. I think it is good to look from the fundamental objective of the amendment, which is basically to facilitate and not to channel it in a certain direction? - *(Mr Wan Fook Kong)* I can go along with that provided it is entirely optional. But here, it is a situation where it is not entirely optional. How do we protect the interest of the remaining 10%, who may be owners assuming you distribute by share value of units on the ground floor of a shopping centre? They disagree with the en-bloc sale but, nevertheless, the en-bloc sale goes ahead because the majority of the shop owners on the upper levels say, "Why not?". So, how do we look after their interest? They may have paid $5 million for their property. And you are now saying that by share value distribution, they get $2[1]h million. If it is a full consensual situation, then, yes, you can leave it to the parties to agree. If they do not agree, then there is no sale. But we are not in that situation. We have a situation where we are trying to look after the concerns of the remaining 10% to make it less painful.

Dr Teo Ho Pin] We are aware of the interest of the minority. That is why the Bill has a provision which allows the minority to refer their objection to the Strata Titles Board, which will decide based upon their expertise, valuation and so forth, to make a certain decision to look after the interest of the minority. So your concern is addressed in that provision of the Bill.

Prof. Jayakumar

188. Can I ask a few questions? First, I would be glad if you can tell us a little bit more about your Association, when was it founded, how many members do you have and what brought about this Association? - *(Mr Wan Fook Kong)* The Association was founded sometime, I believe, around 1995, although we have not been very active. Actually, what has happened is that there is a national body in Singapore known as the Singapore Institute of Surveyors and Valuers, which represents the three branches of the real estate service business, as it were; the estate agencies, valuation, quantity surveying, land surveying and so on. For a long time, it has been felt that the property management industry or profession is beginning to be more and more important, and it would be useful to have an association which is very focused in that particular objective. With the assistance and support of the Singapore Institute of Surveyors and Valuers, a few of us who are involved in property management and maintenance got together and registered the Association. Since then, I think it was in 1997-98 that we began to increase the level of activities. We were grateful to have Mr Koo Tsai Kee to help us launch our Association, logo and so on. Currently, we have about 100-odd members. It continues to grow. The Association has already done quite a bit. We are involved in a number of projects like benchmarking property management standards. We

Mr Wan Fook Kong (cont.)

are conducting seminars on matters relating to the Y2K bug and how it affects property management, buildings and things like that. This is our area of activity. A lot of our members are involved in strata title management. My own company and Jordan's company, between us, we manage something like 160-180 condominiums, just the two of us. So this is an area that we are very involved in.

189. So the members are companies? - *(Mr Wan Fook Kong)* No, they are individuals.

190. Most of the details of your submission have been covered. Of course, we do not want to debate over the general principles. But can I ask you a basic question since you are dealing with so many strata developments: is it better that we proceed with the general approach that we have taken, ie, to have a Bill to facilitate en-bloc developments, as opposed to keeping the status quo which makes it very difficult? - *(Mr Wan Fook Kong)* What we have actually done is that we have discussed certain concepts about the Bill and we have not put it in our submission. Because we thought that for the purpose of the submission, we should try to facilitate the operations of the Act, rather than to talk about whether or not there should be an Act. What generally is felt, by and large, when we discussed this matter, first of all, there is no statistical analysis. We have not done a survey. But I think in the discussions among professsionals, there have always been concerns.

191. I am asking about your Association's view. I am not asking about your personal view? - *(Mr Wan Fook Kong)* The Association's stand is, basically, this. If it is in the interest to have the site developed more intensively, then this Bill is very useful. What is missing, and perhaps this is something that we should consider, is that the initiative to decide whether a particular plot should or should not be redeveloped, I feel, should not rest with the management corporation. That means it should rest with the owners themselves. I think the authorities should look at the overall location and decide whether or not a particular area should be redeveloped more intensively. For example, if you have a site where the surrounding areas have all been substantially developed, and here you have 3 hectares of land which is low-rise and obviously under-utilised, the authorities can then decide and say, "OK, this is an area we think should be redeveloped." They can send a notice and say, "Look, please redevelop the site. We want greater intensity of use within a certain timeframe." The management corporation can then invoke the provisions in the Bill.

192. Why should the authorities do that? The planning authorities have already given broad guidelines, the DGP, the plot ratios, etc. Broad parameters have been set. So developers, owners and others are put on notice. In any particular condominium or strata development, all the subsidiary proprietors collectively own the property. And some other representors who came before you stressed the importance of property rights and so on. The Bill does not disturb that. The Bill's approach is that the decision

is up to you, whether you want to go for en-bloc development or whatever. If you want to go for en-bloc development, this Bill provides the legal framework and the regime, which is more facilitative than the existing law which makes it very cumber some. So we leave it to the subsidiary proprietors to initiate or not to initiate. Once they initiate, the process by which they arrive at the negotiation involves the nitty-gritty and sticking points. That is the approach taken in the Bill. But you are urging on us that if a developer were to initiate redevelopment for a particular site, the authorities should say, "No, we do not think you should redevelop it." Or if they have not taken the initiative, then the authorities should say, "You should." But if the authorities were to say, "You should.", and then the owners may say, "We do not want to do that. All of us are happy." - ? - *(Mr Wan Fook Kong)* Let me perhaps explain and elaborate a little bit. What we are really inspired with this concept is very much the situation concerning the Hillview industrial area where the Planning Department decided that it should change from an industrial site to a residential site.

193. That is a change to a different zone? - *(Mr Wan Fook Kong)* Correct. But they also set down the parameters and the time-frame that you should do certain things within a certain time. If you do not do certain things, they would encourage the change of use. Here, to a large extent, we are not saying that it is exactly the same thing. But for a similar situation, what we are saying is that your plot ratio now is 1.4, and it can go up to 2.8. It may or may not be time to do so. At this part of the game, we leave it to you. But at some point in the future, we say, "No, this is a blight on the landscape in that particular area. We should really do something about it." Now they are telling you, "Please, do something about it within the next five years because if you do not, then we will." Once it comes down to that situation, how do you think the owners will react? They would say, "Yes, we had better be more accommodating to each other because this thing could happen."

194. Supposing we had passed this law, with your approach, five years ago, and we had forced them to initiate and they have to sell their property today, all of them would take umbrage with the authorities for having done it, because the property market has come down? - *(Mr Wan Fook Kong)* No. You would have issued a notice which says, "Within the next five years, you please redevelop." Because of economic conditions, that notice can be lengthened or shortened to suit the circumstances. My basic fear is this: By and large, I think people accept that if it is in the national interest -

195. For national interest, I agree with your point. But on this particular point, it seems to me that you would go even further than what the Bill suggests where the authorities will have a degree of compulsion that there must be en-bloc development. We have not taken that approach. Perhaps you have a point there, but we had better try this approach which in itself has generated some divergent views? - *(Mr Wan Fook Kong)* Right.

Mr Shriniwas Rai

196. I have only one question, Sir. Under the Bill, the existing provision is that any dispute will go to the Strata Titles Board, which has got a qualified legally-trained senior lawyer sitting as President or Deputy President and assisted by two other members who may be lawyers or valuers. There has been a suggestion by some representors that we should send disputes to the High Court. The Select Committee would be interested to find out from your Association, since you deal with a lot of estate management, what would be your preference. Would you prefer to let the matter to be handled by the Strata Titles Board, as it exists under the Bill, or would you prefer to go to the High Court? - *(Mr Wan Fook Kong)* On the question of dispute to be resolved, depending on the nature of the dispute, I suspect that in a situation like that, the concern would be more on the distribution of proceeds and how the matter should be done and so on and so forth. In that situation, I believe the Strata Titles Board would probably be a more appropriate avenue. But if it is a question of legal matters and whether the law is applied correctly, then of course, we go to the courts.

197. Even on questions of law, the President of the Strata Titles Board himself is a senior member of the Bar. The present President is, in fact, a former District Judge. You can be rest assured that the question of law would be adequately dealt with. Sometimes, the composition of the Board is two lawyers and one non-lawyer? - *(Mr Wan Fook Kong)* Yes.

Dr Teo Ho Pin

198. Mr Wan, can I just refer you to page 4, paragraph 3, of your representation? You are concerned whether it is equitable for those subsidiary proprietors who are opposed to the application to pay for the cost of application. I think we should not attempt to split hair because the cost of application to the Strata Titles Board is only $200, which is not a big sum of money. For that matter, there are so many other matters in the management corporation where the minority will always have to pay. Even if you get a consultant to study the defects, which might not be related to one's unit, the spirit is that if you stay in a strata title development, you will always have to follow the majority. So we should not split hair in this instance as to why the minority proprietors should pay for the cost of application. As I say, if the majority agrees that they should go for an en-bloc sale, there is a provision in the existing Land Titles (Strata) Act that they have every right to incur that sort of expenses? - *(Mr Wan Fook Kong)* Here, we are talking about the cost of application going beyond what has to be paid to the Board. I am talking in terms of representation. Then we come to the big amount of legal fees. If the applicants can use the MC funds to employ lawyers, but the opposing parties have got to use their own funds to employ their lawyers, I think that is a little bit inequitable.

199. You are talking about employing lawyers? - *(Mr Wan Fook Kong)* Yes, I am not talking about the $200 cost to the Board. That is not my concern.

Assoc. Prof. Ho Peng Kee

200. Just as a follow up. I think you will know from the Bill that the Strata Titles Board is empowered to decide on costs. So there is a discretion. If I am not wrong, on the ground, it is normally not the MC that takes up the en-bloc process but a committee comprising the majority owners is formed. In terms of the general principles, that is probably a defensible point, that it should not come from the MC funds if it is a group of majority owners who want to proceed with the en-bloc sale. We can consider that? - *(Mr Wan Fook Kong)* Yes.

Chairman

201. Mr Wan, Mr Neo and Mr Tan, on behalf of the Committee, I would like to thank you for coming here this afternoon to assist us. In a few days' time, we will be sending you a transcript of the discussions. Can I ask you to go through the transcript and return to us with amendments, if there are any. In the meantime, I would like to remind you not to publish the evidence you have submitted until the Select Committee has presented its Report to Parliament. Thank you very much for coming here? - *(Witnesses)* Thank you.

(The witnesses withdrew.)

MINUTES OF EVIDENCE

Friday, 4th December, 1998

2.00 pm

PRESENT:

Mr Speaker *(in the Chair)*

Mr Chng Hee Kok
Prof S Jayakumar
Mr Low Thia Khiang
Dr Teo Ho Pin
Assoc Prof Ho Peng Kee
Mr Koo Tsai Kee
Mr Shriniwas Rai

In Attendance:

Attorney-General's Chambers:

Mr Ter Kim Cheu, Head, Legislation Division.

Ministry of Law:

Mr Pang Khang Chau, Deputy Director (Legal Policy).

Ms Petrina Theo, Land Policy Officer.

Registry of Land Titles and Deeds:

Ms Foo Tuat Yien, Registrar of Titles and Deeds.

Mr Vincent Hoong, Deputy Registrar of Titles.

Mr Bryan Chew, Senior Assistant Registrar of Titles.

Paper No. 33 - The following representatives from M/s Phang & Company, 7 Temasek Boulevard, #12-06 Suntec Tower One, Singapore 038987, were examined:

Dr Phang Sin Kat.

Mr Tan Hock Boon, David.

Chairman

202. Good afternoon. Please be seated. For the record, could you please state your names and addresses? - *(Dr Phang Sin Kat)* Mr Chairman, my name is Phang Sin Kat. My address is 7 Temasek Boulevard, #12-06 Suntec Tower One, Singapore 038987. *(Mr David Tan Hock Boon)* Good afternoon, Mr Chairman, my name is David Tan Hock Boon. My address is the same as Dr Phang's. The office address is 7 Temasek Boulevard, #12-06 Suntec Tower One, Singapore 038987.

203. Dr Phang and Mr Tan, thank you very much for your submission to the Select Committee on the Land Titles (Strata) (Amendment) Bill, We would also like to thank you for being here this afternoon to help us clarify certain points that you have made in your submission to the Select Committee? - *(Dr Phang Sin Kat)* Thank you, Mr Chairman, we are happy that we can be of little help.

Chairman] Prof. Jayakumar, would you like to start?

Prof. Jayakumar

204. Thank you very much, Dr Phang. I would, first, like, on a preliminary note, to ask you about your second paragraph where you said that you are lawyers acting for a number of estates that are attempting to sell the units on en-bloc sales. Have any of these attempts to sell the units through en-bloc-sale been successfully completed? - *(Dr Phang Sin Kat)* No, I am afraid not.

205. Are these attempts recent or have they been in the process for some years? - *(Dr Phang Sin Kat)* They have been in the process for some years.

206. So that we can have an idea of the real world problems in such exercises, could you sum up for us the problems, with respect to these attempts which have been going on for some years? What are some of the problems encountered? - *(Dr Phang Sin Kat)* We ran into problems in one case where we did manage to persuade everybody to agree, and the property went on the market, but we did not get the reserve price that was stipulated. And in other cases we were faced with lack of consensus. The reasons for the lack of consensus vary greatly, top of which would be that they like the place, they love the place, they do not want to shift, and they would not sell for any price. Even when offered new units in exchange for development, they came back and said, "No, I am comfortable." One rather extreme case concerns a situation where the owner says, "Look, you know, you can do what you like with the buildings. But if you can find some

Dr Phang Sin Kat (cont.)

ways scientifically of letting me continue with my flat in the air, I do not care what happens around me." An extreme position, I am afraid. There are disputes as to what the correct reserve price is. Somebody says that, "I have renovated my flat at great cost. I have a higher unit with a better ventilation. You have a unit which faces the bin centre. So I hope to get more." The method of apportionment of the sale proceeds is always a contentious issue. And there are various formulae that have been offered to try and solve the questions as to the method of apportionment of the sale proceeds. You can go by share value, which typically is always disagreeable to most or many of the owners. Because your share values are never reflective of the strata titles area, nor of the worth of the flat. So you may have a position where a maisonette owner has got five share values and a flat owner has got three share values. But the respective areas of the maisonette and the flat are not in the ratio of 5:3, and you do not go to decimal point in share values, for historical reasons probably. And you have got people who say, "Look, I am not selling, full-stop. But I will be the last to sign. You people don't bother me, please. Get your agreement and I will be the last to sign." And that is always an excuse, if I may use that phrase, to be on the upper hand. Say, out of 50 owners, 49 have signed, and he is the last one, you need his consent, you give to him what he wants. And so everybody has got that "last-to-sign" syndrome, because he knows that being the last, he has the maximum negotiation power vis-a-vis the rest. These are the main reasons.

207. So it is clear from what you said that there is a host of factors which come into play as opposed to decision-making, maybe monetary, economic, emotional, and so on. You realise that the approach taken in the Bill is to move away from the present rather strict legal regime, which requires going to court, or 100%, and to facilitate it by requiring 90% or 80% vote, as the case may be. But, at the same time, the approach is to ensure that the Strata Titles Board does not have too interventionist a role, which brings me to the point that you have made in the third page. You have argued that the Board's discretion should be based on three types of obsolescence: physical obsolescence; function obsolescence; and economic obsolescence, which you say "takes into account the enhancement of the plot ratio of the site, and whether it is worthwhile, in economic terms, for the owners to pay for the repair, renovation or upgrading costs, when weighed against the en bloc selling price of their flats." Then you proceed to say, your suggestion is this: "... the Board is of the view that an estate is obsolete, then an order of sale must be made. There should be no appeal from the decision ...". Let me ask you to elaborate this. But before you elaborate, I need to point out that the approach in the Bill is to provide a facilitating frame work where most of the decisions are decided by the parties themselves after negotiations, and if they so decide, then the proposed legislation provides certain parameters which must be fulfilled. But you would want us to amend the Bill to go further and vest in the Board the jurisdiction to decide that even when all or majority of the residents do not want to redevelop on one of the three criteria of obsolescence, you would say that the

Board can order the sale to take place. Why should Parliament go so far to take this radical step? - *(Dr Phang Sin Kat)* Let me explain. I am sorry, perhaps I did not make clear that it is not the intention.

208. That is not your intention. What is your suggestion then? - *(Dr Phang Sin Kat)* My suggestion is that unless and until an application is made by 80%, and not if there is no application, the Board will not voluntarily invoke any jurisdiction or power to say, "In our view, let's develop it." I am sorry I should have made it clear. I beg your pardon.

209. I misunderstood you? - *(Dr Phang Sin Kat)* No, I did not make it clear. It is my fault.

210. There was a proposal made by somebody else-?- *(Dr Phang Sin Kat)* Only if there is an application.

211. - that even if there was no application the authorities ought to be able to review and decide that in certain estates or in certain vicinity, the plot ratio has been grossly under-used, therefore, they should redevelop. You are not going that far? - *(Dr Phang Sin Kat)* No. That is quite an extreme position.

212. But let me take you up on your suggestion as you have clarified it. This would, in fact, transfer some of the decision-making to the Board, would it not? The Board would have to make a judgmental value. Is it wise? Is it justifyable for the Board to be clothed with this amount of discretion? Because if we take your third point on economic obsolescence, the Board would have to judge the enhancement of the plot ratio, and whether it is worthwhile, in economic terms, for the owners to pay the repairs, etc, when weighed against the en-bloc selling price. Again it is subjective. What would be the pros and cons, what would be the final judgement, as to whether the selling price as opposed to the renovations, and so on, whether it is worth while? It may vary from year to year, depending on the amount? - *(Dr Phang Sin Kat)* Yes.

213. If I were to put it to you that really we should leave it to the parties to arrive at a decision, and they can get the requisite majority, so be it. But if they cannot, then the matter does not come up to the Strata Titles Board. Why are you not satisfied with that approach in the Bill? - *(Dr Phang Sin Kat)* Mr Chair man, there are various options to solving this problem. One is to say 100% must agree, regardless of the reasons, then the sale will of course go ahead. So that is one option. If you do not want that option, then you say, "Look, we need less than 100%." If we say less than 100%, then you have got again two options. If I have got 80%, the sale must go ahead regard less of any criteria, or objection of the 20%. So the 80% will come together and say, "We want to sell." Then the sale goes through regardless of the 20%, or factors based otherwise than on the intention of the 20%. So that is one option. And I think what the Bill has proposed to do is to take the second option where there is less than unanimity. Even though you have got 80% or 90%, as the case may be, you still must satisfy the Board of some criteria. My respectful suggestion is that the Board should not be the forum to judge the criteria which are listed in the Bill, because the Bill proposes factors

Dr Phang Sin Kat (cont.)

which the Board must consider, like the scheme and intent of the section, interests of all the owners, circumstances of the case and objections of the minority. These are difficult phrases. They are difficult phrases even for the courts and the courts are there to adjudicate on difficult principles applying to certain facts. The Board, not being a judicial body in the sense that it does not consist of judges, would have great difficulties in deciding what are the meanings of phrases, such as scheme and intent, interests and circumstances of the case. So in Kim Lim's case, we did bring it to the courts. The case went through various interlocutory proceedings, through various judges. I must say that those phrases present great difficulties for the lawyers to even begin to make submissions on what the meanings of phrases such as "scheme and intent" are. Had the case been fought out, which it was not, I think the judge involved would have had a long time considering the submissions by opposing parties' lawyers as to what these phrases meant. If we put this criterion as one of the criteria for a decision by the Board, we are, as it were, shifting this difficulty to the Board which, in my respectful view, is not necessarily the correct forum to make a decision of this kind. Moreover, if the Board makes a decision on the criteria, such as scheme and intent, interests, and so on, and make them either for or against the majority, and if there is an appeal from the Board to the proper courts, you have to repeat the arguments all over again. So instead of making it simpler, the Bill puts the additional barrier of the Board having to adjudicate on these issues. Rather than a position where 80% must go regardless of objection, or any of the criteria, and the other position where we have got 80% and the Board must consider all these difficult problems, my suggestion is to draw a middle line which is that, yes, 80%, you make an application. But the Board has to consider certain criteria which are not judicial criteria. They are technical criteria. In my respectful view, the Board is the appropriate body to consider the technical criteria. On this question of obsolescence, the majority can bring forth their experts, and the minority can bring forth their experts, and it is a question of, between the two sets of experts, which can convince the Board as to the obsolescence or otherwise of the estate. And therefore, the Board is confined to one single issue whether or not it is obsolete and not whether it is fitting the scheme and intent, interests of all the proprietors, or circumstances of the case, which are difficult judicial decisions. So I was trying to draw a middle line fitting the position with the Board which consists largely of non-judicial members who can make a decision on the technical aspects.

214. The point that you have raised on the particular provision has been raised by some other representors. We may have to look at it again in the light of our intention, as expressed in Parliament, that it is not to have too much of an interventionist role for the Strata Titles Board; we will look at that provision to see whether we can make it clearer? - *(Dr Phang Sin Kat)* Mr Chairman, I think I have clarified that it is not my suggestion that the Board should on its own initiative -

215. I understand it? - *(Dr Phang Sin Kat)* Either you do not go to the Board at all and say, "I have got 80%. I can go." Or "You must go to the Board.". There must be some sort of a filtering body.

216. As you have seen, the broad intent, as explained in Parliament, is that there can be all sorts of allegations and accusations about the process. So one obvious justifiable role for the Board is to look into the process and be satisfied that there has been no conflict of interest and no collusion. It is at arm's length, bona fide transaction, and that should be the major role of the Board. But we also have to consider what happens if there is an objection and what if no objection is made, what should be the role of the Board, whether it should be as wide as you have proposed and whether we need to look at the wording of the existing provision which, as you have pointed out in your own words, can be difficult, like the scheme and intent, and so on. I think my colleagues have other questions to ask? - *(Dr Phang Sin Kat)* Sir, if I may add. I think the criteria of obsolescence encompass, from what I understand, the intention behind the Bill. You have an enhancement of plot ratio which should be free for other Singaporeans to use. You know the position where 50 units occupy a piece of land when it can be used for 90 units or 100 units. Therefore, it talks about the enhancement of plot ratio under the generic heading of "economic obsolescence". You know the position where you have to spend $100,000 to whitewash a building because the Building Control Department requires it. For old buildings which are 30 years old, you have to whitewash them because the Building Control Department will fine you if you do not do that. So $100,000 or $200,000 will go into whitewashing the building. Like an old car, after a number of years, you can keep on repairing A, B, C, D, but X, Y, Z come out. There is a stage when it is beyond economic repair. The point I am suggesting respectfully is that when a building has reached a stage, I think it is about time to scrap it, in as much as a car when it is 30 years old - we have got the 10-year rule now - you have to repair the carburettor and so on. I think when a building has reached a certain age, there are a lot of services like the lifts and electrical wiring which need to be done.

217. I understand. What you are in fact saying is that the Board ought to have jurisdiction to look into this when the matter comes up to the Board. The point that we will have to consider is whether we should go that route. If we go that route, there can be two ways. In other words, the required majority is obtained but the minority which is not able to block the required majority will maintain that, no, it is not economic obsolescence, then the Board has to take a decision. But it could be the other way where the required majority could not he obtained because it is 78% or 88%, as the case may be, and the 12% or 22% which are blocking are unreasonable, saying that it is not economic obsolescence, in which case the Board has to decide. The question we have to decide is why should the Board get into this kind of debate. We will take your point into consideration? - *(Dr Phang Sin Kat)* Thank you very much.

Assoc. Prof. Ho Peng Kee

218. Dr Phang, given the current phraseology of the Bill, section 84 in particular, what you have called overly broad criteria, I think you have done a valiant effort in suggesting a framework for guiding the Board in its deliberations. But, as the Minister has said, we will look at section 84 to see whether there is a need to look at the overly broad criteria in particular. If you read the Second Reading speech, you will see that my speech is more focused and in fact the process will not be so wide-ranging in so far as the Board is concerned. Putting that aside, just now you alluded to one of the en-bloc sales that you handled which went to court. Without going into the details, just briefly, what was the experience in bringing this matter to court? Was it a difficult experience? - *(Dr Phang Sin Kat)* I cannot find a word that is stronger than "difficult". Maybe I can use the words "extremely difficult" with respect. I think you will face a large number of plaintiffs who themselves have different opinions even though they aim for the joint sale. You have got a position where some people who want the sale do not want to be involved in the court case. They sit on the fence. If you win the case, they will enjoy the outcome. If you lose the case, they say, "I don't have to pay the fees, or the court fee." And you have got large meetings where you have defendants who, in my view, because of a lack of any legal merits, play up the feelings and sentiments by saying, "Oh, I like this place." Respectfully, our judges are trying their level best but it is difficult when you have an old lady coming to court, tears in the eyes, saying, "I have stayed here since I got married." These are all the reasons. So it is an extremely difficult decision.

219. Briefly, would I be right in saying that your view is that, going to the Strata Titles Board, in terms of the process, would be a better approach than going to the court? - *(Dr Phang Sin Kat)* Yes. I like the mediation effort because you need to mediate first. I like that very much.

220. The other point is that, given your experience and what you have described just now, you would agree that for older developments, there should be a gradation, in terms of the percent age. In other words, the current approach taken by the Bill is correct - that for older developments, the required majority is smaller than for newer developments? - *(Dr Phang Sin Kat)* I think you have to draw a line somewhere. I do not have any particular comment on the 80% or 90%. You have got to draw a line somewhere.

221. Not in terms of the exact percentage, but in terms of the approach where there is a gradation for older developments. Rightfully, we have decided on this approach where there is a lower percentage to be satisfied? - *(Dr Phang Sin Kat)* I accept that. If I can add a little comment: it is that the older the condominium, the lesser the percent age. That means, not necessarily but coincidentally, that it runs parallel with the concept of obsolescence because the older the building, the more people want to change it. I accept that.

222. I have two other points. One point is just to assure you that we have

looked at your proposal with regard to section 78 which other representors have made. We will re-consider redrafting that, because you have made a point and other people have a point that currently it is rather ambiguous and susceptible to different meanings. So our officials will look into it to better reflect the real intention behind section 78. The other point is that you have mentioned just now that there are so many different ways of distributing proceeds. Yet, in your submission, you argued that the law should set out one way. But given the fact that there are so many different ways of distribution and also the fact that the types of strata developments are so varied - they could be purely residential, purely commercial or even mixed-we have got so many gradations. And also given the approach that we have taken in the Bill to give the parties as much autonomy as possible because the circumstances are so varied, it is better to leave it to the majority parties to decide as much of the details as they can. Given this explanation today, would you still make a strong case to say that the law should stipulate one way which may be fair to some but maybe terribly unfair to others? - *(Dr Phang Sin Kat)* I respectfully share the concern of the draftsmen and the policy makers on their difficulty. If you say, let the owners decide, the big difficulty is that they do not know how to decide and A would want this and B would want that. As I said, there is a multitude of factors and you may not come up to a decision at all and therefore the whole project is stymied. You get a position where, because the method of apportionment is not clearly stated in law, people are open to disagreement and that may be the excuse, as it were, for them to put a multitude of difficulties in the way. As the law provides, it is share values as currently provided under section 78 and the end result of section 78 is that the owners of the flats own the land in proportion to their share values. The share value is the criterion that is being adopted by the Act as it is. But once you open up this and say it is for the parties to decide - first, you may not get an agreement. Second, in the absence of a clear mandatory provision, the Board does not know how to decide really. So if you fail before the Board and you go under section 78, the judge says, "Well, look at section 78, it is share value." I think it is very difficult to be fair to the last degree. One has to draw a line to say, "This is it! I know it is not fair. But I am trying to be fair."

223. Will I not be right in saying, Dr Phang, that your suggestion is based on the current Act and your experience in en-bloc sales as it is before the Bill comes into effect? Because once the Bill is there, the facilitating scheme is there and given the approach of the Board which is to facilitate en-bloc sales so that if the parties cannot decide despite the facilitating framework, then so be it. But the parties know that there is a facilitating framework, unlike in the past, where the parties cannot decide and they go to court. And you have said going to court is really very difficult. The approach would be, given this framework, would it not be better to let the parties decide based on what they would see as fair and then of course they come before the Board? And if indeed any minority owner lodges an objection saying that it is unfair to him, then the Board can look at it? - *(Dr Phang Sin Kat)* Respectfully, in that

Dr Phang Sin Kat (cont.)

event, how would the Board decide if the minority says that they think it should be on this formula and the majority says that it should be on a different formula? How would the Board then decide?

224. How the Board will operate will be something that will be worked out in due course. But the point is that the Board will not change the terms and conditions of the agreement. In other words, the Board will not impose a different method of distribution. But based on the method that the parties have decided for themselves, if a minority owner says that given this formula, he has been unfairly treated because, for example, a majority owner in similar circumstances has received a better deal, that could be one approach? - *(Dr Phang Sin Kat)* Yes.

Mr Shriniwas Rai

225. Dr Phang, could I refer you to paragraph 4 of your submission on page 3 on "The Board's discretion should be limited..."? You have said that the Board consists largely of members whose expertise is in the technical fields. You are aware that the President and the Deputy President are both senior members of the Bar and sometimes other members of the Bar also sit in. To follow your suggestion would mean that you are restricting the power of the Board. You are saying that the Board should be limited and is based only on technical expertise. But sometimes they deal with technical and legal aspects of it. Do you not think that we should not be very restrictive in this area? - *(Dr Phang Sin Kat)* Yes, Mr Chairman, I agree that the Board does consist of senior members of the Bar and are eminently qualified to make decisions on legal matters. Secondly, some issues are not just purely technical, they are mixed; technical and legal decisions. I accept that absolutely.

226. There is also a possibility that if there are complicated questions of legal issues, then the forum could be increased from 3 to 5, if the Board feels that it is an important issue. There is nothing to prevent the Board from having more than 3 members if the Select Committee thinks so? - *(Dr Phang Sin Kat)* I understand. I just feel that it is a difficult position where already the courts are saddled with difficult questions of interpretation, applications of these complicated phrases which are currently in section 78 and yet we are going to add one more body to adjudicate on the same difficult phrases. I would respectfully suggest, if possible, that these phrases should not at all be in any legislation.

227. If we were to follow your argument, then there may be cases which they have to go to High Court? - *(Dr Phang Sin Kat)* But you cannot.

228. You do not come to this stage. There may be some questions of legal issues. The Board may be forced to refer on its own? - *(Dr Phang Sin Kat)* Case stated. But you are going to have an application to the Board and the case stated to the High Court.

229. We are trying to avoid that. The second question is the earlier proposition that you have made that before you go to

the Board, the Board must approve first. May I have your views, because it could be argued that it is the rights of the individual person to decide on the terms of the agreement, in most cases, the High Court for that matter. You go to High Court to seek approval. Here you are suggesting that you have got the agreement signed, the Board must give in-principle approval. I am trying to fathom why you are suggesting that? - *(Dr Phang Sin Kat)* I think it makes the process a lot simpler. If you go to the market and say you have got this project, and you bid for it. All the problems have been solved in terms of the objecting owners and we are now able to sell every thing (100%). Rather than the position where you say, "Look, we have got 80%, please come and bid." Having got the bid, you go to the Board and say, "Please adjudicate." And the developer who bids will say, "My goodness! Do I have a deal or do I not have a deal?" And both processes may take long. It may go up to appeal, maybe under section 78 again. You have a deal which you will never know whether it is going to come true or not. Whereas if you have already solved all the problems, your sale is going to be a certainty and I think it makes for easy administration that way.

Chairman

230. Are there any other questions? If there are none, may I just thank Dr Phang and Mr Tan for coming here this afternoon to assist us. In a few days' time, we will be sending you a transcript of the proceedings. Can I ask you to look through it and return to us with amendments, if there are any? I would just like to remind you that until the Select Committee has submitted its Report to Parliament, you are not to publish any of the evidence you have submitted or extracts of it. Thank you very much? - *(Dr Phang Sin Kat)* Thank you.

(The witnesses withdrew.)

Paper No. 34 - The following representatives from the National University of Singapore, School of Building and Real Estate, 10 Kent Ridge Crescent, Singapore 119260 were examined:

Dr Lawrence Chin Kein Hoong, Assistant Professor.

Dr Alice Christudason, Assistant Professor.

Ms Anne Magdaline Netto, Assistant Professor.

Ms Low Boon Yean, Part-timeTutor.

Chairman

231. Good afternoon, please be seated. For the record, could you state your names, addresses and the designations in your organisation? - *(Dr Lawrence Chin Kein Hoong)* My name is Lawrence Chin Kein Hoong, Assistant Professor from the School of Building and Real Estate, National University of Singapore. My address is 42, Everton Road #18-04, Asia Gardens, Singapore 089394. *(Dr Alice Christudason)* I am Alice Christudason, School of Building and Real Estate, Assistant Professor, National University of Singapore. I live at 37 Dyson Road, Singapore 309385. *(Ms Anne Magdaline Netto)* My name is Anne Magdaline Netto, School of Build ing and Real Estate, Assistant Professor, National University of Singapore. I live at Blk 60, #06-02, West Coast Crescent, Singapore 128040. *(Ms Low Boon Yean)* My name is Low Boon Yean, I am from the School of Building and Real Estate. I am a tutor with the school. My address is Blk 8, Upper Boon Keng Road, #06-1072, Singapore 380008.

Chairman] On behalf of the Select Committee, I would like to thank you for your written submission on the Land Titles (Strata) (Amendment) Bill. We have invited you here this afternoon in order to seek clarifications on certain points that you have made in your submission. Would you like to start, Prof. Jayakumar?

Prof. Jayakumar

232. Thank you very much, Mr Chair man. I thank you also for your representation. You have made many points in your submission. Today, we will not be able to tackle every one of these points but I want to assure you that it does not mean that we will not carefully consider them. For example, you made some useful procedural suggestions. In your last point, you have suggested that majority owners who apply to STB be allowed to register a notice of such applications in the Registry of Land Titles and Deeds and put potential purchasers on notice that there could be a possible collective sale. I think that is a good idea and maybe we will write it into the Bill. You have made several other suggestions which we will take into account. But for today, I would take up one or two points. Before I do that, can I ask the process in which you submitted the representation. Did you look at the

Bill and then have a discussion or did you also talk to people who are in the process of en-bloc sales to have a real feel of what are the problems on the ground? - *(Dr Alice Christudason)* We based our representation on the discussions among ourselves and from the experience that has been gained from practical experience of en-bloc conveyancing.

233. So you have taken into account your experience? How has the experience been gained by one or more of you? - *(Dr Alice Christudason)* Mainly it is based on Ms Low's practical experience in en-bloc conveyancing.

234. May I know, Ms Low, how would you have had experience in this matter? - *(Ms Low Boon Yean)* I am a practising lawyer. I am with the School on a part-time basis tutoring on some under graduate and postgraduate courses in the Law of Real Property.

235. So in your experience as a lawyer, you have to handle such cases? - *(Ms Low Boon Yean)* Yes, the conveyancing aspects of en-bloc sales.

236. You have had experience in en-bloc sales? - *(Ms Low Boon Yean)* Yes.

237. From your experience, is the Bill a move in the right direction? Or do you think that it is better to keep the present status quo? - *(Ms Low Boon Yean)* I would think that the Bill is a step in the right direction, because we have had a number of unsuccessful sales as a result of not obtaining unanimous approval. Most of the time, upgrading costs would be quite substantial for some of the owners, and an en-bloc sale would definitely benefit them a lot more.

238. Benefit the lawyer? - *(Ms Low Boon - Yean)* Benefit the owners, definitely.

239. Can I go to the first of my two points? At the bottom of page 1 and at the top of page 2 of your submission, basically, the point you make here is that the approach of facilitating en-bloc sale, majority concern and so on, you find it more justifiable for older buildings. But, at the same time, at the bottom of page 1, you say, "... it is acknowledged that there could be situations where collective sale of relatively new buildings may be justified." Having said that, then on top of page 2, you proceed to say that in your view, "collective sales of relatively new buildings should be allowed only under exceptional circumstances." And then you propose that provisions be made accordingly. The approach that we have taken in the Bill is that instead of having too complicated compartments or formulae and having too much subjective determination vested in the Strata Titles Board, we have taken the benchmark of 90% for buildings of 10 years and 80% for buildings of more than 10 years. Your argument is that new buildings will be exceptional. What is your concept of a "relatively new building"? - *(Dr Lawrence Chin)* Mr Chairman and distinguished Members of the Select Committee, we submit that before an en-bloc sale should be considered, the factors, such as the age and the condition of the building, are important considerations. In this case, from the national point of view in managing our scarce land resources, we felt that relatively new

Dr Lawrence Chin (cont.)

buildings would have capitalised on the enhanced plot ratio. It would be a real waste for these buildings to be put on en-bloc sale unless there are special reasons for it. Therefore, we felt that the condition of the building should be examined.

240. We understand your arguments. I am trying to zero in on what is your definition of a "relatively new building"? - *(Dr Lawrence Chin)* In our opinion, even a 10 year old building would be considered relatively new. So we should look at other factors. For example, if it is to optimise land use. then we would submit that an en-bloc sale will be an acceptable option.

241. Do I understand your position is that other than the 10 years benchmark, you should have other factors? - *(Dr Lawrence Chin)* Precisely.

242. If we were to do that, then we have to have a listing of what are the factors or ingredients which make up the "exceptional circumstances". It can be a wide variety of factors. What do you conceive to be "exceptional circumstances", now that you have told us your meaning of "relatively new buildings"? What are the exceptional circumstances? - *(Dr Lawrence Chin)* There are two basic provisions to be considered. Firstly, the condition of the building. Secondly, if the building were to go for en-bloc scheme, it should also satisfy national interest, that is, it actually optimises land resources.

243. Taking your definition of "relatively new building", presumably, your first factor would not figure prominently, the state of disrepair and so on, since it is a relatively new building. Why should we not take the approach in the Bill and leave it to the parties to come to an agreement on their own, rather than the authorities or the Strata Titles Board having to step in and decide on these matters? - *(Dr Lawrence Chin)* We are looking at it from the national estate management point of view. If the en-bloc scheme leads to wastage in terms of the reasons that we have outlined in our submission, serious consideration must be given to it. However, if the scheme enhances our use of national resources. especially land, the sale would be justified.

244. Would you agree with me, that in almost all en-bloc developments, we can expect that there will be a better usage of plot ratio'? - - *(Dr Lawrence Chin)* Right.

245. So there will be a better enhancement and usage of the land. It is bound to be the case, because it is very unlikely that there will be en-bloc development if it was not the case. In that sense, your second criterion is more or less stating the obvious. Because the whole approach of the Bill is that it is in the national interest to allow and facilitate, in land scarce Singapore, en-bloc developments. There will be better utilisation of the land. So your second criterion is more or less the *raison d'etre* of this Bill. Would you agree with me on that? - - *(Dr Lawrence Chin)* Yes, Sir.

246. Can I now go on to my second point and that is your proposal that there should be agreement before an application can be made to the Strata Titles Board? This is the point that some other representors have also urged on us. If I were to say, in reply, that one of the problems we have with this is that the net result will be that the parties would have to come to the Strata Titles Board twice. And we want to avoid this, because a certain amount of duplication will take place, if we get the Strata Titles Board to give in-principle approval. And such in-principle approval, certain things may take a different course. Then they have to come again to the Strata Titles Board. Why is your approach superior or better than the approach here where we say the parties sort it out? When you get an agreed price and your agreement, then you come to the Strata Titles Board and the Board will see whether it is at arm's length, no collusion, and so on. I am not saying that your argument is wrong. But I want you to understand that there is the other side and you are involving the parties and the Strata Titles Board probably twice? - *(Dr Alice Christudason)* Prof. Jayakumar, we understand that it could be self-defeating if the majority were to be in collusion with the developer. However, what we are concerned with is how would the minority view the situation if the purchaser is involved from the very start, rather than the situation where the owners collectively come together and decide to sell. If there is a purchaser who is already involved from the very start and, assuming that there is a minority who does not want to proceed with the sale, then it could appear to the minority that there is collusion. For example, it may occur to the minority, how did the developer manage to get a majority? How come there is already a majority? Could there have been some perks offered to those who now constitute the majority?

247. In which case, if one or more of the minority who are out voted strongly feel or have evidence to show that it is not at arm's length or something fishy about it, that point can still be made before the Strata Titles Board. And that is indeed one of the reasons why we want the Strata Titles Board to look into it. So if your concern is that the allegation ought to be looked at, it will be looked at. But why do we need to have two appearances before the Board? Because you can have the allegation made at different stages. At in-principle approval stage, the minority may not have felt that there was collusion before such in-principle approval. They may uncover it only after the in-principle approval. So you might as well have the whole proposal presented to the Board and these matters be looked at. If I put that to you? - *(Dr Alice Christudason)* We understand that there must not be repetitive applications to the Board. We were merely raising the point that there may be an appearance of collusion from the minority's point of view.

Assoc. Prof: Ho Peng Kee

248. Just two or three points from your paper which, as the Minister has said, are detailed and well written. Your point about section 78, which you have put some effort into elaborating, is also a point that other representors have made. In fact, you have offered a clearer formulation which you feel better reflects the

Assoc. Prof. Ho Peng Kee (cont)

intention behind the section? - *(Dr Alice Christudason)* Yes.

249. Thank you for that. Our officials will look at it. In fact, I think your formulation is something that we can consider? - *(Dr Alice Christudason)* Yes, thank you.

250. Another specific point that you made, again, to better reflect what the position should be, is new section 84A(2) where you say, currently drafted, the Bill allows majority owners to appoint "not more than 3 persons to act as their authorised representatives, jointly and severally." And you have made the argument that because they have decided to appoint 3 persons, the 3 persons should, in fact, act together, and not severally? - *(Ms Anne Magdaline Netto)* Yes.

Assoc. Prof. Ho Peng Kee] Again, that is a good point which I think the Committee can consider.

Dr Teo Ho Pin

251. Mr Chairman, I have got one clarification which is on Paper 5, the last point concerning the removal of jurisdiction of the Strata Titles Board to settle disputes with developers. I think you have made a good suggestion in terms of allowing the Strata Titles Board to settle disputes with developers before the expiry of the initial period or the first AGM. Most of the time, the dispute is during the initial period when you hand over the building to the management corporation. I think this is an interesting observation. But do you all think that the jurisdiction of the Strata Titles Board should be removed with respect to major defects, latent defects and so on? Should such disputes be referred to the courts? What is your opinion? - *(Dr Alice Christudason)* To a certain extent, it might be more appropriate for the courts to entertain such disputes in view of the complexity and the claim for the measure of damages, etc.

252. Building disputes normally are of a highly technical nature. To bring disputes, eg, for a latent defect, to a court, is it the appropriate forum to settle such disputes? Or is it better to have the current practice where disputes such as latent and other defects have been settled by the Strata Titles Board? - *(Dr Lawrence Chin)* We suggest that the Strata Titles Board will still, in this case, be useful to resolve matters in an amicable manner, rather than to resort to the courts. As mentioned earlier, during the first two years, there may be minor defects. So, rather than bringing such disputes to court, it would be more useful that these cases be resolved by the Board.

253. Can I just check whether your concern is due to the cost of bringing up the dispute to the court, which will be very costly to the subsidiary proprietors? Or is it that you are concerned about the technical nature of the dispute? Or is it regarding the speed of resolving the dispute? Are these your main concerns when you bring up this point that during the initial period or before the first AGM, it is better to let the Strata Titles Board settle the dispute? What are your concerns? - *(Dr Lawrence Chin)* Our main

concern is to provide an appropriate avenue where strata title owners can bring up such matters which affect them immediately. Strata titles owners may feel hesitant to appear in court. So why not have a mechanism? I think the existing procedure where the Strata Titles Board is there to adjudicate this sort of matter is more appropriate. *(Ms Anne Magdaline Netto)* The paper draws a distinction between latent defects and minor defects. It attempts to address not the latent defects, but the defects that arise within the first two years. I think that can be quite easily handled by the Strata Titles Board. When it comes to latent defects, then the question of expert evidence and issues become far more complicated and the courts would then possibly be a better forum.

254. So you are more concerned on the minor defects during the initial period of the development? - *(Ms Anne Magdaline Netto)* Yes.

Mr Shriniwas Rai

255. I must thank you for having submitted a very good representation. May I refer you to your Paper 3, Part VA 84A, which reads:

"It is therefore necessary to include a section to deal with the service requirements on all the interested parties."

Would it not be better to leave it to subsidiary legislation? Even courts have what is called rules here. So would it not be better to leave it to the subsidiary legislation where it could be spelt out? - *(Ms Anne Magdaline Netto)* Yes, that will be fine.

Mr Low Thia Khiang

256. I refer to your submission on clause 8 of the Bill, new section 84A(5), which reads:

"(d) Where the majority can be constituted by just one shareholder, the concerns of the minority should assume even greater importance;"

Do you have any mechanism in mind which would allow. under the circumstances that you mentioned, the minority to assume greater importance in the decision? - *(Dr Alice Christudason)* My feeling is that this is a point which must be specially brought to the attention of the Strata Titles Board. The fact that this majority has largely been constituted by, say, one or two individuals, is not the same as when the 80% is derived from various different individuals. So this point must be highlighted to the Strata Titles Board and they have to be mindful of it. So my point is that it must be specifically brought to the attention of the Strata Titles Board so that they would be mindful of it when they are making their order.

257. So you are of the view that as long as the Strata Titles Board is mindful of the circumstances under which one shareholder constitutes a majority it will be sufficient to protect the minority interest? - *(Dr Alice Christudason)* I am just raising the concern that this majority may be constituted by one person. My feeling is that if it is brought to the attention of the Strata Titles Board, I would assume that the Board would bear this in mind before they make an order.

Mr Low Thia Khiang (cont.)

258. If that is your concern, you are not looking into whether there is any mechanism to strengthen the Bill before Parliament in order to better protect the interest of the minority under the circumstances? - *(Dr Alice Christudason)* It is just one of the matters which should be specifically incorporated in the Act.

Mr Shriniwas Rai

259. I have just one more question. There has been some suggestion that the dispute should go to the High Court. You have made various suggestions on the strata titles. Are you happy with the present provision as the Bill stands? - *(Dr Alice Christudason)* As to the circumstances where you can go to the High Court?

260. No, approval where there is an en-bloc sale. Which would you prefer, the existing provision of the Bill or you would prefer it to be amended so that the matter could be sent to the High Court for approval? - *(Ms Anne Magdaline Netto)* The proposal is fine because you are actually setting up a specialist Board which will hear particular types of disputes.

Mr Shriniwas Rai] Thank you.

Chairman

261. If there are no further questions, allow me to thank all of you for coming here this afternoon to assist us. In a few days' time, we will be sending you a transcript of the discussions. Can I ask you to go through it and return it to us, with amendments, if there are any. In the meanwhile, please do not publish the evidence you have given to us until the Select Committee has submitted its Report to Parliament. Thank you very much? - *(Witnesses)* Thank you.

(The witnesses withdrew.)

Paper No. 40 - The following representatives from the Singapore Institute of Surveyors and Valuers 17th Council, 20 Maxwell Road, #1009B. Maxwell House, Singapore 069113, were examined:

Assoc. Prof. Lim Lan Yuan, President.

Dr Amy Khor, Vice-President.

Mr Tay Kah Poh, Hon. Treasurer

Mr Lim Gnee Kiang, Member.

Chairman

262. Good afternoon, please be seated. For the record, could you please state your names, addresses and designations in your organisation? - *(Assoc. Prof. Lim Lan Yuan)* I am Lim Lan Yuan, President of the Singapore Institute of Surveyors and Valuers. My home address is 522 East Coast Road, #09-01. Ocean Park, Singapore 458966. *(Dr Amy Khor)* I am Amy Khor. I am the Chairman of the Valuation and General Practice Division, Singapore Institute of Surveyors and Valuers. My home address is 27 Hillview Avenue, #08-09, Singapore 669559. *(Mr Tay Kah Poh)* My name is Tay Kah Poh, Treasurer of the Singapore Institute of Surveyors and Valuers. My home address is 1 Din Pang Avenue, Singapore 589510. *(Mr Lim Gnee Kiang)* I am Lim Gnee Kiang. I am a member of the Singapore Institute of Surveyors and Valuers. Currently, I am the Director of Investments, Colliers Jardine, a real estate consultancy firm. My address is 151G, King's Road, #16-25, Singapore 268163.

Chairman] Thank you for your submission to the Select Committee on the Land Titles (Strata) (Amendment) Bill. We have invited you here this afternoon to clarify certain points. Would you like to start, Prof. Ho?

Assoc. Prof. Ho Peng Kee

263. Thank you, Mr Chairman. For the benefit of Members, can you just briefly describe your Institute, who are your members and what do you all do, especially with regard to this matter of en-bloc sale, what is your expertise? - *(Assoc. Prof. Lim Lan Yuan)* The Institute comprises three main divisions: Quantity Surveying, Land Surveying and the Valuation and General Practice Division. This particular Bill actually affects the Valuation and General Practice Division. The members in that Division comprise valuers and property managers, including property consultants. A number of our members are involved in en-bloc sales, either in terms of advising clients in the procedures or in management corporations.

264. May I refer you to your submission? At paragraph 3, you have made a suggestion that a better approach to take, which the Bill in fact adopts, is for there to be a sale and purchase agreement

Assoc. Prof. Ho Peng Kee (cont.)

to be already drawn up, the parties have agreed on the terms and conditions and then put before the Board, because you say that this will be helpful in reducing spurious applications. This is in fact the approach the Bill suggests. Can you just elaborate a bit on this? Because one or two other representors have in fact argued otherwise. They say, take the in-principle approach. But you have taken this other approach, which is quite interesting from our point of view. Can you just explain your reasons? - *(Mr Tay Kah Poh)* One of the reasons why we think it is better to have the agreement signed, in other words, the application to the Board to be contingent upon the conditional agreement is because it gives the Strata Titles Board a certain degree of certainty in dealing with the case. Take the opposite instance where there is no conditional sale and purchase agreement and the majority who were trying to sell the property goes to the Board with nothing but an outline application from URA and there is no confirmed contract or any offer to purchase the en-bloc property or any price whatsoever. I think the Board members might find it very difficult to adjudicate or mediate in a case like this because they would not be able to assess whether or not the minority interests have been properly addressed since there is absolutely no offer. The fear we have is that although this might be remote, there could be collusion among the majority members who are trying to force through a collective sale and they actually put together this application. But like I say, there is no offer and it could prejudice the rights of the minority.

265. So your point is that it will lend itself to greater certainty if all the terms have been agreed upon? - *(Mr Tay Kah Poh)* Yes.

266. The Board will have before it an agreement. Then it will exercise what its main function will be, ie, to make sure that the transaction is at arm's length, bona fide and there is no collusion between the parties? - *(Mr Tay Kah Poh)* Yes.

267. How do you respond to a critic, let us say, with this approach, which is that the purchaser should not be in the process from the beginning, which is a point made by another representor? That if the purchaser is in, in other words, the purchaser is found already and the identity is known and the majority discusses the terms with the purchaser, that may lend some credence to suspicions of the minority that there is some collusion. Do you think that is a really valid fear? - *(Mr Tay Kah Poh)* Perhaps my colleagues could add to that. But from my point of view, the process that normally takes place in practice is a tender. The whole process actually revolves around a collective agreement being signed by all the parties. After that they go to the market to find a buyer. This is normally via a process of tender or auction. I would say that the identity of the purchaser is already known, and I do not see that in any way as being prejudicial to either of the parties. I personally do not see the majority being disadvantaged in any way. I think, in fact, the opposite is true. If the offer is made from the beginning, the minority actually will also be in a position to know exactly where they stand, because the price is already known, so

that they themselves can assess whether they would like to sell away the property within the period that the order is valid, which is the subject of another matter that we have raised in our submission. So I personally do not think that is a real problem.

268. So your point is that the process should be transparent, the parties are above board. Ultimately, of course, the Board is there. Should there be objections, the minority can lodge their objection and the Board can look at the whole transaction? - *(Mr Tay Kah Poh)* Yes.

269. Thank you. Another point, before I ask other colleagues if they have other points, is about payment of compensation to tenants. I think you have made, in your paper, a submission concerning a tenant who has to leave, because the Bill provides that there will be automatic termination of the tenancy. This would not affect all the owners. But let us consider this scenario where a minority owner says, "Oh, I have got a difficult tenant who does not want to go, unless I pay him that amount of money." You argue that the Board should be involved in trying to settle this dispute, and even decide on the quantum of compensation. Would it not drag out the process too much and unnecessarily complicate the process? Because here you are deciding a private matter between the owner and the tenant. Would that be the best approach, given the fact that we want the process to go on quickly, so that the transaction is not hanging in the air for too long, which is the point you made, ie, certainty? Otherwise, the parties have come to an agreement, the terms are there, and if the process is held up, because of one or two minority owners with a peculiar situation, that will not really facilitate en-bloc sale, which is the prime objective of this Bill? - *(Assoc Prof Lim Lan Yuan)* I think the reason why we have put in that, is that the date of giving vacant possession for the en-bloc sale is one of the factors that could affect the delay of the whole transaction, and sometimes because there is an existing tenant staying there and is reluctant to move. So what we are saying is, in the course of discussion, even through mediation, if finally we cannot make that decision, the Board should be empowered to arbitrate on the amount to be compensated.

270. In your experience, do you think a situation like that where despite good faith negotiations, despite majority parties on the ground coming in to say, "Look, okay, you have got a difficult tenant, maybe we can chip in.", that the situation is really so recurrent, or is it really more exceptional? - *(Mr Lim Gnee Kiang)* I have been involved in some of the collective sales, and my view is that a collective sale normally induces a windfall profit to the individual owner, and if you wait until the collective sale price is fixed, and then leave the landlord and tenant to settle the compensation, we are very afraid that there will be unfair leverage on the part of the tenants in the form of blackmail for very unreasonable sums from the successful collective sale owners. So we think that, since the Board is in a position to make a decision to facilitate collective sale to go through by

Mr Lim Gnee Kiang (cont.)

allowing existing tenancies to be terminated, we should not leave the matter of compensation unsettled. I think the Board is in a good position to assist on the last hurdle of the sale process.

271. Would the Board be in a position to decide on what is fair compensation? Should it be doing it? - *(Assoc Prof Lim Lan Yuan)* I think in the proposed amendment, the Board is given the power to arbitrate, and to decide eventually, even including the sale price, the method of distribution. The determination of compensation for termination for the leases is part of this whole process. So the Board, I think, would be in a position to determine that.

272. Of course, the basic question will be whether the Board should, in fact, be doing it. Because, as I said just now, it is a unique situation of perhaps one or two minority owners. There are also other unique situations of minority owners who may say, "I want more money, because I have just renovated my apartment." Or, "I have bought it more recently. Therefore, I should be paid higher amount from the proceeds." So if you look at it from this approach where, yes, it is a unique situation where you have got a tenant, which you cannot settle on your own, the approach taken, of course, is that this situation should be settled by the parties involved. Ultimately, the Board will just look at it, arm's length transaction, bona fide, and, perhaps the possibility of a person put to financial loss. I made this point in my speech in Parliament. Certain exceptional cases, for example, a person can justify that he will make a financial loss if the en-bloc sale is to go ahead. This, in fact, could be a special situation where if the tenant says, "Pay me this amount. Otherwise, I won't move.", and this results in the owner incurring a loss. Then, maybe, that is a special situation where the Board can have some role. But, in the main, if it is just a dispute, without this triggering point of there being a financial loss, it may complicate the matter for the Board to be involved in this private matter? - *(Mr Tay Kah Poh)* Sir, may I make a point? It just came to mind. If this is passed as law, I would imagine a situation in all future tenancy agreements to include a clause to say that between the landlord and the tenant, a provision could be set into the tenancy agreement that allows an en-bloc sale situation to extinguish the tenancy, in which your concern actually is related. But the problem, as you said, probably would not arise, because it is already taken care of in the contractual arrangement between the landlord and the tenant.

273. That is a good point. A lot depends on how the Board functions and how the law works out. I am sure people on the ground will adapt. And some of these concerns may not be that real, in due course? - *(Dr Amy Khor)* Sir, may I add on just one more point. The reason why we submitted this suggestion is also because the Board is actually given quite wide powers to administer this amendment to the Act. Like you say, because we felt that there should be more certainty, we are in agreement to that, by allowing the Board to enter into the process of arbitrating in cases where

there are genuine disputes between tenants and landlords, and this may be holding up the en-bloc sale. Instead of lengthening the process, it will probably help in the process, in expediting the en-bloc sale.

Prof. Jayakumar

274. Just to clarify what Dr Amy Khor mentioned. I think we have to be clear that our intention is to give the role to the Strata Titles Board in many of these kinds of issues, ie, mediation. Because "arbitrate" suggests that they look at both sides and then make a decision. I think the correct term to be used is "mediation"? - *(Dr Amy Khor)* Sir, I agree that rightly it should be mediation and not arbitration.

Mr Shriniwas Rai

275. May I refer you to paragraph 5 of your paper - Representation before the Strata Titles Board. You have made an interesting proposition. May I read the section, "In disputes regarding building defects, for instance, the Managing Agent or an appointed professional, and not necessarily a solicitor, would, in many instances, be more appropriate to represent the applicant before the Board, as the former is more technically conversant with the problems involved." I think you will be aware that in the Board there are people with technical background. Do you not think that we are going to set a new precedent where non-lawyers are going to make representations to this body? Your suggestion is that, besides lawyers, others should also be given a right to represent. Could I have the rationale for this representation? - *(Assoc. Prof. Lim Lan Yuan)* Let me try to answer this. The present provision allows a lawyer, representing the management corporation and also council members of MC, to represent the MC before a Board. What we are suggesting is that we should incorporate the managing agent. We should put in there, that the managing agent of a management corporation could also represent the management corporation before a Board. Because, in most cases, managing agents are the ones that manage the property and they are very familiar with the operation of the building. But right now, under the existing provision, they are not allowed to. But this proposed amendment has allowed that.

276. I get your point? - *(Assoc Prof Lim Lan Yuan)* But it has not specifically mentioned managing agents.

277. So you want it to be specifically mentioned? - *(Assoc Prof Lin? Lan Yuan)* We will suggest that perhaps it could be mentioned. Of course, the provision allows for any other members that the Board allows.

Mr Shriniwas Rai] Thank you.

Dr Teo Ho Pin

278. Mr Chairman, one clarification. Based on the submission, may I just know how many members are there in the Institute? Based on the tone and the substance of this submission, it seems that the members or the Institute are supportive of the amendment Bill. Am I right to say that? What is the process

Dr Teo Ho Pin (cont.)

which you all have gone through? Because when I looked at the committee, it is quite a big committee. Is it quite an extensive feedback from the members before you come out with this representation? - *(Mr Tay Kah Poh)* Sir, as Prof. Lim mentioned at the beginning, the Institute represents a large number of agents in the market who are involved in the collective sale process. The process in which we had gathered the feedback was - I would not use the word - "extensive", but we had formed a small committee to actually look at the details of the Bill. We had some discussions. We had meetings to toss around certain ideas and responses to it. Subsequently, we actually showed our draft to other members. For instance, in my case, I showed it to one of my colleagues in Knight Frank, who is very extensively involved in collective sales, and we had got his feedback. We had not fully agreed to everything which he had said in the beginning, but we had tried to moderate the views. As you would have imagined, there would be a lot of views from the ground, from our members, over these things. So we tried to incorporate that, and be as fair as we could. But I do not think it would be right for me to say that it is very extensive. We have consulted the members.

Mr Chng Hee Kok

279. Coming back to paragraph 2 of your representation on the question of order given by the Strata Titles Board, if the sale falls through, what sort of scenario do you envisage that this is onerous or not fair to the minority owners? - *(Dr Amy Khor)* This refers to the suggestion of putting an expiry date for an order made under section 84. I think our idea is that there must be some finality to this whole process, particularly when you have minority owners who are, in the first place, against the en-bloc sale, and should an order be made, and this holds on indefinitely, it may not be fair to the minority owners, particularly, if in the meantime, the market moves to their detriment. The other thing for proposing the expiry date is because we are in agreement that it would be better to have a conditional sale and purchase agreement attached to the application for an order for sale. We also envisage a situation where the developers would not be for the idea of having to be involved in a conditional sale and purchase agreement for an indefinite time, if there is no finality, and there is no termination or expiry date to this order. They will have to enter into a conditional sale and purchase agreement and wait for months, not knowing if they would finally be able to get the land.

Mr Chng Hee Kok] Should the sale fall through, I think all owners would be equally affected, is it not? Even the minorities today would be affected.

Assoc. Prof Ho Peng Kee

280. I think your point relates to the speed with which the Board would come to its decision. That also depends on the cooperation of the parties. But if the parties cooperate, the Board, I am sure, will try to be as expedient as possible so that the transaction is not dragged

through, especially because there is a conditional sale and purchase agreement. That is the first point. The second point is that, like what Mr Tay said, over time in practice, when the parties look at how the Board works, would it not also be the case that perhaps even in the conditional sale and purchase agreement, they will insert terms, should this drag on, providing for the rights and liabilities of the parties so that, in reality, on the ground it will be in accordance with the terms of the contract? - *(Mr Tay Kah Poh)* Sir, it is true. Once it is passed as law, obviously the developers themselves will also have to adjust to the situation. I could imagine, for instance, that they could actually in the conditional sale and purchase agreement put a shelf life to it. In other words, after three months, if the Board does not make a decision in their favour, then the deal is off. What we are saying is that notwithstanding that, we thought it would be helpful to the parties concerned that the order itself has a life. First of all, the Board, where possible, should be given a certain timeframe to make a decision. Obviously, we know that the Board would take every effort to make the judgement and decisions expeditiously. But that is not stated here in the Act. Secondly, of course, the order itself, we are suggesting that if we could have a lifespan, it could also give some degree of certainty. We note that the amendment allows the order to actually bind assignees, successors in title, mortgagees and anyone with an interest. We are not certain whether to interpret as being an order that is, so to speak, everlasting. We are concerned that it may be better in the interest of the parties concerned to actually put a shelf life to it. Obviously, this would mean that, eventually, if the sale falls through and if a subsequent generation of residents in that estate, they want to do another collective sale, they have to go through the whole process again. But we think that this may actually protect the minority rights better than if that order were to have basically no time limit or no finality to it.

280A. Thank you. In fact, there is a general provision in the Act that says that the Board must decide within six months, although not particularly only for en-bloc sale. There is an existing provision. But I am sure the Board would try to decide before then. Of course, your suggestion has pros and cons because if you have a shelf life, even if there are good reasons why a decision has not yet been reached, you are saying that the contract will lapse. So that may in fact also inject some difficulties nearer the expiry time. Of course, you can say that the parties can agree again, but then some may be difficult at that point in time? - *(Mr Tay Kah Poh)* Yes.

Prof. Jayakumar

281. Mr Chairman, before the representors take their leave, can I seek clarification? You made useful points in your representation on certain selected issues. Of course, there are many other issues in the Bill in which other representors have addressed their concerns. The fact that you have not touched on the other issues, does it mean that you have not considered those issues and therefore have no views, or does it mean

Prof. Jayakumar (cont.)

you generally accept the Bill on other issues? For example, majority consent, 10 years and below, 90%; 10 years and above, 80%. There are many other issues which we have to consider. What I want to know is whether we can take it that you are unable to consider that or you have considered it and you do not feel that you have strong objections to those provisions? - *(Assoc. Prof. Lim Lan Yuan)* In fact, we have actually looked through the various provisions. What we could say is that we are in general agreement with the main thrust of the proposal. In other words, we have no qualms over the majority rule like 80% or 90%. That is the main thrust of the proposal. There is a small suggestion whether those developments less than 10 units should also fall within this category.

282. Can we have your views on that? - *(Assoc. Prof. Lim Lan Yuan)* We have experienced cases where there are en-bloc sales involving only six units. With this proposed amendment, that en-bloc sale will be off unless you get the majority view. In respect of that, we are suggesting that maybe for those less than 10 units, as long as not more than one person objects - because it is very difficult to quantify the percentage - perhaps that could fall within this provision. On the other issue about the role of the Strata Titles Board, we have also considered. In fact, we would endorse and support that the Strata Titles Board may be a good forum to discuss these matters, particularly, as it comprises three members, one lawyer and two other senior professionals in the construction and real estate field, and also the provision of mediation. We thought that this is very useful because it would allow the Board to discuss in more detail with the objecting parties what are their concerns and also to be able to work out something that is workable with the parties. We will say that, in general, we are in favour of the main thrust of the proposal.

283. Thank you. Indeed, on developments with 10 units and below, some others have urged on us to review that. We will take it under consideration. Thank you? - *(Dr Amy Khor)* Sir, I would like to put on record that we actually had quite an extensive debate among our small committee regarding the 10-year period. Many reservations had been put up about the 10-year period. But we felt that we are in agreement with this 10-year period given the understanding that the objective of the Bill is to maximise the use of scarce land resources. We feel that, after all, it would be market forces and conditions that would dictate if an en-bloc sale is economically viable and therefore convince the majority owners to sell. The developers would also not embark on such an acquisition if it is not feasible for them and they are not able to develop to a higher use. And I think demolishing buildings that are 10 years old or less may not necessarily be a waste of national resources because if the land is put to better or higher use, it is actually maximising the economic potential of the land.

Prof. Jayakumar) Thank you very much.

Chairman

284. If there are no further questions, let me thank all of you for coming here today to assist us. We will be sending you a transcript of the proceedings in a few days' time. Can I ask you to look through it and return it to us, with amendments, if there are any? I would like to remind you not to publish the evidence you have submitted until the Select Committee has presented its Report to Parliament. Thank you very much? - *(Assoc. Prof. Lim Lan Yuan)* Thank you, Sir.

(The witnesses withdrew.)

Paper No. 39 - The following representatives from The Law Society of Singapore, 1 Colombo Court #08-29/30, Singapore 179129, were examined:

Mr Derrick Wong Ong Eu, Council Member.

Ms Sylvia Khoo Mei Ling, Council Member.

Mr R. Chandra Mohan, Member.

Chairman

285. Good afternoon. Please be seated. For the record, could you please state your names, addresses and the positions you hold in the organisation you represent? - *(Mr Derrick Wong Ong Eu)* Good afternoon, Sir. My name is Derrick Wong. I am from the Law Society of Singapore. I am the Vice President. My address is 15, Lilac Walk, Singapore 808148. *(Ms Sylvia Khoo Mei Ling)* My name is Sylvia Khoo. I am a Council Member of the Law Society. My address is 2 Ridgewood Close #11-01, Singapore. *(Mr R. Chandra Mohan)* My name is R. Chandra Mohan. I am a practising lawyer. My address is 36A, Dunearn Road #03-01, Singapore 309426.

Chairman] Thank you very much for your submission to the Select Committee on the Land Titles (Strata) (Amendment) Bill. We have invited you here this afternoon in order to assist us and to clarify certain points you have made. Prof. Jayakumar, do you want to start?

Prof. Jayakumar

286. First, I would like to thank you for your representation. Some of your proposals touch on specific details of the Bill and some touch on the broad principles which go to the very basis of the Bill because the Select Committee, as you may be aware under the Standing Orders, does not replicate the debate in the Second Reading and go over all the main principles, but rather we look at the details. This is not to say that your main arguments are without any merit, but we tend to concentrate more on the details. Secondly, you have made many points but we may not, because of pressure of time, be able to deal with every one of the issues. But I can assure you that we will look at the points that you have raised. Could I ask if the three of you and others who were involved in your committee or group discussion which resulted in this memorandum, have had individual experience in en-bloc sales or proposed en-bloc sales - I believe you must be practising conveyancers - without divulging the parties for which you acted? - *(Mr Chandra Mohan)* Sir, I acted for one of the parties in a proposed en-bloc sale. I was acting for one of the residents who was against the sale. *(Mr Derrick Wong)* Sir, I do not have any experience in any en-bloc sale application. *(Ms Sylvia Khoo)* In my practice, I have not acted in en-bloc sales. But I am personally in a management corporation of a condominium and

this issue has arisen. So in that sense, I have been involved.

287. I asked the question not in any way to question your credentials! I just want to know if you have any back ground, and as we would then be interested in some of your experiences. First, we should not get into a big debate on the question of the basic principle behind the Bill. The basic principle behind the Bill has been stated in Parliament, that is, the present legal regime is very difficult to enable en-bloc sales. We can keep the present regime. But we have decided, for the reasons which were stated in Parliament, to change the law and move from the regime to facilitate it. If we are going to do that, then the question is one of balance: how do we balance the rights of the majority and the minority because once we move from 100%, then it is a question of majority and minority. When you mentioned in your memorandum that you are concerned that the proposed en-bloc sale would severely undermine the sanctity of home ownership in Singapore - you are lawyers and some of us are - would you agree with me that when we talk about the right to property that right of course encompasses the right to hold property but at the same time also inherent in the right to property is the right to freely alienate property? Would you agree with that? - *(Mr Chandra Mohan)* Yes, Sir.

288. From that, my second question is: would you not agree that there is a fundamental distinction between landed property and rights to property in a strata development in the sense that, in a strata development, a subsidiary proprietor can identify the particular flat, which is the airspace, as his. But in respect of land, it is owned by all subsidiary proprietors in common. Would you agree with that? - *(Mr Chandra Mohan)* Yes.

288A. So coming back to the first point I made. instead of approaching it from the point of view of undermining property rights of home ownership, would it not be a better way to say that it is really a question of balance between the right of one group, those who would like to hold on to the property, and an equally legitimate right of another group who wants to exercise its rights to alienate property? It is a question of balance. Can I put it to you that that would be a better way of approaching it? It is a question of balancing two components of the right to property? - *(Mr Chandra Mohan)* I think the paper actually does accept that. It goes on to argue that, essentially, if there are legitimate reasons as to why the majority wish to alienate the property, then a balance must be struck. I think it is a question of balancing as opposed to saying, yes or no, one way or the other.

289. If it is a question of balancing, we cannot conclude that the approach in the Bill per se is an undermining of right to property or right of home ownership. I want to ask whether you would agree with that? - *(Mr Derrick Wong)* I would agree with that.

290. It really is not a question of undermining the right to property, but striking the right balance. I would proceed to the second and different point. I want to understand your concerns or your points about the mediation, because the way the Bill has been crafted is that

Prof. Jayakumar (cont.)

we anticipate that many of the objections which may be made would be of a diverse nature, a mixture of emotional, non-emotional, monetary and so, on. Our approach in the Bill is that these objections are better to be resolved by the Strata Titles Board, rather than to load it on to the courts. If it is the Strata Titles Board, rather than the Board makes rulings on these issues, it should try to resolve these issues by mediation amongst the parties. I take it that you are not against the concept of mediation, but you have argued that the approach to mediation should be different from what is in the Bill. Can you elaborate? - *(Mr Derrick Wong)* The approach that we take should be that there should be a two-stage process. One that inherently allows mediation to take place instead of adjudication. Assuming the parties are somewhat close but cannot come to some sort of balance, as you say, then, of course mediation can cone in. I think what is important here is that in the mediation process, the people that hear this and try to mediate between the two parties, the two parties are then free to express even their closest sentiments close to the heart as to why they would want to object. Perhaps at this particular stage where personal sentiments are actually advocated, then both parties should look at it as a free exchange, rather than trying to fight their case before the Strata Titles Board. If that stage cannot be concluded satisfactorily, of course, we go to the next stage which is the actual adjudication. We would advocate the separation of the persons who hear the adjudication process from that of the mediation process, so that personal sentiments said during the mediation stage are not really taken into account. That is the point that we would like to make.

291. We may have to look again at the Bill, because inherent in your submission, is your assumption that there is a parallel between what the Strata Titles Board would do and similar processes in the court. The intention is really that the Strata Titles Board's main focus is to ensure that the process is transparent. There is no collusion, conflict of interest and so on. We may want to provide that the factors that the Strata Titles Board will consider, such as the financial aspects, will be provided in the Bill. But the problem is with the host of non-pecuniary objections, such as somebody's sentimental attachment to the flat; he has been living there ever since a child or it is a good location; or it might be, as somebody told us, *"feng shui",* and so on and so forth. We do not expect the Board actually to go through the process of mediation and then formally adjudicate on every such case. How is the Strata Titles Board going to adjudicate on this? This is not susceptible to adjudication. From that point of view, they would do their best to resolve it but we will leave it to the parties really to conic to an agreement on these matters. They should try to resolve it. In that sense, having clarified it in that way, then may I put it to you that there is no serious logical or legal objection to that kind of mediation being followed up by the Strata Titles Board and pronouncing a decision within the parameters of the Act. I can see the point that you have raised, if you put it in exactly the same footing as the courts. But having clarified in this way, would you be more sanguine about it now? -

(Mr Derrick Wong) May I just clarify? Is it going to be the same forum in which the mediation process and the adjudication process take place? In other words, would there be perhaps, as what is in the courts, a different forum for mediation, but still within the Strata Titles Boards and a different set of persons hearing it or mediating it to different adjudicators?

292. We would have an informal arrangement where it could be the same panel which decides it. The mediation role will be as informal as possible, because we still want to have the parties to resolve the matter. The Board is going to facilitate, offer its good services and try to resolve it. But, it is unlikely, the way we envisage it, that those non-pecuniary and emotional matters would be adjudicated upon by the Board itself. The Board would look into the other things which are found in the Bill. Naturally, we may have to make the provisions a bit clearer? - *(Mr Derrick Wong)* That was actually our main concern, that, at the end of the day, there should be a neutral party who hears both sides' points of view fairly, when it comes to the adjudication process. We are all in favour of the mediation process. In fact, both parties should go for mediation first and try to strike a balance.

Assoc. Prof. Ho Peng Kee

293. You have suggested in your paper a wider role for the Board and you say that every application should, in fact, be vetted by the Board to assess whether there are merits to the application. Am I right? - *(Mr Derrick Wong)* Yes.

294. Would this suggestion be influenced by what you have discussed and brought up just now in your interaction between yourself and the Minister in your understanding of what the Strata Titles Board does, because you have used the words "mediation" and "adjudication" as though it were like a court process. But in reality, the ambit and intention of the Bill, as explained in Parliament, is to facilitate en-bloc sale. And the essential function of the Board is to ensure that the transaction is a bona fide one, at arms-length and that there is no collusion. And given the wide diversity of minority concerns - I think Mr Mohan has represented parties - some of these concerns are not really susceptible to adjudication. We can try to settle but, ultimately, if the Board is satisfied that the transaction is bona fide, at arm's length, no collusion, and, as I mentioned in the Second Reading speech, perhaps there is an exceptional circumstance, which is that nobody is at a financial loss, then the transaction will go ahead. Would you still argue for the Board to look at every application? - *(Mr Chandra Mohan)* When we first looked at the Bill, that did not come up, because some of the phrases used, looking at the circumstances of each case, the scheme and the intent of the Bill, T think that mirrors the existing section 78 of the Land Titles (Strata) Act, where the additional phrase used is "just and equitable". We thought it is a situation where you have the Board who is going to sit down, look at everything and function like a court and decide even if someone has got purely personal reasons that they may nevertheless not allow the application. But from what has been told to us, if you settle certain basic criteria which

Mr Chandra Mohan (cont.)

are satisfied, eg, no collusion and no conflict of interests, and if those conditions are satisfied, you will allow an en-bloc sale, so long as there is no financial prejudice to any one of the minority persons. 1 think that should be made clear. Because then, it almost defeats the purpose of making an application by the minority for personal reasons. You might as well just have a mediation process and stop there. If it is resolved, fine. If it does not, then there will be an en-bloc sale. We were coming from a different angle. Because we really thought that you are having a Board which is performing a quasi-judicial function. From your explanation, it is quite clear that that is not the case now.

Prof. Jayakumar

295. We may have to look at the drafting of that provision. While you are on this point, the approach in the Bill is that the Board will be seized of the matter if an objection has been made. From what I have read in your submission, I take it that you would prefer that the Board should even look at the basic elements of at arms' length and so on, even if there were no objections, would you be happier if we wrote into the Bill provisions for the Board to nevertheless look at these narrower issues whether or not there is an objection? - *(Mr Chandra Mohan)* That would be preferable, simply because then you would have a decision of the Board which has viewed the application, taken a stand and made a direction or ruling, "We have looked at the application. We are satisfied and we order the sale."

Prof. Jayakumar] We will take that into consideration.

Assoc. Prof. Ho Peng Kee

296. Another concern you reflected in your submission - rightly so, as lawyers - is a need for proper procedures, notice to the parties, etc. Of course, there are different ways in which notice and other procedural requirements can be effected. One way is through subsidiary legislation, which is a possibility. But you have argued for a clearer setting out of these procedures. Would you be happier if, say, some of these procedures are set out in a Schedule to the Bill, so that everybody knows what has to be done? - *(Mr Derrick Wong)* We would be happy to see that because that is one of our concerns. If there should be procedures, we would be happy to see that enshrined within the regulations.

297. We can consider that because certainly we want parties to know what is in store for them and to ensure that everybody is seized of in the matter, particularly minority owners, so that nobody can complain he did not know that an en-bloc sale is in the offing. Another matter which you have done quite well is to suggest the redrafting of certain sections. You have said that certain sections are not so well worded. You have offered some suggestions and suggested redrafting which I will ask my officials to look at. One other matter,

before my other colleagues ask you questions, is this point about compensation for minority owners with tenants. You all feel that the Strata Titles Board should be involved in determining the quantum of compensation? - *(Ms Sylvia Khoo Mei Ling)* I suppose you could look at it from the point of view of financial loss. In a situation where there is a minority who objects on the basis that he has a tenant in the premises and he may well get sued by the tenant if there is a break in the tenancy by reason of the en-bloc sale, the issue of compensation should be one that perhaps the Board, in the course of the mediation process, would have to look at in the light of the financial loss suffered by that party, because that may well affect his position. We are looking at it from that light.

298. You are aware that the Bill provides for the termination of the tenancy agreement, so that in so far as the minority owner's liability is concerned, he will be covered by the Bill. It will be by operation of law? - *(Mr Chandra Mohan)* I was a bit surprised, because it provides for termination by way of operation of law but, nevertheless, gives right to a compensation to the tenant. I would have thought that it is a frustrating element. I do not know. I suppose it is a question that you have made a specific provision for a tenant's right to compensation. But if it is a question of operation of law, then I think it has to be taken into account in identifying the financial prejudice suffered by the minority.

299. On this point about financial prejudice, not so much that the owner may have to pay his tenant some compensation, which he probably will have to either contractually or by agreement, over time, it could well be the case that lawyers and parties, seeing how the en-bloc sale provisions work out, may put provisions into the tenancy agreement covering en-bloc sales. I take it that your real concern is on the question of financial prejudice or financial loss arising as a result of having to pay a tenant compensation. That is your main concern? - *(Mr Chandra Mohan)* Yes.

Mr Shriniwas Rai

300. Mr Chairman, before I ask Mr Derrick Wong a question, as a member of the Law Society, I am glad that the Law Society has made a very valuable representation. Could I turn to page 6, paragraph D5, last line? It says, "It is reiterated that the Board must be given the power to impose conditions to their approval to the transaction proposed." Could you elaborate on why you wish to have this, Mr Wong? - *(Mr Derrick Wong)* What we meant to say is that it appears that, from the reading of the Bill, either you allow the application or you refuse the application. And it would appear to us that it is just a one-line order made. But I think there could be circumstances where the Board may make further directions and orders. If we have read the Bill wrongly and it is not the main intention of the Bill, of course, we will be happy and accept that the Board should be able to make further directions and orders. *(Ms Sylvia Khoo Mei Ling)* May I elaborate on this aspect? There are two aspects to this

Ms Sylvia Khoo Mei Ling (cont.)

scenario. First, you have the contract between the interested purchaser and the majority subsidiary proprietors who are the applicants. That is one contract. That is for the purchase of all the units. The other aspect is the intra-party arrangement between the subsidiary proprietors with respect to the distribution of the sale proceeds. The purchaser may not be particularly concerned with how the proceeds are to be distributed or in what manner the subsidiary proprietors settle among themselves. But this application to the Board is with respect to the second part of it, not so much the contract for the sale. If you look at the provision in new section 84A(1), it reads, "... a sale and purchase agreement which specifies the proposed method of distributing the sale proceeds ...". The sale agreement may or may not necessarily include the method of distribution of the sale proceeds to the subsidiary proprietors. But if it is a requirement of the application that both must be put in, then the application is a two-fold one. If you approve the application to sell, that is the sale and purchase agreement. If you approve the application, do you also have to approve the mode of distribution? Or can the court vary the mode of distribution in a manner which is acceptable or fairer to the subsidiary proprietors? So if you look at it as sale and purchase plus distribution, you approve it or you disapprove it, then there is a problem there. There may be nothing wrong with the sale and purchase agreement itself. But on the method of distribution, this is where the subsidiary proprietors have problems. It is in the latter aspect that the Board must have the power to look at the method of distribution and how the parties' interests can be better settled amongst themselves.

301. One more question, Sir. There has been a proposal that en-bloc sale approval and distribution cases go to High Court. The Select Committee would be interested to know what is the position of the Law Society on this? - *(Mr Chandra Mohan)* I think the Law Society did not take a stand on this.

302. As members of the Bar, what would be your stand? - *(Mr Chandra Mohan)* I have looked at section 78. Section 78 is a provision which also allows for termination, albeit meant for different purposes. It requires a court application. And even after the court application and there is termination of the strata sub-division, the owners still end up having the interest in the land as tenants in common. Even then the court cannot take away their right to the property. Personally, I would be more comfortable with the High Court of Singapore making an order. But I now take it, after hearing Prof. Jayakumar, that, effectively, the Strata Titles Board is not performing any judicial function at all. It is really administrative in nature. It has become fairly administrative. There is only a certain checklist that they will be looking at. And if they are satisfied, eg, no collusion, no conflict of interest and there is no financial prejudice suffered by any of the parties, they are going to say yes, automatically, in every instance. If that is the way to go, then I do not think you need the High Court to hear these cases. But when I came here

thinking that the Strata Board has a judicial role to play by balancing different interests because they look at the circumstances of the case, look at the scheme and intent of the Act, I thought that would have been better done by the High Court rather than the Strata Titles Board.

Mr Low Thia Khiang

303. I have some clarifications and opinions to seek from all of you. While we recognise the right to property, including the right to own and sell property, the amendment Bill seems to tilt towards the right to sell property, not only the right to sell property but it also seems to be extending the right to force others to sell their property through en-bloc sale. I would like to know, given the circumstances of extending the right, and we are talking of balance, what would be the implications in terms of the owner ship right of property? What is your view on that? - *(Mr Derrick Wong)* Speaking for myself - I cannot speak for the Law Society in this case - I think we somehow go back to our years of learning and talking about property law, and we always say that property law and property rights are, shall we say, very private, very important, to use common words, and cannot be simply taken away from us easily. Of course, if the Bill is such that it appears to give more weightage of power to the majority, then the instinctive natural reaction *of* one who is a minority would say, "Why is that so?" After all, we go back many, many years ago to the sanctity *of* property rights. As private individuals, I would say that so long as my rights are guarded, so long as I have a right to be heard and at least to put up views, at the end of the day, if all these are guarded and sanctified, then I would say okay, let it be judged on the balance of rights and between the majority and the minority. *(Mr Chandra Mohan)* I do accept the view point that there must be a distinction between landed property and where you essentially have something in the sky, and with common property owned by a management corporation which comprises all the individual owners. Clearly, something like this can never be done in the case of landed property. But for strata title, I think it is essentially a question of policy. Where do you draw the line where you think that you have enough people who should be able to say, "Look, let's do it."

304. It is true that the difference between landed property and condominium or strata title property is that the owner of a strata title property does not own the land as well. But in the case of en-bloc sale, although the sale is basically the land, it also involves requiring the owner to sell the unit, which is the property he bought and is freehold. Would you enlighten me as to how you distinguish between ownership of a landed freehold property and a strata title property, except that the land is not attached to the property, in that sense? - *(Mr Chandra Mohan)* If I were to buy a private property, a terrace house or even a bungalow, I know what land is mine and I know that what stands on that land is mine. If I buy a condominium, I come in knowing that I am coming in to live in a place where there are many other people. All I have is an apartment in the sky and that I know that my neighbours and

Mr Chandra Mohan (cont.)

residents or the management corporation, which effectively owns all the common property, exist and that I cannot stay in isolation, because I am going in, knowing from day one, that there are many other people who are going to be part of that particular development. And there are many matters that will affect the development where I cannot insist on what I want to be done all the time. I come in with my eyes open, knowing that it is not an absolute right that I can do whatever I want in this property in the sky. That is how I see it. Whereas if I were to buy a semi-detached, bungalow or even a terrace house, I can say, "Look, my neighbours can't touch me," because it is a fixed parcel and I know that parcel is my parcel. You do not encroach on that parcel. And I would be dead set against anyone who does that.

305. When one buys a strata title property or condominium, the common property is not exclusively used by the person. But, on the other hand, a person who says that he bought a unit and it belongs to him, he has the right to own that unit as a property. In an en-bloc sale, we are not talking about only selling the common property, we are talking about selling the unit as well. So how is the right of a person who bought a strata title free hold property different from that of a landed property owner? - *(Mr Derrick Wong)* If I may simplify the problem by just taking an analogy in company law, I may have one share out of 1,000. That one share is still a share. It is very important to me. I am a minority shareholder. But at the end of the day, when you come right down to the ground, it is a question of price. If the price is right, why should you deprive others from selling their shares? I am just taking this very simple analogy. It is just a question of price, no matter what the sentiment is.

306. I suppose owning a property is not so much a question of price, but there are other factors to consider. I think I have had enough on that. The other clarification I want to make is that I note in your conclusion that you are of the overall view that this Bill does not seem to sufficiently safeguard the interests of the minority, and also the Bill does not seem to give enough protection to the minority. I do not know whether, after this session, you still hold the same view or whether you have changed your view on the overall perspective. Would you elaborate on the salient points of the details where you think the Bill has not adequately protected the minority? - *(Mr Chandra Mohan)* When we came here, we came with a different view of what the Strata Titles Board is. All of us, when we had various discussions, were under the impression that what is being done is an adjudication process. And we said, if you are going to perform a judicial function, sit down and balance different people's rights, where somebody says I have to live here because I have stayed here for 20 years, my daughter is in the school next door, if you are going to really perform by balancing rights between, say, 90% or 95% or 99% versus 1%, 3% or 5% who have got personal interest, then I say there should be guide lines put in as to how the adjudication process should be carried out and to protect those rights. But if effectively the Strata Titles Board is carrying out the administrative function and is essentially

a checklist to make sure that certain things are not infringed, then the protection that has to be offered is to make sure that notice, and I think this is important, is provided so that everybody is aware of it. If they do suffer any financial prejudice, they bring it to the attention of the Board. To make sure that the Strata Titles Board vets every single application so that everything has been complied with, that would be sufficient under the circumstances.

Dr Teo Ho Pin

307. Mr Chairman, I have two clarifycations. Can you please refer to page 3, B5, of your representation? You have suggested that the en-bloc provisions should be expressly restricted to older buildings, whether in age or condition. I think the amendment does provide quite clearly the age of the development. When you mention about older condition of the building, is it possible to express explicitly "older condition of building". What is considered "older condition of building"? The second clarification is at page 6, D7, where you raised the concern that the powers of the Strata Titles Board appear to be restricted under the proposed section 84A(5) to mediation and calling of a valuation and other reports. You suggested that it should be given more general and wider investigative powers. Maybe you can elaborate what you mean by "investigative powers" of the Strata Titles Board. What kind of powers should be given to the Strata Titles Board? - *(Ms Sylvia Khoo)* In answer to both issues, I think Parliament will have to make more clear what the policy of the Bill is. We had a different impression before we came on the issue of adjudication, etc. The Bill, as it stands, raises a lot of issues because there was not any guideline or direction as to what would be looked at, what would be considered important, on what basis objections would be considered, and I think more directions need to be given where this is concerned. If ultimately it is a policy issue to permit en-bloc sales to proceed, so long as certain fixed criteria are met, for instance, personal considerations are to be mediated upon but not to be considered as a point of rejection of the application, then you have to look at the arguments raised here from that point of view. One of the earlier points raised by Prof. Ho Peng Kee was that the en-bloc process was to help rejuvenate older developments, and that assumes that we are looking at the older developments which are more run-down. There are older developments of 10 years or more which may not be run-down but which may be well maintained. There, of course, could be less than 10-year old buildings which are in a terrible condition anyway. It appears to me that if a particular apartment block or condominium is in a fairly decent condition, again, what would be the purpose of pulling it down and rebuilding it? You could go back to, say, maximising land area usage. If it is, as I have said, a policy decision, so be it. But that has to be made clear in the Act itself and directions would have to be given to the Board as to what they have to consider. In respect of the investigative powers of the Board, if their role is, in the first instance, to mediate a solution between the parties, then it must be made clear that that is the first duty that they have. What it says in the Bill is that they have the power to

Ms Sylvia Khoo (cont.)

mediate. Does this mean that they do not have to. if they do not want to? So it is the direction in which it is going. I do not think we were very clear as to how the Board was to look at this application. On the one hand, it looks as if the Board was given to adjudicate on this issue and the traditional role of the Board has been to settle disputes as far as possible between subsidiary proprietors, but not to go so far as to take away property rights. This is a major act and power that until now the Strata Titles Board did not have or was not intended to function.

308. You mentioned that the role of the Board is basically to settle disputes. From our point of view, we look at it as facilitating en-bloc sale. The role of the Board in this instance may be to facilitate en-bloc sale. So it is not so much of settling disputes per se. It is more as a facilitator than an adjudicator. If you look at it from that perspective, do you think it is necessary to widen the powers of the Board in terms of investigative powers? Is there a need to do so? If it is an adjudication board. I can understand. But if it is a mediation board, which is in this case facilitating en-bloc sale, you may not need to widen that power? - *(Ms Sylvia Khoo)* I was looking at it from the existing and more traditional role of the Board to what the Board is now to do with the en-bloc provisions. Traditionally, the Board's procedures have been very informal. They do not follow rules of court. The whole procedure has been on a more loose end and they do try to mediate disputes and orders are made on that basis. This is in line with what Mr Low has mentioned, ie, the difference between living by yourself and living in a community. You need someone to settle things on a community level, and that is what the role of the Board has been to-date. Now, the position of the Board is somewhat different. It is actually in a position to make an order to take away someone's property, or force someone to sell his property. That is ultimately what the Board is empowered to do at the end of the day. Because the proceedings are informal and, as Prof. Jayakumar has said, it would appear that the Board's principal role would now be, as far as possible, to mediate first between the parties. Then it puts a slightly different complexion to our initial perception of how this Bill was drawn up.

Prof. Jayakumar] So that there will be no misunderstanding or misconception, the Board will have a mediating role in many of the kinds of objections which, as I have said, may in fact be emotive and not pecuniary. But the structure of the Bill, even after whatever amendments we might put in, will still have the role of the Board as set out in the Bill, ie, an application has been made and certain conditions have been met with regard to the procedures and processes, and the Board must be satisfied. For example, in the illustration that you have mentioned on apportionment of proceeds, it has to be presented to the Board. There may be objections made as to the fairness or unfairness of it. and the Board will consider it. But the Board may find that the objections have some credence or reality to it and it may say, "Look, you go back. I am not going to approve it." This is different from saying that the Board, hearing both sides, will then decide what is the best apportionment.

I do not envisage that the Board will take upon itself to decide what is the best way of apportioning the proceeds because we rather let the parties settle and come to an agreement. But if an objection is strenuously made as to the intrinsic unfairness of the whole scheme and the Board thinks that there is a point, it will say, "Look, in that case, I am not satisfied with it. You had better go back to the drawing board and see whether you can come to an agreement." That is what I mean about the nature of the Board is not really envisaged to be like a court process.

Assoc. Prof. Ho Peng Kee

309. Just another quick clarification. The primary objective of the Bill is to maximise land use in land-scarce Singapore, particularly because a lot of developments are in prime areas, free hold and 999 years. A resultant benefit is that some of the older estates will be rejuvenated. So we should see that in perspective? - *(Mr Chandra Mohan)* When the three of us first read the Bill we really thought - that is why I have been answering the question along this line - that it should be the court which should have the function. Because we really thought that the Strata Titles Board is going to perform some kind of a judicial function in coming to a decision where parties are at loggerheads and they are going to look at the scheme and the intent, something similar to what the court is supposed to have done under section 78. Perhaps that can be made clear. Because it is after a while that one realises, "Look, I have got some personal reasons, why do I want to move? But there is a 95%. It is not really a financial reason why 1 do not want to move." I think it is less likely to have objections before the Board than if you leave it in its present format because I think the reading now, as it stands, is that they would make an objection, the lawyers would come with an affidavit, and they are going to fight it out. If that is the intention, so be it. If that is not the intention, I think it should be made very clear so that it can take away a lot of objections which are created unnecessarily.

Chairman

310. Are there any more questions'? If there are none, on behalf of the Committee, can I thank the three of you for coming here this afternoon to assist us. We will send you a transcript of the proceedings in a few days' time. Can I ask you to look through it and return it to us, with amendments, if there are any? Before you leave, can I just remind you not to publish your submission or any of the evidence you have given until the Select Committee has presented its Report to Parliament'? Thank you very much? - *(Witnesses)* Thank you.

(The witnesses withdrew.)

MINUTES OF PROCEEDINGS

1st Meeting

MONDAY, 9 NOVEMBER 1998

2.30 p.m.

Present:

Mr Speaker (Mr Tan Soo Khoon) *(in the Chair)*
Mr Chng Hee Kok
Assoc Prof Ho Peng Kee
Prof S Jayakumar
Mr Koo Tsai Kee
Mr Low Thia Khiang
Mr Shriniwas Rai
Dr Teo Ho Pin

In Attendance:

Ministry of Law:

Ms Foo Tuat Yien, Registrar, Registry of Land Titles and Deeds

1. The Committee deliberated.

2. *Agreed* that officials from the Registry of Land Titles and Deeds be admitted to the meetings of the Committee.

3. Written representations received were considered.

4. *Agreed* -

(a) that the anonymous representation received be not accepted for consideration;

(b) that the written representations received late be accepted for consideration;

(c) that the following representors be invited to give oral evidence on Monday, 30 November 1998, Thursday, 3 December 1998 and Friday, 4 December 1998:

(1) Mr Mark Fong Wei Tsong *(Paper 1);*

(2) Assoc Prof Tan Sook Yee *(Paper 10);*

(3) Mr Ting Piew *(Paper 15);*

(4) Mr Leong Weng Hon *(Paper 16);*

(5) Management Corporation Strata Title Plan No. 849 *(Paper 17);*

(6) Mr Ng Yuen *(Paper 19);*

(7) Mr Yeo Heng Moh *(Paper 21);*

(8) Mr Nga Thio Ping (Collective Sale Committee, Kum Hing Court, MST Plan No. 245) *(Paper 25);*

(9) Mr Supardi Sujak *(Paper 26);*

(10) Messrs Rodyk and Davidson *(Paper 31);*

(11) Association of Property and Facility Managers *(Paper 32);*

(12) Messrs Phang & Co *(Paper 33);*

(13) School of Building and Real Estate, National University of Singapore *(Paper 34);*

(14) Law Society of Singapore *(Paper* 39); and

(15) Singapore Institute of Surveyors and Valuers *(Paper 40)*.

(d) that not more than four representatives be invited to represent each representor;

(e) that Papers 1, 2, 4, 5, 7, 8, 9, 10, 11, 15, 16, 17, 19, 21, 22, 24, 25, 26, 28, 31, 32, 33, 34, 35, 36, 37, 39, 40, 45 and 46 be printed in the Report of the Committee;

(f) that a list of all written representations be included in the Report of the Committee; and

(g) that the Committee do meet again on Monday, 30 November 1998 at 2.00 pm.

Adjourned to Monday, 30 November 1998 at 2.00 pm.

2nd Meeting

Monday, 30th November 1998

2.00 p.m.

Present:

Mr Speaker (Mr Tan Soo Khoon) *(in the Chair)*
Assoc Prof Ho Peng Kee
Prof S Jayakumar
Mr Low Thia Khiang
Mr Shriniwas Rai

Absent:

Mr Chng Hee Kok
Mr Koo Tsai Kee
Dr Teo Ho Pin

In Attendance:

Attorney-General's Chambers:

Mr Ter Kim Cheu. Head, Legislation Division

Registry of Titles & Deeds:

Ms Foo Tuat Yien, Registrar of Titles & Deeds
Mr Vincent Hoong, Deputy Registrar of Titles

Ministry of Law:

Mr Pang Khang Chau, Deputy Director (Legal Policy)
Mr Li Chong Jin, Assistant Director (Land Policy)
Ms Petrina Theo, Land Policy Officer

1. The Committee deliberated.

2. *Agreed* that Mr Ter Kim Cheu of the Attorney-General's Chambers, Mr Vincent Hoong and Mr Bryan Chew of the Registry of Land Titles and Deeds and Mr Pang Khang Chau, Mr Li Chong Jin and Ms Petrina Theo of the Ministry of Law be admitted to the meetings of the Committee.

3. Mr Ting Piew (Paper 15) was examined.

4. Mr Leong Weng Hon (Paper 16) was examined.

5. Mr Mark Fong Wei Tsong (Paper 1) was examined.

6. Mr Ng Wai Hong (Paper 17) was examined.

7. Mr Ng Yuen (Paper 19) was examined.

8. Mr Norman Ho (Partner) and Mr Justin Wee (Legal Assistant) of Messrs Rodyk & Davidson (Paper 31) were examined.

Adjourned till 2.00 p.m.
on Thursday, 3rd December 1998

3rd Meeting

Thursday, 3rd December 1998

2.00 p.m.

Present:

Mr Speaker (Mr Tan Soo Khoon) *(in the Chair)*
Mr Chng Hee Kok
Assoc Prof Ho Peng Kee
Prof S Jayakumar
Mr Koo Tsai Kee
Mr Low Thia Khiang
Mr Shriniwas Rai
Dr Teo Ho Pin

In Attendance:

Attorney-General's Chambers:

Mr Ter Kim Cheu, Head, Legislation Division

Registry of Titles & Deeds:

Ms Foo Tuat Yien, Registrar of Titles & Deeds
Mr Vincent Hoong, Deputy Registrar of Titles
Mr Bryan Chew, Assistant Registrar of Titles

Ministry of Law:

Mr Pang Khang Chau, Deputy Director (Legal Policy)
Mr Li Chong Jin, Assistant Director (Land Policy)
Ms Petrina Theo, Land Policy Officer

1. The Committee deliberated.

2. Mr Nga Thio Ping, Chairman, and Mrs Goh Guan Siew. Member, of the Collective Sale Committee, Kum Hing Court (Paper 25) were examined.

3. Mr Supardi Sujak (Paper 26) was examined.

4. Assoc Prof Tan Sook Yee (Paper 10) was examined.

5. Mr Wan Fook Kong, President, Mr Jordan Neo, Vice President and Mr Tan Yew Teck, Council Member, of the Association of Property and Facility Managers (Paper 32) were examined.

Adjourned till 2.00 p.m.
on Friday, 4th December 1998

4th Meeting

Friday, 4th December 1998

2.00 p.m.

Present:

Mr Speaker (Mr Tan Soo Khoon) *(in the Chair)*
Mr Chng Hee Kok
Assoc Prof Ho Peng Kee
Prof S Jayakumar
Mr Koo Tsai Kee
Mr Low Thia Khiang
Mr Shriniwas Rai
Dr Teo Ho Pin

In Attendance:

Attorney-General's Chambers:

Mr Ter Kim Cheu, Head, Legislation Division

Registry of Titles & Deeds:

Ms Foo Tuat Yien, Registrar of Titles & Deeds
Mr Vincent Hoong, Deputy Registrar of Titles
Mr Bryan Chew, Assistant Registrar of Titles

Ministry of Law:

Mr Pang Khang Chau, Deputy Director (Legal Policy)
Ms Petrina Theo, Land Policy Officer

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1. The Committee deliberated.

2. Mr Phang Sin Kat and Mr Tan Hock Boon, David. of M/s Phang & Co (Paper 33) were examined.

3. Dr Lawrence Chin Kein Hoong (Asst Prof), Dr Alice Christudason (Asst Prof), Ms Anne Magdaline Netto (Asst Prof) and Ms Low Boon Yean (Part-time Lecturer), of the NUS School of Building & Real Estate (Paper 34) were examined.

4. Assoc Prof Lim Lan Yuan (President), Dr Amy Khor (Vice President), Mr Tay Kah Poh (Honorary Treasurer) and Mr Lim Gnee Kiang (Member), of the Singapore Institute of Surveyors and Valuers (Paper 40) were examined.

5. Mr Derrick Wong Ong Eu (Council Member), Ms Sylvia Khoo Mei Ling (Council Member) and Mr Chandra Mohan (Member), of the Law Society of Singapore (Paper 39) were examined.

6. The Committee deliberated.

Adjourned to
a date to be fixed.

5th Meeting

Friday, 9th April 1999

2.15 p.m.

Present:

Mr Speaker (Mr Tan Soo Khoon) *(in the Chair)*
Assoc Prof Ho Peng Kee
Prof S Jayakumar
Assoc Prof Koo Tsai Kee
Mr Low Thia Khiang
Mr Shriniwas Rai
Dr Teo Ho Pin

Absent:

Mr Chng Hee Kok

In Attendance:

Attorney-General's Chambers:

Mr Ter Kim Cheu, Head, Legislative Division

Registry of Titles & Deeds:

Ms Foo Tuat Yien, Registrar of Titles & Deeds
Mr Bryan Chew, Assistant Registrar of Titles

1. The Committee deliberated.

2. Bill considered clause by clause.

Clauses 1 and 2 agreed to.

Clause 3:

Amendments made -
(1) in page 2, line 19, by leaving out "under section 84A, 84D, 84E or 84F";

(2) in page 2, line 21, by leaving out from "project" to the end of line 25, and inserting -

"on the land to -

(a) a subsidiary proprietor of a lot in a strata title plan under section 84A;

(b) a registered proprietor of a flat in a development under section 84D, 84E or 84F;

(c) a registered proprietor of a lot or a flat where the owners of all the lots and flats in the development have agreed to sell their lots or flats to the purchaser; or

(d) a registered proprietor of land (other than a lot or flat) who has agreed to sell the land to the purchaser either by itself or together with the registered proprietors of any adjacent land,

before the legal completion of the transfer for the lot, flat or land, as the case may be.";

(3) in page 2, line 27, by leaving out from "lots" to "and" in line 30, and inserting ", flats or land referred to in that subsection"; and

(4) in page 2, line 36, by leaving out from "(1)" to the full-stop in line 2 of page 3, and inserting "and shall not sell any other flat in the development before the share values are accepted by the Commissioner". (Prof S Jayakumar).

Clause 3 , as amended, agreed to.

Clauses 4 and 5 agreed to.

Clause 6:

Amendment made, in page 4, line 10, after "application", by inserting "or order of the Board". (Assoc Prof Ho Peng Kee)

Clause 6, as amended, agreed to.

Clause 7:

Amendment made, in page 4, line 16, by leaving out from "the" where it first occurs to the end of line 19, and inserting "only reason for the application by the subsidiary proprietors for the sale of all the lots and common property in a strata title plan is that they -". (Assoc Prof Ho Peng Kee).

Clause 7, as amended, agreed to.

Clause 8:

Amendments made -

(1) in page 5, lines 10 and 11, by leaving out "with more than 10 lots";

(2) in page 5, line 15 and line 23, by leaving out "the development", and inserting "any building comprised in the strata title plan" in each case;

(3) in page 5, line 31, after "proprietors", by inserting "(whether in cash or kind or both)";

(4) in page 5, line 34, by leaving out "(jointly and severally)";

(5) in page 5, line 35, after "act", by inserting "jointly";

(6) in page 6, line 3, by leaving out "prescribed requirements", and inserting "requirements specified in the Fourth Schedule";

(7) in page 6, line 7, after "person", by inserting "(other than a lessee)";

(8) in page 6, line 8, by leaving out "the" where it first occurs;

(9) in page 6, line 11, by leaving out "this section", and inserting "the Fourth Schedule";

(10) in page 6, by leaving out lines 19 to 27, and inserting -

"(6) Where an application has been made under subsection (1) and no objection has been filed under subsection (4), the Board shall, subject to subsection (9), approve the application and order that the lots and common property in the strata title plan be sold.

(7) Where one or more objections have been filed under subsection (4), the Board shall, subject to subsection (9), after mediation, if any, approve the application made under subsection (1) and order that the lots and common property in the strata title plan be sold unless, having regard to the objections, the Board is satisfied that -

(a) any objector, being a subsidiary proprietor, will incur a financial loss; or

(b) the proceeds of sale for any lot to be received by any objector, being a subsidiary proprietor, mortgagee or chargee, are insufficient to redeem any mortgage or charge in respect of the lot.

(8) For the purposes of subsection (7)(a), a subsidiary proprietor -

(a) shall be taken to have incurred a financial loss if the proceeds of sale for his lot, after any deduction allowed by the Board, are less than the price he paid for his lot;

(b) shall not be taken to have incurred a financial loss by reason only that his net gain from the sale of his lot will be less than the other subsidiary proprietors.

(9) The Board shall not approve an application made under subsection (1) if the Board is satisfied that -

(a) the transaction is not in good faith after taking into account only the following factors:

(i) the sale price for the lots and the common property in the strata title plan;

(ii) the method of distributing the proceeds of sale; and

(iii) the relationship of the purchaser to any of the subsidiary proprietors; or

(b) the sale and purchase agreement would require any subsidiary proprietor who has not agreed in writing to the sale to be a party to any arrangement for the development of the lots and the common property in the strata title plan.

(10) Where no objection has been filed under subsection (4), the determination under subsection (9) shall be made by the Board on the basis of the facts available to the Board.";

(11) in page 7, line 1, by leaving out from "under" to the end of line 11, and inserting "the Fourth Schedule";

(12) in page 7, lines 13 and 14, by leaving out "by registered post";

(13) in page 7, after line 15, by inserting -

"(14) The Minister may, by order published in the *Gazette,* amend or add to the Fourth Schedule."; (Prof S Jayakumar)

(14) in page 7, line 20, by leaving out "or (7)", and inserting ", (7) or (11)";

(15) in page 7, by leaving out lines 21 to 23;

(16) in page 7, line 24, by leaving out "the successors in title and assigns of';

(17) in page 7, line 26, after "plan", by inserting ", their successors in title and assigns";

(18) in page 7, line 27, by leaving out "the";

(19) in page 7, lines 28 and 29, by leaving out "referred to in section 84A(1)";

(20) in page 8, after line 3, by inserting -

"(3) A subsidiary proprietor of a lot who has not agreed in writing to a sale under section 84A or any lessee of the lot may, at any time after an application has been made under section 84A(1) and before the Board has approved the application for sale, apply to the Board to determine the amount of compensation payable to the lessee.";

(21) in page 8, lines 4 and 5, by leaving out "referred to in subsection (1)(a)", and inserting "who have not agreed in writing to the sale under section 84A";

(22) in page 8, line 6, by leaving out "the land for";

(23) in page 8, line 9, by leaving out "or to his solicitor", and inserting ", the representatives appointed under section 84A(2) or to their solicitors";

(24) in page 8, line 13, by leaving out "or (7)", and inserting ", (7) or (11)";

(25) in page 9, line 7, by leaving out "with more than 10 flats";

(26) in page 9, line 17 and line 25, after "of', by inserting "any building comprised in" in each case;

(27) in page 9, line 33, after "flats", by inserting "(whether in cash or kind or both)";

(28) in page 9, line 37, by leaving out "or chargee whose interest is shown", and inserting ", chargee or other person (other than a lessee) with an estate or interest in the flat and whose interest is notified";

(29) in page 10, line 2, by leaving out "this section", and inserting "the Fourth Schedule";

(30) in page 10, by leaving out lines 4 to 12, and inserting -

"(4) Where an application has been made under subsection (2) and no objection has been filed under subsection (3), the Board shall, subject to subsection, (7), approve the application and order that the flats and the land in the development be sold.

(5) Where one or more objections have been filed under subsection (3), the Board shall, subject to subsection (7), after mediation, if any, approve the application made under subsection (2) and order that the flats and the land in the development be sold unless, having regard to the objections, the Board is satisfied that -

(a) any objector, being a proprietor, will incur a financial loss; or

(b) the proceeds of sale for any flat to be received by any objector, being a proprietor, mortgagee or chargee, are insufficient to redeem any mortgage or charge in respect of the flat.

(6) For the purposes of subsection (5)(a), a proprietor -

(a) shall be taken to have incurred a financial loss if the proceeds of sale for his flat, after any deduction allowed by the Board, are less than the price he paid for his flat;

(b) shall not be taken to have incurred a financial loss by reason only that his net gain from the sale of his flat will be less than the other proprietors.

(7) The Board shall not approve an application made under subsection (2) if the Board is satisfied that -

(a) the transaction is not in good faith after taking into account only the following factors:

(i) the sale price for the flats and the land in the development;

(ii) the method of distributing the proceeds of sale; and

(iii) the relationship of the purchaser to any of the proprietors; or

(b) the sale and purchase agreement would require any proprietor who has not agreed in writing to the sale to be a party to any arrangement for the development of the flats and the land in the development.

(8) Where no objection has been filed under subsection (3), the determination under subsection (7) shall be made by the Board on the basis of the facts available to the Board.";

(31) in page 10, line 13, by leaving out ", (8), (9) and (10)(c)" and inserting ", (11), (12) and (13)";

(32) in page 10, lines 15, 16 and 17, by leaving out ", including the modification that section 84A(10)(c) shall apply to any proprietor of a flat";

(33) in page 10, line 27, by leaving out "with more than 10 flats";

(34) in page 11, line 7 and line 15, after "of', by inserting "any building comprised in" in each case;

(35) in page 11, line 23, after "flats" by inserting "(whether in cash or kind or both)";

(36) in page 11, line 26, by leaving out from "to" where it secondly occurs to 11 notified" in line 29, and inserting "the Fourth Schedule on the proprietor of the land and every mortgagee, chargee or other person with an estate or interest in the land and whose interest is";

(37) in page 11, lines 32 and 33, by leaving out "with an estate or interest in the land whose interest is shown", and inserting "(other than a lessee) with an estate or interest in the flat and whose interest is notified";

(38) in page 11, line 36, by leaving out "this section", and inserting "the Fourth Schedule";

(39) in page 11, by leaving out line 38 to line 7 in page 12, and inserting -

"(6) Where an application has been made under subsection (3) and no objection has been filed under subsection (5), the Board shall, subject to subsection (9), approve the application and order that the flats and the land in the development be sold.

(7) Where one or more objections have been filed under subsection (5), the Board shall, subject to subsection (9), after mediation, if any, approve the application made under subsection (3) and order that the flats and the land in the development be sold unless, having regard to the objections, the Board is satisfied that -

(a) any objector, being a proprietor, will incur a financial loss; or

(b) the proceeds of sale for any flat to be received by any objector, being a proprietor, mortgagee or chargee, are insufficient to redeem any mortgage or charge in respect of the flat.

(8) For the purposes of subsection (7)(a), a proprietor -

(a) shall be taken to have incurred a financial loss if the proceeds of sale for his flat, after any deduction allowed by the Board, are less than the price he paid for his flat;

(b) shall not be taken to have incurred a financial loss by reason only that his net gain from the sale of his flat will be less than the other proprietors.

(9) The Board shall not approve an application made under subsection (3) if the Board is satisfied that -

(a) the transaction is not in good faith after taking into account only the following factors:

(i) the sale price for the flats and the land in the development;

(ii) the method of distributing the proceeds of sale; and

(iii) the relationship of the purchaser to any of the proprietors; or

(b) the sale and purchase agreement would require any proprietor who has not agreed in writing to the sale to be a party to any arrangement for the development of the flats and the land in the development.

(10) Where no objection has been filed under subsection (5), the determination under subsection (9) shall be made by the Board on the basis of the facts available to the Board.";

(40) in page 12, lines 12 and 13, by leaving out "owned by the proprietor of the land", and inserting "deemed to be owned by the proprietor under subsection (14)";

(41) in page 12, lines 16 and 17, by leaving out "are deemed to have agreed to sell", and inserting "have not agreed in writing to the sale";

(42) in page 12, line IS, by leaving out "the";

(43) in page 12, line 20, by leaving out "or to his solicitor", and inserting ", the representatives appointed under section 84A(2) or to their solicitors";

(44) in page 12, line 26, by leaving out "registered";

(45) in page 12, by leaving out line 30 to the end of line 33 and inserting -

"(15) Sections 84A(2), (3), (5), (11), (12) and (13), 84B and 84C shall apply, with the necessary modifications, to any application or order made under this section.";

(46) in page 13, line 12, by leaving out from "writing", to the full-stop in line 17, and inserting "under a sale and purchase agreement to sell all their flats to a purchaser (whether in cash or kind or both), they shall serve a notice on the proprietor of the land and every mortgagee, chargee or other person with an estate or interest in the land and whose interest is notified on the land register at least 21 days before the date of the first transfer of any such flat informing them of the transfer under subsection (4)";

(47) in page 13, after line 17, by inserting -

"(3) Notice under subsection (2) shall be given by -

(a) advertising the proposed sale in such local newspapers in the 4 official languages as approved by the Registrar;

(b) serving the notice on the proprietor of the land and every mortgagee, chargee or other person with an estate or interest in the land and whose interest is notified on the land register by registered post; and

(c) affixing a copy of the notice in the 4 official languages to a conspicuous part of each building in the development.";

(48) in page 13, line 26, after "land" where it first occurs, by inserting "and whose interest is";

(49) in page 13, line 27, by leaving out "at the address or"; and

(50) in page 13, line 32, by leaving out "by registered post". (Assoc Prof Ho Peng Kee).

Consequential amendments made -

(1) in page 6, line 28, by leaving out "(8)", and inserting"(11)";

(2) in page 6, line 31, by leaving out "(9)", and inserting"(12) ;

(3) in page 7, line 1, by leaving out "(10)", and inserting"(13)';

(4) in page 7, line 16, by leaving out "(11)", and inserting"(15)";

(5) in page 7, lines 24, 28 and 31, by re-lettering paragraphs (b), (c) and (d) as paragraphs (a), (b) and (c), respectively;

(6) in page 8, line 1, by leaving out "(d)" ,and inserting"(c)";

(7) in page 8, line 4, by leaving out "(3)" and inserting"(4)";

(8) in page 10, line 13, by leaving out "(6)", and inserting"(9)";.

(9) in page 10, line 18, by leaving out "(7)", and inserting"(10)";

(10) in page 12, line 8, by leaving out "(8)", and inserting"(11)";

(11) in page 12, line 16, by leaving out "(9)", and inserting"(12)";

(12) in page 12, line 21 and line 22, by leaving out "(10)" and "(9)", and inserting"(13)" and "(12)", respectively;

(13) in page 12, line 26, by leaving out "(11)", and inserting "(14)";

(14) in page 12, line 34, by leaving out "(13)", and inserting"(16)";

(15) in page 13, line 18, by leaving out "(3)", and inserting"(4)";

(16) in page 13, line 24, by leaving out "(4)", and inserting"(5)";

(17) in page 13, line 35, by leaving out "(5)", and inserting `(6)'; and

(18) in page 14, line 3, by leaving out "(6)", "(9), (10), (11) and (13)"; and inserting"(7)", "(12), (13), (14) and (16)", respectively.

Clause 8, as amended, agreed to.

Clause 9 agreed to.

Clause 10:

Amendments made -

(1) in page 14, line 12, by leaving out "2", and inserting "not more than 3"; and

(2) in page 14, after line 17, by inserting -
"(b) by inserting, immediately after the word "two" in the 5th line of subsection (2), the words "or 4";". (Assoc Prof Ho Peng Kee).

Consequential amendments made –

(1) in page 14, line 18, by re-lettering paragraph (b) as paragraph (c), and

(2) in page 15, line 1, by re-lettering paragraph (c) as paragraph (d).

Clause 10, as amended, agreed to.

Clause 11:

Amendment made, in page 15, line 6, by leaving out "24", and inserting "not more than 30". (Prof S Jayakumar).

Clause 11, as amended, agreed to.

Clauses 12 to 15 inclusive agreed to.

Clause 16:

Amendments made -

(1) in page 18, line 2, by leaving out "An applicant for an order", and inserting "A party to any proceedings"; and

(2) in page 18, line 5, by leaving out "applicant", and inserting "party". (Prof S Jayakumar).

Clause 16, as amended, agreed to.

Clause 17 agreed to.

Clause 18:

Amendment made, in page 19, line 13, by leaving out "the" where it first occurs. (Prof S Jayakumar).

Clause 18, as amended, agreed to.

Clauses 19 and 20 agreed to.

New clause (A) brought up and read the first time.

"Repeal of section 131

(A). Section 131 of the principal Act is repealed.". (Prof S Jayakumar).

New clause (A) read a second time and added to the Bill as clause 19.

New clause (B) brought up and read the first time.

"Repeal and re-enactment of Fourth Schedule

(B). The Fourth Schedule to the principal Act is repealed and the following Schedule substituted therefor:

"FOURTH SCHEDULE

Sections 84A(3), 84D(3) and 84E(4)

REQIREMENTS UNDER SECTION 84A, 84D OR 84E

1. The subsidiary proprietors referred to in section 84A(1) or the proprietors referred to section 84D(2) or 84E(3) shall, before making an application to a Board -

(a) consider the collective sale at an extraordinary meeting held in accordance with the Act or, where the development is not registered under the Act, at a meeting held after sending a notice of the meeting by registered post to all the proprietors to their last recorded addresses at the Registry of Titles or the Registry of Deeds and placing a copy of the notice under the main door of every flat in the development;

(b) advertise the particulars of the application in such local newspapers in the 4 official languages as approved by the Board;

(c) serve a notice of the proposed application to be made under section 84A(1), 84D(2) or 84E(3) by sending a copy by registered post to all the subsidiary proprietors or proprietors, as the case may be, and by placing a copy under the main door of every lot or flat, together with a copy each of

(i) the advertisement referred to in sub-paragraph (b);

(ii) the sale and purchase agreement;

(iii) a statutory declaration made by the purchaser under the sale and purchase agreement on his relationship, if any, to the subsidiary proprietors of the lots or the proprietors of the flats;

(iv) a valuation report which is not more than 3 months old;

(v) a report by a valuer on the proposed method of distributing the sale proceeds; and

(vi) the minutes of the extraordinary meeting or meeting referred to in sub-paragraph (a);

(d) affix a copy of the notice referred to in sub-paragraph (c) to the main door of the lots or flats whose subsidiary proprietors or proprietors, as the case may be, have not agreed in writing to the sale; and

(e) affix a copy of the notice referred to in sub-paragraph (c) in the 4 official languages to a conspicuous part of each building in the development.

2. The notice referred to in paragraph 1(c) to be served by registered post shall be served on an affected party -

(a) where the party is a subsidiary proprietor of a lot in the strata title plan, at the address as shown on the strata roll;

(b) where the party is a proprietor of a flat or land, at the last recorded address at the Registry of Titles or Registry of Deeds;

(c) where the party is a mortgagee, chargee or other person with an estate and interest in the lot or flat whose interest is notified on the land register, at the address on the strata roll or last recorded address at the Registry of Titles or Registry of Deeds; and

(d) where the party is a management corporation, at its address recorded on the folio of the land register comprising the common property.

3. The advertisement referred to in paragraph 1(b) shall include -

(a) information on the development;

(b) the names of the subsidiary proprietors or proprietors, addresses, unit numbers and strata lot numbers, if any, of their flats;

(c) the names of mortgagees, chargees and other persons with an estate and interest in the lots, flats and land;

(d) brief details of the sale proposal; and

(e) the place at which the affected parties can inspect documents for the collective sale.

4. An application to a Board shall be made by the subsidiary proprietors referred to in section 84A(1) or the proprietors referred to in section 84D(2) or 84E(3) within 14 days of the publication of the advertisement referred to in paragraph 1(b), enclosing -

(a) the documents specified in paragraph. 1 (c);

(b) the statutory declaration made by the representatives appointed under section 84A(2) or their solicitors that paragraph 1(a), (b), (c), (d) and (e) have been complied with;

(c) a list of the names of the subsidiary proprietors who have not agreed in writing to the sale, their mortgagees, chargees and other persons (other than lessees) with an estate or interest in the lots or flats whose interests are notified on the land register; and

(d) such other document as the Board may require.

5. The Board shall, within 5 days of the filing of an objection, serve a copy of it by registered post on the representatives appointed under section 84A(2) and their solicitors, if any.

6. The subsidiary proprietors referred to in section 84A(1) or the proprietors referred to in section 84D(2) or 84E(3) shall, after making an application to the Board, cause a copy of the application to be registered under the Act, the Land Titles Act (Cap.157) or the Registration of Deeds Act (Cap.269), as the case may be.

7. The subsidiary proprietors referred to in paragraph 6 shall, if an order for sale is granted by the Board under section 84A, 84D or 84E, register the order of the Board in accordance with the Act, the Land Titles Act (Cap.157) or the Registration of Deeds Act (Cap.269), as the case may be, or if the order for sale is not granted by the Board, apply to cancel the application registered under paragraph 6.

8. For the purposes of this Schedule, "affected parties" means -

(a) the subsidiary proprietors referred to in section 84A(1) or the proprietors referred to in section 84D(2) or 84E(3);

(b) the subsidiary proprietors of the lots or the proprietors of the flats who have not agreed in writing to the sale, and any mortgagee, chargee and other person (other than a lessee) with an estate or interest in the lot or flat whose interest is notified on the land register;

(c) the proprietor of the land under section 84E, his mortgagee, chargee or other person with an estate or interest in the land whose interest is notified on the land register; and

(d) the management corporation, where applicable.". (Prof S Jayakumar).

New clause (B) read a second time and added to the Bill as clause 20.

Consequential amendments made to the numbering of the clauses consequent on the addition of the 2 new clauses and the citation year "1998" changed to "1999".

Bill to be reported.

REPORT

3. The Chairman's Report brought up, and read the first time.

4. Resolved, "The the Chairman's Report be read a second time, paragraph by paragraph.".

Paragraphs to 1 to 48 inclusive read and agreed to.

5. Resolved, "That this Report be the Report of the Committee to Parliament.".

6. Agreed that the Chairman do present the Report to Parliament when printed copies thereof are available for distribution to Members of Parliament.

Adjourned sine die

Appendix VI

Friday,9th April 1999

Official Report

Consideration of Bill (clause by clause)

CONTENTS

Official Report

Consideration of Bill (clause by clause)

Friday, 9th April, 1999

The Committee met at 2.15 pm

PRESENT:

Mr Speaker (Mr Tan Soo Khoon) (East Coast)).

Assoc Prof Ho Peng Kee (Sembawang), Minister of State, Ministry of Law and Ministry of Home Affairs.

Prof S Jayakumar (East Coast), Minister for Law and Minister for Foreign Affairs.

Assoc. Prof. Koo Tsai Kee (Tanjong Pagar), Parliamentary Secretary to the Minister for National Development.

Mr Low Thia Khiang (Hougang).

Mr Shriniwas Rai (Nominated Member).

Dr Teo Ho Pin (Sembawang).

ABSENT:

Mr Chng Hee Kok (East Coast).

In attendance:

Attorney-General's Chambers:

Mr Ter Kim Cheu, Head, Legislation Division.

Registry of Land Titles and Deeds:

Ms Foo Tuat Yien, Registrar of Titles and Deeds.

Mr Bryan Chew, Senior Assistant Registrar of Titles.

The Chairman: I call the meeting to order. Today we are to consider the Bill clause by clause and the Report of the Committee to Parliament. The first item of business is to consider the Bill clause by clause. A notice of amendments to the Bill has been received from the Minister for Law and it has been circulated to Members.

Clauses 1 and *2* agreed to stand part of the Bill.

Clause 3-(Amendment of section 7)

Prof. Jayakumar: Mr Chairman, Sir, can I have your permission, where I have more than one amendment to any particular clause, to move all or some of the amendments together and then give the reasons for the amendments?

The Chairman: Please do so.

Prof. Jayakumar: Sir, I beg to move,

(1) In page 2, line 19, to leave out "under section 84A, 84D, 84E or 84F.

(2) In page 2, line 21, to leave out from "project" to the end of line 25, and insert -

"on the land to -

(a) a subsidiary proprietor of a lot in a strata title plan under section 84A;

(b) a registered proprietor of a flat in a development under section 84D, 84E or 84F;

(c) a registered proprietor of a lot or a flat where the owners of all the lots and flats in the development have agreed to sell their lots or flats to the purchaser; or

(d) a registered proprietor of land (other than a lot or flat) who has agreed to sell the land to the purchaser either by itself or together with the registered proprietors of any adjacent land,

before the legal completion of the transfer for the lot, flat or land, as the case may be.".

(3) In page 2, line 27, to leave out from "lots" to "and" in line 30, and insert ", flats or land referred to in that subsection".

(4) In page 2, line 36, to leave out from "(I)" to the full-stop in line 2 of page 3, and insert "and shall not sell any other flat in the development before the share values are accepted by the Commissioner".

Amendment Nos. 1 and 2 provide that the exemption from having to get the Commissioner of Building's approval for share values before the units in a new development can be sold to the sellers in an en-bloc sale apply not only to en-bloc sales under the Bill but also en-bloc sales by unanimous agreement of strata developments and landed properties. This amendment is in response to a representation.

Amendment Nos. 3 and 4 are amendments consequential upon amendment Nos. 1 and 2 and are essentially drafting amendments.

Amendments agreed to.

Clause 3, as amended, agreed to stand part of the Bill.

Clauses 4 and *5* agreed to stand part of the Bill.

Clause 6- (Amendment of section 54)

Assoc. Prof. Ho Peng Kee: Sir, I beg to move,

In page 4, line 10, after "application", to insert "or order of the Board".

This amendment provides that the management corporation will, in response to an application, certify whether it has received a copy of an application to the Board for an en-bloc sale and an order made by the Board. This is a technical amendment.

Amendment agreed to.

Clause 6, as amended, agreed to stand part of the Bill.

Clause 7- (Amendment of section 78)

Assoc. Prof. Ho Peng Kee: Sir, I beg to move,

In page 4, line 16, to leave out from "the" where it first occurs to the end of line 19, and insert "only reason for the application by the subsidiary proprietors for the sale of all the lots and common property in a strata title plan is that they -".

This is a drafting amendment made in response to some representations.

Amendment agreed to.

Clause 7, as amended, agreed to stand part of the Bill.

Clause 8- (New Part VA)

Prof. Jayakumar: Sir, I beg to move,

(1) In page 5, lines 10 and 11, to leave out "with more than 10 lots".

(2) In page 5, line 15 and line 23, to leave out "the development", and insert "any building comprised in the strata title plan" in each case.

(3) In page 5, line 31, after "proprietors", to insert "(whether in cash or kind or both)".

(4) In page 5, line 34, to leave out "(jointly and severally)".

(5) In page 5, line 35, after "act", to insert "jointly".

(6) In page 6, line 3, to leave out "prescribed requirements", and insert "requirements specified in the Fourth Schedule".

(7) In page 6, line 7, after "person", to insert "(other than a lessee)".

(8) In page 6, line 8, to leave out "the" where it first occurs.

(9) In page 6, line 11, to leave out "this section", and insert "the Fourth Schedule".

Sir, let me first explain that there are three categories of en-bloc sales by majority consent:

(1) Strata developments registered under the Land Titles (Strata) Act;

(2) Flats registered under the Registration of Deeds Act or the Land Titles Act and where the proprietors of the flats also own the land comprised in the development; and

(3) Flats registered under the Registration of Deeds Act or the Land Titles Act where the proprietors of the flats own a leasehold estate of at least 999 years or more in the flat or for such estate as the Minister may gazette and where they do not own the land comprised in the development.

Members will recall that the Bill covers these three categories. Therefore, some of the amendments, which we are proposing, will be common to these three categories and, therefore, have to be repeated in the Notice of Amendments. I therefore propose to give a full explanation when I move the amendment for the first time. But when the amendment is repeated, to save the Select Committee's time, I can then be more brief to avoid repetition.

Having said that, let me say that amendment Nos. 1 to 9 relate to the new proposed section 84A which deals with en-bloc sales by majority consent of strata developments registered under the Land Titles (Strata) Act.

Amendment No. 1 is to include developments with 10 or fewer units so that they can be sold in en-bloc sales by majority consent. Some representors and one Member of Parliament felt that en-bloc sales by majority consent should also extend to these developments. Many of these developments are old or have areas which are under utilised, thus rendering them suitable for redevelopment. Extending the en-bloc sale provisions to these developments will make more land available for en-bloc redevelopment.

Amendment No. 2 makes it clear that the age of a development (which is completed in phases), will be calculated from the date when the Temporary Occupation Permit or Certificate of Statutory Completion is issued for the last building in the development. That is a technical amendment.

Amendment No. 3 makes it clear that the consideration in an en-bloc sale under the Bill could be cash or kind, ie, an exchange of units or a combination thereof.

Amendment Nos. 4 and 5 provide that the representatives appointed by the majority owners must act jointly and not severally. This is in response to a representation which was made to us.

Amendment No. 6 is a drafting amendment to incorporate the procedure for service of notice in the Fourth Schedule of the Act itself.

Amendment No. 7 makes it clear that a lessee may not file an objection with the Board. He will, however, receive notice of the sale. If his lessor is a minority owner who has not agreed to the en-bloc sale and if he is unable to agree with his lessor on the compensation payable to him for termination of the lease, he can apply to the Board to determine the compensation. This is provided for in a subsequent amendment, ie, amendment No. 20.

Amendment Nos. 8 and 9 are drafting amendments.

Amendments agreed to.

Prof. Jayakumar: Sir, I beg to move,

(10) In page 6, to leave out lines 19 to 27, and insert -

> "(6) Where an application has been made under subsection (1) and no objection has been filed under subsection (4), the Board shall, subject to subsection (9), approve the application and order that the lots and common property in the strata title plan be sold.

(7) Where one or more objections have been filed under subsection (4), the Board shall, subject to subsection (9), after mediation, if any, approve the application made under subsection (1) and order that the lots and common property in the strata title plan be sold unless, having regard to the objections, the Board is satisfied that -

(a) any objector, being a subsidiary proprietor, will incur a financial loss; or

(b) the proceeds of sale for any lot to be received by any objector, being a subsidiary proprietor, mortgagee or chargee, are insufficient to redeem any mortgage or charge in respect of the lot.

(8) For the purposes of subsection (7)(a), a subsidiary proprietor -

(a) shall be taken to have incurred a financial loss if the proceeds of sale for his lot, after any deduction allowed by the Board, are less than the price he paid for his lot;

(b) shall not be taken to have incurred a financial loss by reason only that his net gain from the sale of his lot will be less than the other subsidiary proprietors.

(9) The Board shall not approve an application made under subsection (1) if the Board is satisfied that –

(a) the transaction is not in good faith after taking into account only the following factors:

(i) the sale price for the lots and the common property in the strata title plan;

(ii) the method of distributing the proceeds of sale; and

(iii) the relationship of the purchaser to any of the subsidiary proprietors; or

(b) the sale and purchase agreement would require any subsidiary proprietor who has not agreed in writing to the sale to be a party to any arrangement for the development of the lots and the common property in the strata title plan.

(10) Where no objection has been filed under subsection (4), the determination under subsection (9) shall be made by the Board on the basis of the facts available to the Board.".

(11) In page 7, line 1. to leave out from "under" to the end of line 11, and insert "the Fourth Schedule".

(12) In page 7, lines 13 and 14, to leave out "by registered post".

(13) In page 7, after line 15, to insert -

"(14) The Minister may, by order published in the Gazette, amend or add to the Fourth Schedule.".

Sir, they are the remaining amendments relating to new proposed section 84A.

Amendment No. 10 spells out in detail the approach of the Board and the factors which it will consider when deciding an en-bloc application. Members will recall that a number of MPs and representors have expressed the view that the general guidelines as previously set out in the Bill were too broad with insufficient guidance given on how the Board will decide on objections raised, including non-financial objections. Some representors also felt that the Board's approval should be obtained even if there are no objections.

(a) The Board will review all cases (even where there is no objection) to see whether on the face of the application it is satisfied that the transaction is in good faith and at arms length, after taking into account the sale proceeds, method of distribution, and the relationship of the purchaser to any of the unit owners. It will also ensure that the sale and purchase agreement does not require a minority owner to be part of a joint venture with the developer of the land. This will address the concerns which have been expressed that the Board is not sufficiently proactive in safeguarding minority interests; and

(b) When objections are raised, the Board will, where relevant, mediate. Where mediation fails, the Board must order that the en-bloc sale proceeds unless the Board is satisfied that:

(1) the transaction is not in good faith and at arms length or that the sale and purchase agreement requires a minority owner to be part of a joint venture agreement with the developer;

(2) the minority owner will suffer a financial loss in that the purchase price which he will receive is less than the price he paid for his unit, after including all deductions allowed by the Board; and

(3) the proceeds of sale for a unit are not sufficient to redeem the mortgages and charges on the unit.

The Board will not impose its own terms and conditions on the parties. If the Board feels that the price is too low or the method of distribution of the sale proceeds is not equitable, it will order that the sale not proceed. The majority owners must then address the issue.

Amendment Nos. 11 and 12 are drafting amendments to incorporate the new procedure for service of notice in the Fourth Schedule.

Amendment No. 13 is a technical amendment to give the Minister power to amend the Fourth Schedule by Gazette notification. The Fourth Schedule specifies the conditions which must be satisfied before an application can be made to the Board and the procedure for service of notice and application to the Board.

The amendment to include the Fourth Schedule as part of the Bill will be covered under a separate amendment for New Clause (B).

Amendments agreed to.

Assoc. Prof. Ho Peng Kee: Sir, I beg to move,

(14) In page 7, line 20, to leave out "or (7)", and insert", (7) or (11)".

(15) In page 7, to leave out lines 21 to 23.

(16) In page 7, line 24, to leave out "the successors in title and assigns of'.

(17) In page 7, line 26, after "plan", to insert ", their successors in title and assigns".

(18) In page 7, line 27, to leave out "the".

(19) In page 7, lines 28 and 29, to leave out "referred to in section 84A(1)".

(20) In page 8, after line 3, to insert -

> "(3) A subsidiary proprietor of a lot who has not agreed in writing to a sale under section 84A or any lessee of the lot may, at any time after an application has been made under section 84A(1) and before the Board has approved the application for sale, apply to the Board to determine the amount of compensation payable to the lessee.".

(21) In page 8, lines 4 and 5, to leave out "referred to in subsection (1)(a)", and insert "who have not agreed in writing to the sale under section 84A".

(22) In page 8, line 6, to leave out "the land for".

(23) In page 8, line 9, to leave out "or to his solicitor", and insert ", the representatives appointed under section 84A(2) or to their solicitors".

(24) In page 8, line 13, to leave out "or (7)", and insert ", (7) or (11)".

Amendment Nos. 14 to 24 relate to new proposed sections 84B and 84C which deal with the effect of an order of the Board and the powers of the Board.

Amendment Nos. 14 to 19 are drafting amendments.

Amendment No. 20 provides that a minority owner who has not agreed in writing to an en-bloc sale or his lessee may apply to the Board to determine the amount of compensation payable to the lessee.

A number of representors felt that a minority owner may not be able to agree with his lessee on compensation. The Board should, therefore, decide on the compensation to expedite and facilitate an en-bloc sale. While the Board will do so in such cases, the Board will not decide on the compensation payable to the lessees of the majority owners as the majority owners must make their own arrangements with their lessees before they commit themselves to an en-bloc sale.

Amendment Nos. 21 to 24 are drafting amendments.

Amendments agreed to.

Assoc. Prof. Ho Peng Kee: Sir, I beg to move,

(25) In page 9, line 7, to leave out "with more than 10 flats".

(26) In page 9, line 17 and line 25, after "of', to insert "any building comprised in" in each case.

(27) In page 9, line 33, after "flats", to insert "(whether in cash or kind or both)".

(28) In page 9, line 37, to leave out "or chargee whose interest is shown", and insert ", chargee or other person (other than a lessee) with an estate or interest in the flat and whose interest is notified".

(29) In page 10, line 2, to leave out "this section", and insert "the Fourth Schedule".

(30) In page 10, to leave out lines 4 to 12, and insert -

> "(4) Where an application has been made under subsection (2) and no objection has been filed under subsection (3), the Board shall, subject to subsection (7), approve the application and order that the flats and the land in the development be sold.
>
> (5) Where one or more objections have been filed under subsection (3), the Board shall, subject to subsection (7), after mediation, if any, approve the application made under subsection (2) and order that the flats and the land in the development be sold unless, having regard to the objections, the Board is satisfied that -

(a) any objector, being a proprietor, will incur a financial loss; or

(b) the proceeds of sale for any flat to be received by any objector, being a proprietor, mortgagee or chargee, are insufficient to redeem any mortgage or charge in respect of the flat.

(6) For the purposes of subsection (5)(a), a proprietor -

(a) shall be taken to have incurred a financial loss if the proceeds of sale for his flat, after any deduction allowed by the Board, are less than the price he paid for his flat;

(b) shall not be taken to have incurred a financial loss by reason only that his net gain from the sale of his flat will be less than the other proprietors.

(7) The Board shall not approve an application made under subsection (2) if the Board is satisfied that -

(a) the transaction is not in good faith after taking into account only the following factors:

(i) the sale price for the flats and the land in the development;

(ii) the method of distributing the proceeds of sale; and

(iii) the relationship of the purchaser to any of the proprietors; or

(b) the sale and purchase agreement would require any proprietor who has not agreed in writing to the sale to be a party to any arrangement for the development of the flats and the land in the development.

(8) Where no objection has been filed under subsection (3), the determination under subsection (7) shall be made by the Board on the basis of the facts available to the Board.".

(31) In page 10, line 13, to leave out ", (8), (9) and (10)(c)" and insert ", (11), (12) and (13)".

(32) In page 10, lines 15, 16 and 17, to leave out ", including the modification that section 84A(10)(c) shall apply to any proprietor of a flat".

Amendment Nos. 25 to 32 relate to the new proposed section 84D which deals with en-bloc sales by majority consent of flats registered under the Registration of Deeds Act or the Land Titles Act and where the proprietors of the flats also own the land comprised in the development. That is the second category that the Minister

mentioned just now. Here the provisions are similar and parallel to the ones that have already been explained.

Amendment No. 25 is similar to amendment No. 1.

Amendment No. 26 is similar to amendment No. 2.

Amendment No. 27 is similar to amendment No. 3.

Amendment No. 28 is similar to amendment No. 7.

Amendment No. 29 is a drafting amendment.

Amendment No. 30 is similar to amendment No. 10, and spells out in detail the approach of the Board and the factors which it will consider when dealing with an en bloc application.

Amendment Nos. 31 and 32 are consequential drafting amendments.

Amendments agreed to.

Assoc. Prof. Ho Peng Kee: Sir, I beg to move,

(33) In page 10, line 27, to leave out "with more than 10 flats".

(34) In page 11, line 7 and line 15, after "of", to insert "any building comprised in" in each case.

(35) In page 11, line 23, after "flats" to insert "(whether in cash or kind or both)".

(36) In page 11, line 26, to leave out from "to" where it secondly occurs to "notified" in line 29, and insert "the Fourth Schedule on the proprietor of the land and every mortgagee, chargee or other person with an estate or interest in the land and whose interest is".

(37) In page 11, lines 32 and 33, to leave out "with an estate or interest in the land whose interest is shown", and insert "(other than a lessee) with an estate or interest in the flat and whose interest is notified".

(38) In page 11, line 36, to leave out "this section" and insert "the Fourth Schedule".

(39) In page 11, to leave out line 38 to line 7 in page 12, and insert -

"(6) Where an application has been made under subsection (3) and no objection has been filed under subsection (5), the Board shall, subject to

subsection (9), approve the application and order that the flats and the land in the development be sold.

(7) Where one or more objections have been filed under subsection (5), the Board shall, subject to subsection (9), after mediation, if any, approve the application made under subsection (3) and order that the flats and the land in the development be sold unless, having regard to the objections, the Board is satisfied that -

(a) any objector, being a proprietor, will incur a financial loss; or

(b) the proceeds of sale for any flat to be received by any objector, being a proprietor, mortgagee or chargee, are insufficient to redeem any mortgage or charge in respect of the flat.

(8) For the purposes of subsection (7)(a), a proprietor

(a) shall be taken to have incurred a financial loss if the proceeds of sale for his flat, after any deduction allowed by the Board, are less than the price he paid for his flat;

(b) shall not be taken to have incurred a financial loss by reason only that his net gain from the sale of his flat will be less than the other proprietors.

(9) The Board shall not approve an application made under subsection (3) if the Board is satisfied that -

(a) the transaction is not in good faith after taking into account only the following factors:

(i) the sale price for the flats and the land in the development;

(ii) the method of distributing the proceeds of sale; and

(iii) the relationship of the purchaser to any of the proprietors; or

(b) the sale and purchase agreement would require any proprietor who has not agreed in writing to the sale to be a party to any arrangement for the development of the flats and the land in the development.

(10) Where no objection has been filed under subsection (5), the determination under subsection (9) shall be made by the Board on the basis of the facts available to the Board.".

(40) In page 12, lines 12 and 13, to leave out "owned by the proprietor of the land", and insert "deemed to be owned by the proprietor under subsection (14)".

(41) In page 12, lines 16 and 17, to leave out "are deemed to have agreed to sell", and insert "have not agreed in writing to the sale".

(42) In page 12, line 18, to leave out "the".

(43) In page 12, line 20, to leave out "or to his solicitor", and insert ", the representatives appointed under section 84A(2) or to their solicitors".

(44) In page 12, line 26, to leave out "registered".

(45) In page 12, to leave out line 30 to the end of line 33 and insert -

> "(15) Sections 84A(2), (3), (5), (11), (12) and (13), 84B and 84C shall apply, with the necessary modifications, to any application or order made under this section.".

Amendment Nos. 33 to 45 relate to the new proposed section 84E which deals with en-bloc sales by majority consent of flats registered under the Registration of Deeds Act or the Land Titles Act, where the proprietors of the flats own a leasehold estate of at least 999 years or more in the flat or for such estate as the Minister may gazette and where they do not own the land comprised in the development. That is the third category that the Minister has mentioned just now.

Amendment No. 33 is similar to amendment Nos. 1 and 25.

Amendment No. 34 is similar to amendment Nos. 2 and 26.

Amendment No. 35 is similar to amendment Nos. 3 and 27.

Amendment No. 36 is a drafting amendment to incorporate the procedure for service of notice in the Fourth Schedule.

Amendment No. 37 is similar to amendment Nos. 7 and 28.

Amendment No. 38 is a drafting amendment.

Amendment No. 39 is similar to amendment Nos. 10 and 30.

Amendment Nos. 40 to 44 are drafting amendments.

Amendment No. 45 is a consequential drafting amendment.

Amendments agreed to.

Assoc. Prof. Ho Peng Kee: Sir, I beg to move,

(46) In page 13, line 12, to leave out from "writing", to the full-stop in line 17, and insert "under a sale and purchase agreement to sell all their flats to a purchaser (whether in cash or kind or both), they shall serve a notice on the proprietor of the land and every mortgagee, chargee or other person with an estate or interest in the land and whose interest is notified on the land register at least 21 days before the date of the first transfer of any such flat informing them of the transfer under subsection (4)".

(47) In page 13, after line 17, to insert -

"(3) Notice under subsection (2) shall be given by

(a) advertising the proposed sale in such local newspapers in the 4 official languages as approved by the Registrar;

(b) serving the notice on the proprietor of the land and every mortgagee, chargee or other person with an estate or interest in the land and whose interest is notified on the land register by registered post; and

(c) affixing a copy of the notice in the 4 official languages to a conspicuous part of each building in the development.".

(48) In page 13, line 26, after "land" where it first occurs, to insert "and whose interest is".

(49) In page 13, line 27, to leave out "at the address or".

(50) In page 13, line 32, to leave out "by registered post".

Amendment Nos. 46 to 50 relate to the new proposed section 84F which deals with en-bloc sales by unanimous agreement for flats registered under the Registration of Deeds Act or Land Titles Act, where the proprietors of the flats own a leasehold estate of at least 999 years or more in the flat or such other estate as the Minister may gazette and where they do not own the land comprised in the development.

Amendment No. 46 is similar to amendment Nos. 3, 27 and 35. It is also a drafting amendment.

Amendment No. 47 sets out the procedure for service of notice on the proprietor of the land and reversion and his mortgagee or chargee. Notice is to be given by advertising in the local newspapers in the four official languages, service by registered post and by affixing a copy of the notice in the four official languages to a conspicuous part of each building in the development.

Amendment Nos. 48 to 50 are drafting amendments.

Amendments agreed to.

Consequential amendments made:

(1) In page 6, line 28, to leave out "(8)", and insert "(11)".

(2) In page 6, line 31, to leave out "(9)", and insert "(12)".

(3) In page 7, line 1, to leave out "(10)", and insert "(13)".

(4) In page 7, line 16, to leave out "(11)", and insert "(15)".

(5) In page 7, lines 24, 28 and 31, to re-letter paragraphs (b), (c) and (d) as paragraphs (a), (b) and (c), respectively.

(6) In page .8, line 1, to leave out "(d)" and insert "(c)".

(7) In page 8, line 4, to leave out "(3)" and insert "(4)".

(8) In page 10, line 13, to leave out "(6)", and insert "(9)".

(9) In page 10, line 18, to leave out "(7)", and insert "(10)".

(10) In page 12, line 8, to leave out "(8)", and insert "(11)".

(11) In page 12, line 16, to leave out "(9)", and insert "(12)".

(12) In page 12, line 21 and line 22, to leave out "(10)" and "(9)", and insert "(13)" and "(12)", respectively.

(13) In page 12, line 26, to leave out "(11)", and insert "(14)".

(14) In page 12, line 34, to leave out "(13)", and insert "(16)".

(15) In page 13, line 18, to leave out "(3)", and insert "(4)".

(16) In page 13, line 24, to leave out "(4)", and insert "(5)".

(17) In page 13, line 35, to leave out "(5)", and insert "(6)".

(18) In page 14, line 3, to leave out "(6)", "(9), (10), (11) and (13)", and insert "(7)", "(12),(13), (14) and (16)", respectively.

Clause 8, as amended, agreed to stand part of the Bill.

Clause 9 agreed to stand part of the Bill.

Clause 10 - (Amendment of section 86)

Assoc. Prof. Ho Peng Kee: Sir, I beg to move,

(1) In page 14, line 12, to leave out "2", and insert "not more than 3".

(2) In page 14, after line 17, to insert -

"(b) by inserting, immediately after the word "two" in the 5th line of subsection (2), the words "or 4";".

Amendment No. 1 gives the Minister for Law power to appoint three instead of two Deputy Presidents.

Amendment No. 2 gives the President of the Board the option to select either two or four members from the Board's panel to form a Board of either three or five persons headed by the President or a Deputy President.

A number of MPs and representors have expressed the view that the Board should be strengthened not only in numbers but in terms of its representation so that it can effectively perform its enlarged duties.

Amendments agreed to.

Consequential amendments made:

(1) In page 14, line 18, to re-letter paragraph (b) as paragraph (c).

(2) In page 15, line 1, to re-letter paragraph (c) as paragraph (d).

Clause 10, as amended, agreed to stand part of the Bill.

Clause 11 - (Amendment of section 87)

Prof. Jayakumar: Sir, I beg to move,

In page 15, line 6, to leave out "24", and insert "not more than 30".

This amendment increases the number of panel members for the Board from a proposed 24 in the Bill to 30.

Amendment agreed to.

Clause 11, as amended, agreed to stand part of the Bill.

Clauses 12 to *15* inclusive agreed to stand part of the Bill.

Clause 16 -(Repeal and re-enactment of section 110)

Prof. Jayakumar: Sir, I beg to move,

(1) In page 18, line 2, to leave out "An applicant for an order", and insert "A party to any proceedings".

(2) In page 18, line 5, to leave out "applicant", and insert "party".

These are technical amendments.

Amendments agreed to.

Clause 16, as amended, agreed to stand part of the Bill.

Clause 17 agreed to stand part of the Bill.

Clause 18- (New section 125A)

Prof. Jayakumar: Sir, I beg to move,

In page 19, line 13, to leave out "the" where it first occurs.

It is a drafting amendment.

Amendment agreed to.

Clause 18, as amended, agreed to stand part of the Bill.

Clauses 19 and *20* agreed to stand part of the Bill.

New Clause (A) -

"Repeal of section 131

(A) Section 131 of the principal Act is repealed.". - *[Prof. Jayakumar.]*

Brought up and read the First time.

Prof. Jayakumar: Sir, I beg to move, "That the clause be read a Second time."

This is a technical amendment.

Question put, and agreed to.

Clause read a Second time and added to the Bill.

The Chairman: The new clause (A) will be inserted immediately after clause 18.

New Clause (B) -

"Repeal and re-enactment of Fourth Schedule

(B**)** The Fourth Schedule to the principal Act is repealed and the following Schedule substituted therefor:

"FOURTH SCHEDULE

Sections 84A(3), 84D(3) and 84E(4)

REQUIREMENTS UNDER SECTION 84A, 84D OR 84E

1. The subsidiary proprietors referred to in section 84A(1) or the proprietors referred to section 84D(2) or 84E(3) shall, before making an application to a Board -

(a) consider the collective sale at an extraordinary meeting held in accordance with the Act or, where the development is not registered under the Act, at a meeting held after sending a notice of the meeting by registered post to all the proprietors to their last recorded addresses at the Registry of Titles or the Registry of Deeds and placing a copy of the notice under the main door of every flat in the development;

(b) advertise the particulars of the application in such local newspapers in the 4 official languages as approved by the Board;

(c) serve a notice of the proposed application to be made under section 84A(1), 84D(2) or 84E(3) by sending a copy by registered post to all the subsidiary proprietors or proprietors, as the case may be, and by placing a copy under the main door of every lot or flat, together with a copy each of

(i) the advertisement referred to in sub-paragraph (b);

(ii) the sale and purchase agreement;

(iii) a statutory declaration made by the purchaser under the sale and purchase agreement on his relationship, if any, to the subsidiary proprietors of the lots or the proprietors of the flats;

(iv) a valuation report which is not more than 3 months old;

(v) a report by a valuer on the proposed method of distributing the sale proceeds; and

(vi) the minutes of the extraordinary meeting or meeting referred to in sub-paragraph (a);

(d) affix a copy of the notice referred to in sub-paragraph (c) to the main door of the lots or flats whose subsidiary proprietors or proprietors, as the case may be, have not agreed in writing to the sale; and

(e) affix a copy of the notice referred to in sub-paragraph (c) in the 4 official languages to a conspicuous part of each building in the development.

2. The notice referred to in paragraph 1(c) to be served by registered post shall be served on an affected party -

(a) where the party is a subsidiary proprietor of a lot in the strata title plan, at the address as shown on the strata roll;

(b) where the party is a proprietor of a flat or land, at the last recorded address at the Registry of Titles or Registry of Deeds;

(c) where the party is a mortgagee, chargee or other person with an estate and interest in the lot or flat whose interest is notified on the land register, at the address on the strata roll or last recorded address at the Registry of Titles or Registry of Deeds; and

(d) where the party is a management corporation, at its address recorded on the folio of the land register comprising the common property.

3. The advertisement referred to in paragraph 1(b) shall include

(a) information on the development;

(b) the names of the subsidiary proprietors or proprietors, addresses, unit numbers and strata lot numbers, if any, of their flats;

(c) the names of mortgagees, chargees and other persons with an estate and interest in the lots, flats and land;

(d) brief details of the sale proposal; and

(e) the place at which the affected parties can inspect documents for the collective sale.

4. An application to a Board shall be made by the subsidiary proprietors referred to in section 84A(1) or the proprietors referred to in section 84D(2) or 84E(3) within 14 days of the publication of the advertisement referred to in paragraph 1(b), enclosing -

(a) the documents specified in paragraph 1(c);

(b) the statutory declaration made by the representatives appointed under section 84A(2) or their solicitors that paragraph 1(a), (b), (c), (d) and (e) have been complied with;

(c) a list of the names of the subsidiary proprietors who have not agreed in writing to the sale, their mortgagees, chargees and other persons (other than lessees) with an estate or interest in the lots or flats whose interests are notified on the land register; and

(d) such other document as the Board may require.

5. The Board shall, within 5 days of the filing of an objection, serve a copy of it by registered post on the representatives appointed under section 84A(2) and their solicitors, if any.

6. The subsidiary proprietors referred to in section 84A(1) or the proprietors referred to in section 84D(2) or 84E(3) shall, after making an application to the Board, cause a copy of the application to be registered under the Act, the Land Titles Act (Cap.157) or the Registration of Deeds Act (Cap.269), as the case may be.

7. The subsidiary proprietors referred to in paragraph 6 shall, if an order for sale is granted by the Board under section 84A, 84D or 84E, register the order of the Board in accordance with the Act, the Land Titles Act (Cap. 157) or the Registration of Deeds Act (Cap.269), as the case may be, or if the order for sale is not granted by the Board, apply to cancel the application registered under paragraph 6.

8. For the purposes of this Schedule, "affected parties" means -

(a) the subsidiary proprietors referred to in section 84A(1) or the proprietors referred to in section 84D(2) or 84E(3);

(b) the subsidiary proprietors of the lots or the proprietors of the flats who have not agreed in writing to the sale, and any mortgagee, chargee and other person (other than a lessee) with an estate or interest in the lot or flat whose interest is notified on the land register;

(c) the proprietor of the land under section 84E, his mortgagee, chargee or other person with an estate or interest in the land whose interest is notified on the land register; and

(d) the management corporation, where applicable.". - *[Prof. Jayakumar.]*

Brought up and read the First time.

Prof. Jayakumar: Sir, I beg to move, "That the clause be read a Second time."

This amendment incorporates a new Fourth Schedule which sets out the conditions which must be met before an application for en-bloc sale can be made to the Board and sets the procedure for service of notice and application to the Board.

If I may explain, a number of representors felt that the procedure for service of notice on the owners and other interested parties should be made clearer and also included in the Bill itself. Another representor proposed that the majority owners be required to register the notice of their application to the Board with the Registry of Titles and Deeds so as to alert all potential purchasers to an en-bloc sale. Another representation was that the majority owners should be required to hold general meetings of all the unit owners to discuss the sale to facilitate a full airing of views and discussion on the terms of sale, distribution of the sale proceeds and the terms of appointment of the three persons to represent the majority owners.

This Fourth Schedule addresses the concerns which had been raised and provides for the following:

(i) the majority owners to convene at least one meeting to discuss the en-bloc sale; and

(ii) the procedure for notice which includes advertising in the four language newspapers, service of notice to all the owners, the mortgagees and chargees and the management corporation by registered post and by leaving a copy under the main door of every unit, affixing a copy of the notice to the door or gate of a minority owner, affixing a copy of the notice to a conspicuous part of each building in the development; and

(iii) the majority owners to file a copy of their application to the Board with the Registry of Titles and Deeds for notification on the land register.

Question put, and agreed to.

Clause read a Second time and added to the Bill.

The Chairman: The new clause (B) will be inserted immediately after clause 19.

Consequential amendments will be made to the numbering of the clauses consequent on the addition of the two new clauses. The citation year "1998" will be changed to "1999" wherever it occurs in the Bill. These will be done.

Bill to be reported.

REPORT

The Chairman: We shall now consider the report of the Committee to Parliament. The Chairman's draft report has been circulated to Members.

Is it agreed that the Chairman's draft report be accepted as a basis of discussion?

Hon. Members *indicated assent.*

Draft Report, proposed by the Chairman, brought up, and read the First time.

Question put, and resolved,

That the draft Report, proposed by the Chairman, be read a Second time, paragraph by paragraph.

Paragraphs 1 to *48 inclusive* read and agreed to stand part of the Report.

Question put, and resolved.

That this Report be the Report of the Committee to Parliament.

The Chairman: Is it agreed that the Chairman present the Report to Parliament when printed copies are available for distribution to Members?

Hon. Members indicated assent.

The Chairman: Thank you, gentlemen. The Committee is now *functus officio.*

Committee adjourned at 2.40 pm.