



# **LAWS OF SARAWAK**

## **Chapter 69**

### **HOUSING DEVELOPMENT (CONTROL AND LICENSING) ORDINANCE, 2013**

SarawakLawNet

**HOUSING DEVELOPMENT (CONTROL AND LICENSING)  
ORDINANCE, 2013**

Date Passed by Dewan Undangan  
Negeri ... .. 19th November, 2013

Date of Assent ... .. 12th December, 2013

Date of Publication in *Gazette* ... 19th December, 2013

Sarawak LawNet

**LAWS OF SARAWAK**

**Chapter 69**

**HOUSING DEVELOPMENT (CONTROL AND LICENSING)  
ORDINANCE, 2013**

---

ARRANGEMENT OF SECTION

---

**PART I**

**PRELIMINARY**

*Section*

1. Short title and commencement
2. Application
3. Interpretation
4. Power of Minister to determine housing accommodation
5. Appointment of Controller, Deputy Controller and Inspectors

**PART II**

**LICENSING OF HOUSING DEVELOPER**

6. Application for Licence
7. Conditions or restrictions for the grant of a licence
8. Controller to forfeit deposit
9. Refund of deposit

**PART III**

**DUTIES OF A LICENSED HOUSING DEVELOPER**

10. Duties of a licensed housing developer
11. Transfer or assignment of a licence

Section

12. Licensed housing developer to open and maintain Housing Development Account
13. Freezing of the Housing Development Account
14. Arrangement or agreement of a licensed housing developer

PART IV

INVESTIGATION AND ENFORCEMENT

15. Investigation
16. Powers of entry, inspection and seizure
17. List of things seized and detained
18. Search of person
19. Obstruction to exercise of powers by the Controller, an Inspector or police officer
20. Requirement to provide translation
21. Power to examine person
22. Specific persons in respect of whom powers of investigation may be exercised
23. Assistance to police or other public officer
24. Protection of informers
25. Authority to act
26. Penalty for obstruction and failure to provide translation

PART V

POWERS OF MINISTER AND CONTROLLER

27. Minister to give directions for safeguarding interest of purchasers
28. Minister to give general directions
29. Revocation and suspension of a licence
30. Controller to notify licensed housing developer of any action taken under sections 6, 14 or 29
31. Controller to report the conduct of an architect or engineer
32. A bankrupt or a convicted person not eligible to manage the business of a licensed housing developer
33. Right of appeal to the Minister

PART VI  
TRIBUNAL FOR HOUSING PURCHASER CLAIMS

*Section*

34. Tribunal for Housing Purchaser Claims
35. Temporary exercise of functions of Chairman
36. Vacation of office
37. Revocation of member's appointment
38. Remuneration and allowances
39. Secretary to Tribunal and other officers
40. Sitting of Tribunal
41. Scope of a claim
42. Jurisdiction of Tribunal
43. Limitation of jurisdiction
44. Notice of claim and hearing
45. Mediation for settlement
46. Right to appear at hearing
47. Proceedings of the Tribunal
48. Tribunal may act in absence of party
49. Award of the Tribunal
50. Reference to a Judge of the High Court
51. Orders and settlement to be recorded in writing
52. Decisions of Tribunal to be final
53. Criminal penalty for failure to comply
54. Disposal of documents, *etc.*
55. Act or omission done in good faith

PART VII  
MISCELLANEOUS

*Section*

56. Indemnity and protection against suits and proceedings
57. Offences relating to a licence under section 6
58. Offences relating to abandonment of housing development by a housing developer
59. Offences by a housing developer under sections 10, 14, 15(3), 27 or 28
60. Offences by a director, manager or secretary under section 32
61. Release of moneys by a stakeholder
62. Progress certification
63. Penalty for offences not otherwise provided for
64. Aiding or abetting
65. Liability of director, manager and other officials for offences committed by companies and liability of a person for acts done by others
66. Conduct of prosecution
67. Powers to make regulations

PART VIII

REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS

68. Repeal, savings and transitional provisions

*SCHEDULE*

**LAWS OF SARAWAK**

**Chapter 69**

**HOUSING DEVELOPMENT (CONTROL AND LICENSING)  
ORDINANCE, 2013**

*An Ordinance to provide for the control and licensing of the business of housing development in Sarawak, the protection of the interest of purchasers and for matters connected therewith.*

Enacted by the Legislature of Sarawak—

[1st November, 2014]

\*(Swk. L.N. 104/2014)

**PART I**

**PRELIMINARY**

**Short title and commencement**

1. This Ordinance may be cited as the Housing Development (Control and Licensing) Ordinance, 2013, and shall come into force on such date as the Minister may, by notification in the \**Gazette*, appoint.

**Application**

2.—(1) This Ordinance shall, subject to exemption under subsection (2), apply to every housing developer including any body or agency established or incorporated by statute and under the control of the Federal or State Government which is carrying out the business of housing development.

(2) The Minister may, by notification published in the *Gazette*, exempt any housing developer from any or all of the provisions of this Ordinance or regulations made hereunder.

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

### **Interpretation**

3. In this Ordinance—

“abandoned housing development” means housing development which has been abandoned as declared by the Minister under section 27(2);

“bank” means any bank licensed under the Financial Services Act 2013 [*Act 758*] and the Islamic Financial Services Act 2013 [*Act 759*];

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

“company” means any company incorporated under the Companies Act 1965 [*Act 125*], and any written law previously in force in Sarawak relating to companies;

“Controller” means the Controller of Housing appointed under section 5 and includes the Deputy Controller;

“designated licensed housing developer” means a housing developer directed by the Minister to assume control and carry on business of a housing developer under section 27(1)(c);

“finance company” means any finance company licensed under the Financial Services Act 2013 [*Act 758*];

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



“housing accommodation” includes any building, tenement or messuage which is wholly or principally constructed, adapted or intended for human habitation or partly for human habitation and partly as business premises or such other types of accommodation as may be prescribed by the Minister pursuant to section 4;

“housing developer” means any person, body of persons, company, firm or society (by whatever name described) carrying out the business of a housing development including, where appropriate, a licensed housing developer;

“housing development” means the carrying out of any building operations for the purpose of erecting in any manner housing accommodation in, on, over or under any land or the collection of moneys therefor, or the sale of such housing accommodation;

“Housing Development Account” means an account opened and maintained by a licensed housing developer pursuant to section 12;

“housing development area” means an area where the developer undertakes to construct housing accommodation or any other buildings, including commercial or industrial buildings and roads, bridges, drains and other works;

“housing lot” means any piece of land surveyed or otherwise, to which a lot number has been assigned to it and which is subject to the restrictions and conditions expressed in the document of title or contained in the Land Code [*Cap. 81 (1958 Ed.)*];

“Inspector” means an Inspector of Housing appointed under section 5;

“licence” means a licence granted under section 6;

“licensed housing developer” means any housing developer licensed under section 6 to engage in or carry out or undertake a housing development;

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

“occupation permit” means an occupation permit for occupation of a building issued under the Buildings Ordinance, 1994 [*Cap. 8*];

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

“stakeholder” means any advocate or firm of advocates holding moneys as stakeholder for payment to a housing developer pursuant to sale and purchase agreements in respect of a housing development;

“Tribunal” means the Tribunal for Housing Purchaser Claims established under section 34.

#### **Power of Minister to determine housing accommodation**

4. Subject to Part X of the Land Code [*Cap. 81 (1958 Ed.)*], the Minister may, by notification in the *Gazette*, prescribe any type of accommodation to be a housing accommodation.

#### **Appointment of Controller, Deputy Controller and Inspectors**

5.—(1) For the purpose of this Ordinance, the Minister may, by notification in the *Gazette*, appoint a Controller, a Deputy Controller and such number of Inspectors as the Minister may deem fit and proper from amongst members of the State Public Service.

(2) The Deputy Controller and Inspectors shall assist the Controller in carrying out his functions under this Ordinance.

(3) The Controller, the Deputy Controller and every Inspector shall, while discharging their duties as such under this Ordinance, be deemed to be public servants within the meaning of the Penal Code [Act 574].

## PART II

### LICENSING OF HOUSING DEVELOPER

#### Application for Licence

6.—(1) A proprietor of any alienated land, or person holding the written consent of such proprietor, who intends to carry out a housing development of more than eight units of housing accommodation shall, before carrying out such development, apply for a licence in accordance with this Ordinance.

(2) Where the development is to be undertaken in phases within a housing development area, a licence shall be required for each phase:

Provided that where the housing accommodation to be constructed within a housing development area does not exceed one hundred units, only one licence may be issued to the housing developer notwithstanding that such housing development is to be undertaken in phases.

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

(4) A housing developer shall submit his application to the Controller in accordance with the Schedule and any such application shall be made in the prescribed form and on payment of the prescribed fees.

(5) The Controller may, subject to section 7 and on such terms and conditions as he may deem fit and proper, grant the licence applied for or refuse to grant such licence.

(6) Subject to section 30, the Controller may at any time vary, cancel or alter the terms and conditions of a licence or impose any or new or additional terms and conditions as the Controller may deem fit and proper in carrying out his functions under this Ordinance.

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

7.—(1) Subject to subsection (2), the licence applied for under section 6 may be granted if—

(a) the applicant has an issued and paid-up capital, and has made a deposit, of such amount as may be prescribed in the regulations made under this Ordinance;

(b) the applicant has not been convicted of an offence involving fraud or dishonesty;

(c) the applicant is not a bankrupt;

(d) the housing development plan to which this Ordinance applies has been approved by the State Planning Authority under Part X of the Land Code [*Cap. 81 (1958 Ed.)*];

(e) at the time the application is made, the applicant has not been involved in or associated with any abandoned housing development which has been declared abandoned by the Minister under section 27(2) or has not, during his involvement in any housing development, failed to fulfill his obligations under a sale and purchase agreement for any housing development; or

(f) the applicant has not been convicted of any offence under this Ordinance.

(2) For the purposes of this section, the expression ‘applicant’ shall include a company as defined in the Companies Act 1965 [*Act 125*], a body of persons or a firm, its director, manager or officers thereof.

(3) The Minister may waive any or all of the conditions set out in subsection (1)(a), (c), (e) and (f) or substitute the said conditions with other conditions as he may deem fit and proper.

**Controller to forfeit deposit**

8.—(1) If, in the opinion of the Controller, any licensed housing developer—

(a) is carrying on his business in a manner which is detrimental to the interests of the purchasers or any member of the public;

(b) has insufficient assets to cover his liabilities;

(c) has ceased to carry on housing development in Sarawak;

(d) is contravening any of the provisions of this Ordinance;

the Controller may, after having given the licensed housing developer an opportunity to submit reasons within a specified period on why the deposit under section 7 should not be forfeited, forfeit the whole or part of the deposit.

(2) Notwithstanding subsection (1), the Controller may forfeit the deposit where the licensed housing developer fails to apply for a new licence within two months after the expiry of the licence issued under section 6 in respect of a housing development not having been completed within the period of such licence.

(3) The deposit forfeited under subsection (1) may be applied to meet any expenses incurred by any person other than the licensed housing developer in complying with or arising from or consequential upon any direction given by the Minister under sections 27 and 28.

### **Refund of deposit**

9. The Controller may refund to the licensed housing developer the deposit made under section 7(1)(a)—

(a) subject to section 8, upon completion of the housing development, which shall mean the production of the occupancy permit (OP) issued by the appropriate authority or of the requisite Certificate of Making Good Defects in respect of the housing accommodation comprised in the housing development, whichever is the later; or

(b) upon the request of the licensed housing developer who does not intend to commence with such housing development for the remaining period of the licence

### **PART III**

#### **DUTIES OF A LICENSED HOUSING DEVELOPER**

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

10.—(1) In addition to the duties specified in section 14, a licensed housing developer shall—

(a) within four weeks of the making of any alteration in or to any of the documents submitted to the Controller under section 6(4) furnish to the Controller written particulars of the alteration;

(b) exhibit at all times in a conspicuous position in any office and branch office of the licensed housing developer a copy of his last audited balance sheet as soon as the same is available and such information as the present or former full name, usual residential address, nationality, nationality of origin (where the present nationality is not that of origin), business or occupation (if any) of each person who has the control and management of the business of the licensed housing developer and particulars of any other directorship held by that person;

(c) keep or cause to be kept in his office such accounting and other records as will sufficiently explain the transactions and the financial position of the licensed housing developer and to enable true and fair profit and loss accounts and balance sheets and any documents required to be attached thereto to be prepared from time to time, and shall cause these records to be kept in such manner as to enable them to be conveniently and properly audited;

(d) not later than 21st day of January and the 21st day of July of each year, send to the Controller a statement in the prescribed form; and

(e) where he considers that he is likely to become unable to meet his obligations to the purchasers, forthwith notify the Controller of such fact in writing.

(2) Where submission could not be made by the licensed housing developer within the period specified in subsection (1), the Controller may, on application made by the licensed housing developer prior to the expiry period, extend such period which in any case shall not exceed six months.

#### **Transfer or assignment of a licence**

**11.—(1)** A licensed housing developer shall not transfer his licence granted under this Ordinance or assign any right therein and any such transfer or assignment shall be null and void.

(2) A licensed housing developer who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine of not less than ten thousand ringgit but not exceeding one hundred thousand ringgit or to imprisonment for a term of not exceeding five years or to both.

**Licensed housing developer to open and maintain Housing Development Account**

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

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

(3) The licensed housing developer shall pay into the Housing Development Account of a housing development the purchase moneys received by the licensed housing developer from the sales of housing accommodation and any other sums of money which are required by regulations made under this Ordinance to be paid into the Housing Development Account.

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

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

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

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



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

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

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

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

(8) Subject to the Financial Services Act 2013 [*Act 758*] and the Islamic Financial Services Act 2013 [*Act 759*], the Minister may, if he considers necessary, appoint an approved company auditor to investigate the books, accounts and transactions of a Housing Development Account and the licensed housing developer shall pay all expenses incurred thereto.

(9) This section shall not apply to any housing development carried on by a licensed housing developer where all the housing accommodation in the housing development will not be offered for sale and purchase before the completion of the housing development and the issuance of certificate of completion.

(10) Any licensed housing developer who contravenes this section commits an offence and shall, on conviction, be liable to a fine of not less than two hundred and fifty thousand ringgit but not exceeding five hundred thousand ringgit or to imprisonment for a term of not exceeding three years or to both.

### **Freezing of the Housing Development Account**

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

(2) No bank or finance company, or director, officer or employee of the bank or finance company, as the case may be, shall be subject to any claim or demand by or liability to any person in respect of anything done or omitted to be done in good faith in pursuance of or execution or intended execution of or in connection with the execution or intended execution of an order of the Controller under subsection (1).

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

### **Arrangement or agreement of a licensed housing developer**

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

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

## **PART IV**

### **INVESTIGATION AND ENFORCEMENT**

#### **Investigation**

15.—(1) Either on his own volition or upon being directed by the Minister under subsection (2), the Controller or an Inspector may from time to time under conditions of secrecy investigate into the affairs or into the accounting or other records of any housing developer.

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

(a) if he has reason to believe that the housing developer in question is carrying on his business in a manner detrimental to the interests of his purchasers, or has assets insufficient to meet his liabilities or is contravening any of the provisions of this Ordinance or any regulations made hereunder; or

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

(3) For the purpose of making an investigation under this section, the Controller or an Inspector shall have the right of access at all times to the accounting and other records of the housing developer and shall be entitled to require such information and explanation as he desires for the purpose of the investigation from officers of the housing developer or from any other persons who are in possession of the information or who could give the explanation.

#### **Powers of entry, inspection and seizure**

**16.—(1)** The Controller, an Inspector or any police officer may, without warrant—

(a) enter, search and inspect any premises, place or site for the purpose of ascertaining whether the provisions of this Ordinance or its regulations are being complied with or if he has reason to believe that an offence under this Ordinance has been committed;

(b) inspect, make copies of or take extracts from any book or other documents;

(c) take possession of, and remove from the premises, place or site any property, book or other documents;

(d) take photographs, video or audio recordings or make sketches of the premises, place or site or any other things on the premises, place or site which he has reason to believe that an offence has been committed under this Ordinance;

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

(f) stop, detain or search any vehicle or conveyance which he has reason to believe has been used in the commission of an offence under this Ordinance.

(2) In effecting any entry and seizure under subsection (1), the Controller, an Inspector or any police officer may use such force as may be reasonably necessary.

#### **List of things seized and detained**

17.—(1) The Controller, an Inspector or any police officer who seized and detained any thing or document under this Ordinance shall prepare a list of all things or documents seized and detained and forthwith sign the list.

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

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

#### **Search of person**

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

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

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

**Obstruction to exercise of powers by the Controller, an Inspector or police officer**

19. No person shall—

(a) refuse the Controller, an Inspector or any police officer exercising his powers under section 16 or 18 access to any premises or any part of such premises, or fail to submit to the search of his person;

(b) assault, obstruct, hinder or delay the Controller, an Inspector or any police officer in effecting any entrance which he is entitled to effect;

(c) fail to comply with any lawful demands of the Controller, an Inspector or any police officer in the execution of his duties under section 17;

(d) refuse to give to the Controller, an Inspector or any police officer any information which may reasonably be required of him and which he has within his power to give;

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

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

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

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

#### **Requirement to provide translation**

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

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

#### **Power to examine person**

**21.—**(1) Where the Controller, an Inspector or any police officer suspects any person to have committed an offence under this Ordinance, he may, if in his opinion it is reasonably necessary to do so for the purpose of investigating into such offence—

(a) order any person orally or in writing to attend before the Controller, an Inspector or any police officer for the purpose of being examined orally by the Controller, an Inspector or any police officer in relation to any matter which may, in the opinion of the Controller, an Inspector or any police officer, assist in the investigation into the offence;

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

(c) by written notice require any person to furnish a statement in writing made on oath or affirmation setting out in the notice all such information which, in the opinion of the Controller, an Inspector or any police officer, assist in the investigation into the offence.

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

(a) a person to whom an order under subsection (1)(a) has been given shall attend in accordance with the terms of the order to be examined, and shall continue to so attend from day to day as directed by the Controller, an Inspector or any police officer until the examination is completed, and shall during such examination disclose all information which is within his knowledge, or which is available to him, or which is capable of being obtained by him, in respect of the matter in relation to which he is being examined, whether or not any question is put to him with regard thereto, and where any question is put to him he shall answer the question truthfully and to the best of his knowledge and belief, and shall not refuse to answer any question on the ground that it tends to incriminate him;

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



(c) a person to whom a written notice has been given under subsection (1)(c) shall, in his statement made on oath or affirmation, furnish and disclose truthfully all information required under the notice which is within his knowledge, or which is available to him, or which is capable of being obtained by him, and shall not fail to furnish or disclose the information on the ground that it tends to incriminate him.

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

(4) Where any person discloses any information or produces any property, book, other documents, article, or thing, pursuant to subsections (1) and (2), neither the first-mentioned person, nor any other person on whose behalf or direction or as whose agent or employee the first-mentioned person may be acting, shall, on account of such disclosure or production, be liable to any prosecution for any offence under or by virtue of any law, or to any proceeding or claim in any form or of any description by any person under or by virtue of any agreement or arrangement, or otherwise.

(5) The Controller, an Inspector or any police officer may seize, take possession of and retain for such duration as he deems necessary, any property, book, other documents, article or thing produced before him in the course of an investigation under subsection (1), or search the person who is being examined by him under subsection (1)(a), or who produces anything to him under subsection (1)(b), for ascertaining whether anything relevant to the investigation is concealed, upon such person or is otherwise upon such person.

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

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

(a) for, or in relation to, an offence under this Ordinance;  
or

(b) for, or in relation to, any other matter under this Ordinance, regardless whether such proceedings are against the person who was examined, or who produced the property, book, other documents, article or thing, or who made the written statement on oath or affirmation, or against any other person.

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

**22.** The powers of investigation conferred by this Ordinance on the Controller, an Inspector or any police officer, may be exercised by him against—

(a) any past or present business associate; or

(b) any person who is or was concerned in the control or management, in whole or in part of the affairs, of the person suspected to have committed an offence under this Ordinance.

### **Assistance to police or other public officer**

**23.** The Controller may on his own initiative, or on the request of an Inspector—

(a) supply to a police officer or any other public officer a copy of any book or other documents seized, detained or taken possession of under section 16 or 18, or of any record of examination under section 21(1)(a), or of any written statement on oath or affirmation made under section 21(1)(c), or of any book or other document produced under section 21(1)(b), or otherwise in the course of any examination under section 21(1)(a), or under any written statement on oath or affirmation made pursuant to section 21(1)(c), and such police officer or other public officer may make such use of such copy of such record, statement, book or other document as may be necessary or expedient in relation to the exercise of his powers, the performance of his functions or the discharge of his duties, in respect of any person; or

(b) allow a police officer or any other public officer to have access to and inspect any property, book, other documents, article of thing which had been produced before, or seized, detained or taken possession of, by an Inspector under this Ordinance, and such police officer or other public officer may make such use of any knowledge gained by such access or inspection as may be necessary or expedient in relation to the exercise of his powers, the performance of his functions, or the discharge of his duties, in respect of any person.

### **Protection of informers**

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

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

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

#### **Authority to act**

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

#### **Penalty for obstruction and failure to provide translation**

**26.** Any person who contravenes section 19, section 20(2) or section 21 commits an offence and shall, on conviction, be liable to a fine of not less than ten thousand ringgit but not exceeding one hundred thousand ringgit or to imprisonment for a term of not exceeding five years or to both.

PART V  
POWERS OF MINISTER AND CONTROLLER

**Minister to give directions for safeguarding interest of purchasers**

27.—(1) Where on his own volition a housing developer informs the Controller or where as a result of an investigation made under section 15 or for any other reasons the Controller is of the opinion that the housing developer has or is likely to become unable to meet his obligations to his purchasers or is about to suspend his building operations or is carrying on his business in a manner detrimental to the interests of his purchasers, the Minister may, either on his own motion or on the report of the Controller for the purpose of safeguarding the interests of the purchasers of the housing developer —

- (a) direct the housing developer in question to take such steps as he may consider necessary to rectify any matter or circumstance;
- (b) appoint or cause to be appointed a person to advise the housing developer in the conduct of his business;
- (c) direct any other housing developer (hereinafter referred to as “the designated housing developer”) to assume control and carry on the business of the housing developer upon such terms and conditions as the Minister may determine with a view to completing any housing development which the housing developer is undertaking;
- (d) direct the housing developer to present a petition to the High Court for the winding up of his business; or
- (e) take such action as the Minister may consider necessary in the circumstances of the case for carrying into effect the provisions of this Ordinance.

(2) The action to be taken by the Minister under subsection (1)(e) may include a declaration that the housing development has been abandoned as where a housing developer had refused to carry out or delayed or suspended or stopped or ceased works continuously for a period of six months or more or beyond the stipulated period of completion as agreed under the sale and purchase agreement.

(3) Every such direction or action of the Minister made under subsection (1) shall be binding on the housing developer.

(4) Where a designated housing developer has, in pursuance of a direction of the Minister under subsection (1)(e), assumed control of and carried on the business of a housing developer, the following provisions shall apply:

(a) the housing developer in question shall submit his business to the control of the designated housing developer and shall provide the designated housing developer with such facilities as the Controller may consider necessary for the purpose of carrying on the business of the housing developer with a view to completing any housing development which the housing developer is undertaking,

(b) the designated housing developer shall take over and become in control of and continue to carry on the business of the housing developer until such time as the Minister may in writing otherwise direct or until the completion to the satisfaction of the Controller of the housing development of the housing developer; and

(c) every such assumption and cessation of control of the business of a housing developer pursuant to a direction of the Minister made under subsection (1)(e) shall be published by the Controller in the *Gazette*.

### **Minister to give general directions**

28. The Minister may give to a housing developer such directions as he considers fit and proper for the purpose of ensuring compliance with this Ordinance or any regulations made hereunder, and any such direction shall be made in writing and shall be binding on the housing developer to whom the direction is made.

### **Revocation and suspension of a licence**

29. If any licensed housing developer—

(a) is carrying on his business, in the opinion of the Controller, in a manner detrimental to the interests of the purchasers or to any member of the public;

(b) has insufficient assets to cover his liabilities;

(c) has ceased to carry on housing development in Sarawak; or

(d) is contravening any of the provisions of this Ordinance or any regulations made hereunder,

the Controller may, subject to the provisions of section 30 relating to the giving of opportunity of being heard, revoke the licence issued to the licensed housing developer or suspend it for such period as the Controller may determine.

### **Controller to notify licensed housing developer of any action taken under sections 6, 14 or 29**

30. Before revoking or suspending a licence under section 29 or before varying, cancelling or altering any conditions imposed on a licence or before imposing thereon any new or additional conditions under section 6(6) or before refusing to give approval under section 14, the Controller shall notify the licensed housing developer of the aforesaid proposed action and shall give him an opportunity to submit reasons why the aforesaid proposed action should not be carried out.

### **Controller to report the conduct of an architect or engineer**

**31.** Where the Controller is satisfied that the conduct of an architect or engineer engaged or employed by a housing developer is prejudicial to the interest of a purchaser, the Controller may report such conduct of the architect or engineer to his respective professional body.

### **A bankrupt or a convicted person not eligible to manage the business of a licensed housing developer**

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

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

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

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

### **Right of appeal to the Minister**

**33.** An applicant applying under section 6(4) or a licensed housing developer, as the case may be, who is aggrieved by the action or decision of the Controller—

(a) in refusing to grant a licence to him under section 6(5);

(b) in varying, altering or cancelling any conditions of his licence or imposing thereon any new or additional conditions under section 6(6);



(c) in refusing to give approval to an arrangement or agreement proposed to be entered into by a licensed housing developer under section 14, or in approving the same but subject to conditions being imposed thereon; or

(d) in revoking or suspending his licence under section 29,

may, within fourteen days after having been notified of the action or decision of the Controller, appeal against that action or decision to the Minister.

## PART VI

### TRIBUNAL FOR HOUSING PURCHASER CLAIMS

#### **Tribunal for Housing Purchaser Claims**

**34.—(1)** There shall be established a tribunal to be known as the “Tribunal for Housing Purchaser Claims”.

(2) The Tribunal shall consist of the following members:

- (a) a Chairman;
- (b) a Deputy Chairman; and
- (c) not more than five other members,

to be appointed by the Minister from amongst persons who possess a recognized legal qualification or who are members of any registered professional bodies in Sarawak and have relevant experience in the housing industry.

(3) The appointment of a member of the Tribunal shall be for a period not exceeding three years and shall be subject to such terms and conditions as may be imposed.

(4) A member of the Tribunal is eligible for reappointment upon the expiry of the term of his office.

### **Temporary exercise of functions of Chairman**

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

### **Vacation of office**

**36.** The office of a member of the Tribunal shall become vacant—

- (a) upon the death of the member;
- (b) upon the member resigning from such office by giving a written notice to the Minister; or
- (c) upon expiration of his term of office.

### **Revocation of member's appointment**

**37.** The Minister may revoke the appointment of a member of the Tribunal—

- (a) if in his opinion the conduct of the member, whether in connection with his duties as a member of the Tribunal or otherwise, shall bring discredit to the Tribunal or the member has become incapable of carrying out his duties;
- (b) if the member has been convicted in Court for—
  - (i) an offence involving fraud, dishonesty or moral turpitude; or
  - (ii) an offence under a law relating to corruption;
- (c) if he is adjudicated a bankrupt;
- (d) if he has been found or declared to be of unsound mind; or

(e) if he has otherwise become incapable of managing his affairs.

### **Remuneration and allowances**

**38.** The members of the Tribunal appointed shall be paid such remunerations and other allowances as the Minister may determine.

### **Secretary to Tribunal and other officers**

**39.—(1)** There shall be a Secretary to the Tribunal and such number of officers from the State Public Service to be appointed by the Minister to carry out the functions of the Tribunal.

(2) Subject to any special or general direction of the Minister, the Secretary shall be the administrative officer and shall have general control and supervision of all other officers of the Tribunal.

### **Sitting of Tribunal**

**40.—(1)** The jurisdiction of the Tribunal shall be exercised by a panel consisting of three members as may be determined by the Chairman.

(2) The Tribunal shall where reasonably possible conduct the hearing in one continuous sitting until completion at such time and place as may be determined by the Chairman, taking into consideration the nature of complaint and administrative convenience.

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

(4) Every disclosure of interest under subsection (3) shall be recorded.

(5) If a member of the Tribunal who is involved in any proceedings in respect of a claim, dies or becomes incapacitated, or is for any other reasons unable to carry out his duties, the Chairman may appoint another member to replace him in the proceedings.

### **Scope of a claim**

**41.** A purchaser may lodge with the Tribunal a claim in the prescribed form, together with the prescribed fees, for any loss suffered or any matter concerning his interests under a sale and purchase agreement.

### **Jurisdiction of Tribunal**

**42.—(1)** Subject to section 43, the Tribunal shall have jurisdiction to hear a claim which does not exceed one hundred and fifty thousand ringgit lodged under section 41.

(2) Any counter-claim arising out of the sale and purchase agreement to be filed before the Tribunal shall not exceed one hundred and fifty thousand ringgit.

(3) A claim before the Tribunal shall be filed at any time not later than eighteen months from the date of the issuance of the occupation permit or before the expiry date of the defect liability period as set out in the sale and purchase agreement, whichever is later.

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

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

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

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

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

(c) Upon receipt of the documents in paragraph (b), the financial institution or third party shall within two weeks file their explanation or defence with the Tribunal.

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

#### **Limitation of jurisdiction**

**43.—(1)** Except as expressly provided under this Ordinance, the Tribunal shall have no jurisdiction in respect of any claim—

(a) for the recovery of land, or any estate or interest in land;

(b) in which there is a dispute concerning—

(i) the entitlement of any person under a will or settlement, or on intestacy (including partial intestacy);

(ii) goodwill;

(iii) any chose in action; or

(iv) any trade secret or other intellectual property rights.

(2) The jurisdiction of the Tribunal shall be limited to a claim by the purchaser that is based on a cause of action arising from a sale and purchase agreement entered into whether or not pursuant to this Ordinance.

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

(4) The Tribunal shall have no jurisdiction—

(a) to hear a claim arising from personal injury or death;  
or

(b) to award a prohibitory, mandamus, declaration, specific performance or an injunction order.

#### **Notice of claim and hearing**

44. Upon a claim being lodged under section 41, the Secretary to the Tribunal shall give notice of the details of the day, time and place of hearing in the prescribed form to the claimant and the respondent.

#### **Mediation for settlement**

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

(2) The parties shall be informed that the mediation shall be on a “without prejudice” basis and the parties shall decide on the issues and reach their own settlement.

(3) Where the parties reach an agreed settlement, the Tribunal shall approve and record the settlement and the settlement shall then take effect as if it were an award of the Tribunal.

(4) Where—

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

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

the Tribunal shall proceed to determine the dispute.

### **Right to appear at hearing**

**46.—**(1) At the hearing of a claim every party shall be entitled to attend and be heard.

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

(3) Subject to subsection (2)—

(a) a corporation or an unincorporated body of persons may be represented by a fulltime employee of the corporation or body; and

(b) a minor or any person under a disability may be represented by his next friend or guardian *ad litem*.

(4) Where a party is represented as permitted under subsection (3), the Tribunal may impose conditions as it considers necessary to ensure that the other party to the proceedings is not substantially disadvantaged.

### **Proceedings of the Tribunal**

**47.—(1)** All proceedings or hearings before the Tribunal shall be open to the public.

(2) A Tribunal shall not, in its proceedings or deliberations, be bound by the provisions of the Evidence Act 1950 [~~Act 56~~] or any law relating to evidence.

### **Tribunal may act in absence of party**

**48.** The Tribunal may hear and determine the claim before it notwithstanding the absence of any party to the proceedings if it is proved to the satisfaction of the Tribunal that a notice of the hearing has been duly served on the absent party.

### **Award of the Tribunal**

**49.—(1)** The Tribunal shall make its award in the proceedings without undue delay and shall give reasons for its decision.

(2) Any decision of the Tribunal shall be made by a majority of all its panel members.

(3) The Tribunal may award interest not exceeding eight per centum per annum.

### **Reference to a Judge of the High Court**

**50.—(1)** Before the Tribunal makes an award under section 49, it may, in its discretion, refer to a Judge of the High Court for his legal opinion a question of law which arose in the course of its proceedings, together with a summary of facts of the case.

(2) A State Legal Officer authorized by the State Attorney General for the purpose may appear on behalf of the Tribunal in any proceedings before a Judge of the High Court under this section.

(3) The Tribunal shall make its award in conformity with the legal opinion of the Judge of the High Court in respect of the reference made under subsection (1).



### **Orders and settlement to be recorded in writing**

**51.** The Tribunal shall make or cause to be made a written record of the terms of—

- (a) every agreed settlement reached by the parties under section 45; and
- (b) every award made by the Tribunal under section 49.

### **Decisions of Tribunal to be final**

**52.—(1)** Every agreed settlement recorded by the Tribunal under section 45 and every award made by the Tribunal under section 49 shall—

- (a) be final and binding on all parties to the proceedings; and
- (b) be deemed to be an order of a Magistrate's Court or a Sessions Court, as the case may be, and be enforced accordingly by any party to the proceedings.

(2) For the purpose of subsection (1)(b), the Secretary to the Tribunal shall send a copy of the award made by the Tribunal to the Magistrate's Court or the Sessions Court, as the case may be, having jurisdiction in the place to which the award relates or in the place where the award was made and the Court shall cause the copy to be recorded.

### **Criminal penalty for failure to comply**

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

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

**Disposal of documents, etc.**

54.—(1) The Tribunal may, at the conclusion of the proceedings before it, order that any document, record, material or any other property produced during the proceedings be delivered to the rightful owner or be disposed of in such manner as it considers fit.

(2) Where no person has taken delivery of the document, record, material or other property referred to in subsection (1) after a period of six months, the ownership in the document, record, material or other property shall be deemed to have passed to and become vested in and be at the disposal of the State Government.

**Act or omission done in good faith**

55. No action or suit shall be instituted or maintained in any court against—

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

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

PART VII

MISCELLANEOUS

**Indemnity and protection against suits and proceedings**

56.—(1) No officer acting under the direction of the Minister, the Controller, Deputy Controller or Inspector shall be personally liable for any act or default done or omitted to be done in good faith and without negligence in the course of the discharge of their duties under this Ordinance.

(2) The Public Authorities Protection Act 1948 [Act 198] shall apply to any action, suit, prosecution or proceedings against the State

Government, Minister, Controller, Deputy Controller, Inspectors, the Tribunal or any member or officer in respect of any act, neglect or default done or committed by any of them in such capacity.

**Offences relating to a licence under section 6**

**57.** Any housing developer who—

(a) in contravention of section 6(1), carries out housing development without having been duly licensed under that section;

(b) in contravention of section 6(3), assumes or uses in relation to his business or any part of his business the words “housing developer” or any of the derivatives or any other word or words indicating the carrying on of the business of housing development; or

(c) fails to comply with any of the conditions imposed on the licence granted under section 6,

commits an offence and shall, on conviction, be liable to a fine of not less than ten thousand ringgit but not exceeding one hundred thousand ringgit or to imprisonment for a term of not exceeding five years or to both.

**Offences relating to abandonment of housing development by a housing developer**

**58.** A housing developer who abandons or causes to be abandoned a housing development or any phase of housing development shall commit an offence and shall, on conviction, be liable to a fine of not less than two hundred and fifty thousand ringgit but not exceeding five hundred thousand ringgit or to imprisonment for a term of not exceeding three years or to both.

**Offences by a housing developer under sections 10, 14, 15(3), 27 or 28**

**59.** Any housing developer who—

(a) in contravention of any of the provisions of section 10, fails to perform any of the duties imposed by that section;

(b) enters into an arrangement or agreement in contravention of section 14 or fails to comply with any conditions imposed pursuant to section 14(2);

(c) after having been required by the Controller or an Inspector to afford the Controller or Inspector access to the accounting or other records of a housing developer or to furnish any information or explanation, in contravention of section 15(3), fails to comply with that request;

(d) after the Minister has, pursuant to section 27(1)(c), directed a designated housing developer to assume control of and carry on the business of the housing developer, in contravention of section 27(4), fails to submit his business to the control of the designated housing developer or fails to provide the designated housing developer with such facilities as the Controller may consider necessary for the purpose of carrying on the business of the housing developer with a view to completing any housing development undertaken by the housing developer;

(e) fails to comply with any direction given or action required by the Minister under section 27(1)(a), (b), (d) or (e); or

(f) in contravention of section 28, fails to comply with any direction given by the Minister under that section,

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

**Offences by a director, manager or secretary under section 32**

**60.** Any person who—

(a) in contravention of section 32(1), continues to act as or hold office of a director, manager or secretary of a licensed housing developer or any similar office or position in the employ of the licensed housing developer notwithstanding that he has become bankrupt or suspended payment to or compounded with his creditors or is convicted of an offence involving fraud or dishonesty; or

(b) in contravention of section 32(2), acts as or holds or continues to act as or hold office of a director or is directly concerned in the management of the business of any licensed housing developer without the approval in writing of the Minister after the business of that licensed housing developer has been wound up by a court,

commits an offence and shall, on conviction, be liable to a fine of not exceeding fifteen thousand ringgit or to imprisonment for a term of not exceeding two years or to both.

**Release of moneys by a stakeholder**

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

**Progress certification**

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

**Penalty for offences not otherwise provided for**

**63.** Any housing developer who commits of an offence against this Ordinance for which no penalty is expressly provided for shall, on conviction, be liable to a fine of not exceeding twenty thousand ringgit or to imprisonment for a term of not exceeding five years or to both.

**Aiding or abetting**

**64.** Any person who aids or abets the commission of any offence under this Ordinance shall be liable to be punished with the punishment provided for that offence.

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

**65.—(1)** Where any offence against any provision of this Ordinance has been committed by a housing developer, any person who at the time of the commission of the offence was a director, manager or secretary or holds any similar office or position or was an agent, clerk or servant of the housing developer shall be deemed to be guilty of that offence, unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances and shall, on conviction, be liable to a fine of not exceeding fifteen thousand ringgit or to imprisonment for a term of not exceeding two years or to both.

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

(a) his partner;

(b) his agent acting on his behalf;

(c) his clerk or servant acting in the course of his employment; or

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

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

### **Conduct of prosecution**

66. Prosecution for offences against this Ordinance or its regulations may be conducted by the Public Prosecutor or any person authorized in writing by him pursuant to section 377(b) of the Criminal Procedure Code [Act 593].

### **Powers to make regulations**

67.—(1) The Minister may make regulations for the purpose of carrying into effect the provisions of this Ordinance.

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

(a) regulate the advertisements by a licensed housing developer;

(b) regulate the use of names of housing estates developed by a licensed housing developer;

(c) prescribe the form or forms of contracts which shall be used by a licensed housing developer, his agent or nominee and purchaser as a condition of the grant of a licence under this Ordinance or otherwise;

(d) regulate payments (under whatever name these may be described) which may be made by a purchaser before, during or after the construction of the housing accommodation for which that purchaser is required to make the payments, including the amount of the payments, the time when the payments become due and conditions that shall be fulfilled by a licensed housing developer before he may ask for the payments;

(e) regulate and prescribe the conditions and terms of any contract between a licensed housing developer, his agent or nominee and a purchaser;

(f) provide for the issued and paid up capital, fees and deposit and prescribe the amount thereof as required under this Ordinance;

(g) prescribe that any act or omission in contravention of any of the regulations shall be an offence and provide for the penalties therefor either by way of fine or imprisonment or both: Provided that any fine so provided shall not exceed five thousand ringgit and a term of imprisonment so provided shall not exceed three years, and in addition thereto may subject to section 29 also provide for the cancellation and suspension of a licence issued under this Ordinance;

(h) regulate the procedure to be followed in the submission of application for a licence under section 6(4);

(i) prescribe the moneys which shall be paid into or withdrawn from a Housing Development Account and the conditions for such withdrawals;

(j) provide for the offences under this Ordinance or regulations made hereunder which may be compounded by the Controller, the persons who may compound, the limit of the sum of money to be collected by the Controller for compounding such offence and the procedures and forms to be complied with in compounding;



- (k) prescribe, in respect of the Tribunal—
  - (i) terms and conditions of appointment of its members;
  - (ii) remuneration and other allowances payable to its members;
  - (iii) procedure of the Tribunal;
  - (iv) procedure for settlement or mediation of claim;
  - (v) forms to be used;
  - (vi) fees payable; and
  - (vii) any other matters necessary or required to be prescribed;
- (l) provide for the amendment of the Schedule; and
- (m) prescribe anything which is authorized or required to be, or which may be prescribed under this Ordinance.

## PART VIII

### REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS

#### **Repeal, savings and transitional provisions**

68.—(1) The Housing Developers (Control and Licensing) Ordinance, 1993 [*Cap. 5*] is repealed.

(2) Notwithstanding subsection (1), all regulations or orders made under or in accordance with the repealed Ordinance, shall in so far as they are not inconsistent with this Ordinance, continue in force until amended, revoked or replaced pursuant to this Ordinance.

(3) Nothing in this Ordinance shall invalidate any licence, right, privilege or other authority lawfully given under the repealed Ordinance and the same shall continue in force and be deemed to have been issued under this Ordinance.

(4) Any person who, immediately before the commencement of this Ordinance, was holding any office to which appointment may be made under this Ordinance shall continue in that office and be deemed for the purposes of this Ordinance to have been so appointed.

*SCHEDULE*

(Section 6 (4))

(1) <i>Applicant</i>	(2) <i>Documents to be submitted</i>	(3) <i>By whom document to be verified</i>
Person	<ol style="list-style-type: none"> <li>1. A copy of the latest audited balance sheet, if any, relating to all housing developments undertaken by that person.</li> <li>2. Such other information as may be called for by the Controller.</li> </ol>	That person himself.
Body of persons	<ol style="list-style-type: none"> <li>1. A copy of an agreement between or amongst persons forming that body.</li> <li>2. A copy of the latest audited balance sheet, if any, relating to all housing developments undertaken by that body of persons.</li> <li>3. Such other information as may be called for by the Controller.</li> </ol>	Any of the persons forming that body.
Company	<ol style="list-style-type: none"> <li>1. A copy of memorandum of association.</li> <li>2. A copy of articles of association.</li> <li>3. A copy of the latest audited balance sheet.</li> <li>4. Such other information as may be called for by the Controller.</li> </ol>	A director, managing director, general manager, secretary or any senior officer of the company.
Firm	<ol style="list-style-type: none"> <li>1. A copy of the partnership agreement.</li> <li>2. A copy of the latest audited balance sheet.</li> <li>3. Such other information as may be called for by the Controller.</li> </ol>	A partner.
Society	<ol style="list-style-type: none"> <li>1. A copy of the rules or bylaws of the society.</li> <li>2. A copy of the latest audited balance sheet.</li> <li>3. Such other information as may be called for by the Controller.</li> </ol>	President or secretary.

