

**HOUSING DEVELOPMENT (CONTROL AND LICENSING) ACT 1966**

*(Incorporating latest amendment - Act A1415 of the year 2012)*

**Effective 1 JUNE 2015**

	<b>Old</b>	<b>New (changes tracked)</b>
1	"housing developer" means any person, body of persons, company, firm or society (by whatever name described), who or which engages in or carries on or undertakes or causes to be undertaken a housing development;	"housing developer" means any person, body of persons, company, firm or society (by whatever name described), who or which engages in or carries on or undertakes or causes to be undertaken a housing development, <u>and in a case where the housing developer is under liquidation, includes a person or body appointed by a court of competent jurisdiction to be the provisional liquidator or liquidator for the housing developer;</u> <sup>1</sup>
2	<p><b>6. Conditions or restrictions for the grant of a licence.</b></p> <p>(1) Subject to the exercise of power of waiver by the Minister under subsection (2), the licence applied for under section 5 shall not be granted -</p> <p>(a) unless the applicant has a capital issued and paid up in cash of not less than two hundred and fifty thousand ringgit and makes a deposit with the Controller of not less than two hundred thousand ringgit in cash or in such other form as the Minister may determine, if the application is made by a company; or</p> <p>(b) unless the applicant makes a deposit with the Controller of not less than two</p>	<p><b>6. Conditions or restrictions for the grant of a licence.</b></p> <p>(1) Subject to the exercise of power of waiver by the Minister under subsection (2), the licence applied for under section 5 shall not be granted -</p> <p>(a) unless the applicant has a capital issued and paid up in cash of not less than two hundred and fifty thousand ringgit and makes a deposit with the Controller of <del>not less than two hundred thousand ringgit</del> <u>a sum equivalent to three per cent of the estimated cost of construction</u> <sup>2</sup> <u>as certified by an architect in charge of the housing development</u> in cash or in such other form as the Minister may determine, if the application is made by a company; or</p>

<sup>1</sup> The Act has been amended to extend the interpretation of a 'housing developer' to include a person or body appointed by a court of competent jurisdiction to be the provisional liquidator or liquidator for the housing developer in a case where the housing developer is under liquidation. Hence, the liquidator is subjected to the duties imposed by the Act and may be liable for the offences of breaching such duties of a housing developer.

<sup>2</sup> JFY: The present RM200,000 is flawed because it assumes a "one-size-fits-all" formula, applicable to all developers across the board, big or small. Now, the actual deposit sum is dependent on the size of the project. Developer-aspirants who are financially so weak that they are unable to raise the 3% deposit (which is refundable) should stay out of the industry because the probability of them running into trouble is higher.

<p>hundred thousand ringgit in cash or in such other form as the Minister may determine, if the application is made by a person or body of persons;</p> <p>(c) unless the applicant is not himself nor is any member or partner thereof a person convicted of an offence involving fraud or dishonesty or an undischarged bankrupt, if the application is made respectively by a person or a body of persons or a firm;</p> <p>(d) unless no one who is convicted of an offence involving fraud or dishonesty or who is an undischarged bankrupt is holding office as director, manager or secretary of the applicant or other similar office or position, if the application is made by a company, or is holding office as president, secretary or treasurer of the applicant or other similar office or position, if the application is made by a society;</p> <p>(e) unless, at the time the application is made, the applicant or any member or partner of the applicant, if the applicant is a body of persons or firm, or a director, manager or secretary of the applicant, if the applicant is a company, has not, due to a conviction for an offence under this Act, been sentenced to a fine exceeding ten thousand ringgit or to imprisonment (other than imprisonment in default of a fine not exceeding ten thousand ringgit);</p> <p>(f) unless, at the time the application is made, a person who had been a director of or had been directly concerned in the management of the business of a licensed housing developer which has been wound up by a court is not a director or is not directly concerned in the management of the business of the applicant; and</p> <p>(g) if the registration of the applicant's architect or engineer has been cancelled and has not been reinstated under the Architects Act 1967 [Act 117] or the Registration of Engineers Act 1967 [Act 138] at the time the application is made.</p> <p>(1A) For the purposes of paragraphs (1)(d), (e) and (f), if the applicant is a company, the expression "applicant" shall include the holding company of the applicant, or a</p>	<p>(b) unless the applicant makes a deposit with the Controller of <del>not less than two hundred thousand ringgit</del> <u>sum equivalent to three per cent of the estimated cost of construction as certified by an architect in charge of the housing development</u> in cash or in such other form as the Minister may determine, if the application is made by a person or body of persons;</p> <p>(c) unless the applicant is not himself nor is any member or partner thereof a person convicted of an offence involving fraud or dishonesty or an undischarged bankrupt, if the application is made respectively by a person or a body of persons or a firm;</p> <p>(d) unless no one who is convicted of an offence involving fraud or dishonesty or who is an undischarged bankrupt is holding office as director, manager or secretary of the applicant or other similar office or position, if the application is made by a company, or is holding office as president, secretary or treasurer of the applicant or other similar office or position, if the application is made by a society;</p> <p>(e) unless, at the time the application is made, the applicant or any member or partner of the applicant, if the applicant is a body of persons or firm, or a director, manager or secretary of the applicant, if the applicant is a company, has not, due to a conviction for an offence under this Act, been sentenced to a fine exceeding ten thousand ringgit or to imprisonment (other than imprisonment in default of a fine not exceeding ten thousand ringgit);</p> <p>(f) unless, at the time the application is made, a person who had been a director of or had been directly concerned in the management of the business of a licensed housing developer which has been wound up by a court is not a director or is not directly concerned in the management of the business of the applicant; and</p> <p>(g) if the registration of the applicant's architect or engineer has been cancelled and has not been reinstated under the Architects Act 1967 [Act 117] or the Registration of Engineers Act 1967 [Act 138] at the time the</p>
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	<p>subsidiary of the applicant or a subsidiary of the holding company of the applicant.</p> <p>(2) The Minister may in his absolute discretion waive any or all of the conditions set out in paragraph (1) (a), (b) or (d) or substitute any or all of the said conditions for such other conditions as he may consider fit and proper.</p>	<p>application is made.</p> <p>(1A) For the purposes of paragraphs (1)(d), (e) and (f), if the applicant is a company, the expression "applicant" shall include the holding company of the applicant, or a subsidiary of the applicant or a subsidiary of the holding company of the applicant.</p> <p><u>(1B) For the purpose of paragraphs (1)(a) and (b), "estimated cost of construction" means the cost of constructing a housing development and includes financial costs, overhead costs and all other expenses necessary for the completion of the housing development but excludes land cost.</u></p> <p>(2) The Minister may in his absolute discretion waive any or all of the conditions set out in paragraph (1) (a), (b) or (d) or substitute any or all of the said conditions for such other conditions as he may consider fit and proper.</p>
3	<p><b>7B. Licensed housing developer for the purpose of sections 8, 8A, 11 and 12.</b></p> <p>For the purpose of sections 8, 8A, 11 and 12, "licensed housing developer" includes any housing developer whose licence has expired.</p>	<p><b>7B. Licensed housing developer for the purpose of sections <u>7<sup>3</sup></u>, 8, 8A, 11 and 12.</b></p> <p>For the purpose of sections <u>7</u>, 8, 8A, 11 and 12, "licensed housing developer" includes any housing developer whose licence has expired. <sup>[4]</sup></p>
4	<p><b>8A. Statutory termination of sale and purchase agreements.</b></p>	<p><b><u>Section 8A. Statutory termination of sale and purchase agreements.</u></b> <sup>[5]</sup></p>

<sup>3</sup> JFY: **s7 HDA** refers generally to the duties of a housing developer eg. exhibit at all times its license/AP in a conspicuous position in any office/branch office/sales gallery etc; ensure that the development of the housing accommodation has been carried out in accordance with any requirements prescribed under all applicable laws; inform the Controller of the progress in the issuance of separate or strata titles for the housing accommodation and the transfer of such titles to the purchasers from the date of the handing over of vacant possession to the first purchaser of the housing accommodation in the housing development until separate or strata titles for all the housing accommodation have been issued etc. etc

<sup>4</sup> JFY: Developers who failed to renew their license cannot use that as an excuse to escape liability now.

<sup>5</sup> Basically, under this **new s8A**, any ONE/individual buyer can choose to terminate his own sale and purchase agreement ("SPA") as long as the conditions in sub (1)(a) to (c) are met; and upon which termination, the Developer has 30 days to refund all monies received (free of interest). Note:-

1) Previously, the buyers had to collectively apply to the Minister to terminate ALL the sale and purchase agreements; and no such termination was allowed unless BOTH the Developer AND at least **75%** of all the buyers of the signed SPAs agreed to it. But now, each respective buyer can proceed to terminate his own SPA without having to wait for the others.

2) Also important to note that now, the Developer no longer has the right to initiate such termination.

<p>(1) Notwithstanding anything contained in any agreement, a licensed housing developer or the purchasers may apply to the Minister for approval to terminate all the sale and purchase agreements entered into in respect of a housing development or any phase of a housing development which the housing developer is engaged in, carries on or undertakes or causes to be undertaken if-</p> <p>(a) such application, duly made in accordance with subsection (2), is received by the Minister within six months after the execution of the first sale and purchase agreement in respect of that housing development or that phase of housing development; and</p> <p>(b) at least seventy-five per cent of all the purchasers who have entered into the sale and purchase agreements have agreed with the housing developer in writing to terminate the sale and purchase agreements.</p> <p>(2) Any application made under subsection (1) shall be supported by-</p> <p>(2A) In the case of an application made by the purchasers under subsection (1), no licensed housing developer shall unreasonably withhold his written consent to the termination of the sale and purchase agreement.</p> <p>(a) the written consent of the licensed housing developer and of each of the purchasers who have agreed to terminate the sale and purchase agreements and such consent shall have been duly executed by the licensed housing developer and the purchaser, as the case may be, and witnessed by his solicitors or a Commissioner for Oaths not earlier than one month before the date of the application; and</p> <p>(b) such other documents or evidence as the Minister may require or as may be</p>	<p><u>(1) Notwithstanding anything contained in any agreement, a purchaser shall at any time be entitled to terminate the sale and purchase agreement entered into in respect of a housing development which the licensed housing developer is engaged in, carries on, undertakes or causes to be undertaken if—</u></p> <p><u>(a) the licensed housing developer refuses to carry out or delays or suspends or ceases work for a continuous period of six months or more after the execution of the sale and purchase agreement;</u></p> <p><u>(b) the purchaser has obtained the written consent from the end financier; and</u></p> <p><u>(c) the Controller has certified that the licensed housing developer has refused to carry out or delayed or suspended or ceased work for a continuous period of six months or more after the execution of the sale and purchase agreement.</u></p> <p><u>(2) For the purpose of paragraph (1)(b), no end financier shall unreasonably withhold its written consent to the termination of the sale and purchase agreement.</u></p> <p><u>(3) In the event that the purchaser exercises his right to terminate the sale and purchase agreement under subsection (1), the licensed housing developer shall within thirty days of such termination refund or cause to be refunded to such purchaser all monies received by the licensed housing developer from the purchaser free of any interest.</u></p> <p><u>(4) Upon receipt of the refund under subsection (2), the purchaser shall immediately cause all encumbrances on the land to be removed and the cost and expenses for such removal shall be borne by the licensed housing developer and may be claimed as a civil debt from the licensed housing developer.</u></p>
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**QUERY:** What if after signing the SPAs, Developer runs into financial difficulties and is unable to proceed with the project; yet Developer cannot walk away? But rather, Developer has to wait for the buyers, one by one to terminate its SPA, if at all? Meanwhile, the Developer will be guilty of an offence under the **new s18A** (below) for having abandoned the housing development.

<p>determined including such evidence which may satisfy the Minister that the licensed housing developer is financially capable of refunding to the purchasers and their financiers all the moneys paid by them to the licensed housing developer if the Minister approves such application.</p> <p>(3) For the purpose of this section, joint purchasers irrespective of any number in a sale and purchase agreement shall be considered as one purchaser.</p> <p>(4) Upon receipt of an application under subsection (1), the Minister may grant or refuse the application for approval.</p> <p>(5) In granting the approval under subsection (4) the Minister may impose such conditions as he may deem fit and proper.</p> <p>(6) The decision of the Minister shall be final and shall not be questioned in any court and it shall be binding on the licensed housing developer and all the purchasers and no injunction shall be granted to restrain any person from carrying out the decision of the Minister.</p> <p>(7) All the sale and purchase agreements in respect of the housing development or the phase of a housing development which is the subject of an approval under subsection (4) including those of the remaining purchasers who have not agreed to the termination shall be deemed to have been duly terminated.</p> <p>(8) The licensed housing developer shall, within fourteen days from the date of receipt of the Minister's approval, inform all the purchasers in writing of the Minister's decision.</p> <p>(9) The licensed housing developer shall refund all moneys received by the licensed housing developer from the respective</p>	<p><u>(5) Any person who fails to comply with this section shall be guilty of an offence and shall, on conviction, be liable to a fine which shall not be less than fifty thousand ringgit but which shall not exceed two hundred and fifty thousand ringgit and to a further fine not exceeding five thousand ringgit for every day during which the offence continues after conviction.</u></p> <p><u>(6) This section applies only to an agreement lawfully<sup>6</sup> entered into between a purchaser and a licensed housing developer after the date of coming into operation of the Housing Development (Control and Licensing) (Amendment) Act 2012 [Act A1415].<sup>7</sup></u></p>
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<sup>6</sup> JFY: **QUERY:** buyers may question why the word “lawfully” was inserted? Can one escape the clutches of this clause by saying the SPA was not lawfully entered into? If so, will the old **s8A** apply then?

<sup>7</sup> JFY: this applies to only sale and purchase agreements **signed AFTER 1 JUNE 2015**. For those agreements signed before 1 JUNE 2015, the old s8A will still apply.

	<p>purchasers free of any interest within the period stated in the Minister's approval.</p> <p>(10) Upon receipt of the refund under subsection (9), the purchasers shall immediately cause all encumbrances on the land to be removed and the cost and expenses for such removal shall be borne by and may be claimed as a civil debt from the housing developer.</p> <p>(11) Any person who fails to comply with any of the provisions of this section shall be guilty of an offence and shall, on conviction, be liable to a fine which shall not be less than fifty thousand ringgit but which shall not exceed two hundred and fifty thousand ringgit and to a further fine not exceeding five thousand ringgit for every day during which the offence continues after conviction.</p>	
5	<p><b>16N. Limitation of jurisdiction.</b></p> <p>(1) Except as expressly provided under this Act, the Tribunal shall have no jurisdiction in respect of any claim -</p> <p>(a) for the recovery of land, or any estate or interest in land; and</p> <p>(b) in which there is a dispute concerning-</p> <p>(i) the entitlement of any person under a will or settlement, or on intestacy (including partial intestacy);</p> <p>(ii) goodwill;</p> <p>(iii) any chose in action; or</p> <p>(iv) any trade secret or other intellectual property right.</p> <p>(2) The jurisdiction of the Tribunal shall be limited to a claim that is based on a cause of action arising from the sale and purchase agreement entered into between the homebuyer and the licensed housing developer which is brought by a homebuyer not later than twelve months from -</p>	<p><b>16N. Limitation of jurisdiction. [8]</b></p> <p>(1) Except as expressly provided under this Act, the Tribunal shall have no jurisdiction in respect of any claim -</p> <p>(a) for the recovery of land, or any estate or interest in land; and</p> <p>(b) in which there is a dispute concerning-</p> <p>(i) the entitlement of any person under a will or settlement, or on intestacy (including partial intestacy);</p> <p>(ii) goodwill; <u>or</u></p> <p><del>(iii) any chose in action; or</del></p> <p><del>(iiiv)</del> any trade secret or other intellectual property right.</p> <p>(2) The jurisdiction of the Tribunal shall be limited to a claim that is based on a cause of action arising from the sale and purchase agreement entered into between the homebuyer and the <del>licensed</del>—housing developer which is brought by a homebuyer not later than twelve months from -</p>

<sup>8</sup> NO change to the existing limit of **RM50,000.00** : **s16M HDA**: “the Tribunal shall have jurisdiction to determine a claim lodged .... in respect of which an award of the Tribunal is sought does not exceed fifty thousand ringgit.”

	<p>(a) the date of issuance of the certificate of completion and compliance for the housing accommodation or the common facilities of the housing accommodation intended for subdivision, whichever is the later;</p> <p>(b) the expiry date of the defects liability period as set out in the sale and purchase agreement; or</p> <p>(c) the date of termination of the sale and purchase agreement by either party and such termination occurred before the date of issuance of the certificate of completion and compliance for the housing accommodation or the common facilities of the housing accommodation intended for subdivision, whichever is later...[no other change...]</p>	<p>...[no other change...]</p>
6	<p><b>Section 16Q. Cause of action not to be split.</b></p> <p>Claims may not be split, nor more than one claim brought, in respect of the same matter against the same party for the purpose of bringing it within the jurisdiction of the Tribunal.</p>	<p><b>Section 16Q. <del>Claims</del>ause of action not to be split.</b></p> <p>Claims may not be split, nor more than one claim brought, in respect of the same matter against the same party for the purpose of bringing it within the jurisdiction of the Tribunal.</p>
7	<p><b>Section 16AD. Criminal penalty for failure to comply.</b></p> <p>(1) Any person who fails to comply with an award made by the Tribunal within the period specified by the Tribunal commits an offence and shall on conviction be liable to a fine which shall not be less than five thousand ringgit but which shall not exceed ten thousand ringgit or to imprisonment for a term not exceeding two years or to both.</p>	<p><b>Section 16AD. Criminal penalty for failure to comply.</b></p> <p>(1) Any person who fails to comply with an award made by the Tribunal within the period specified by the Tribunal commits an offence and shall on conviction be liable to a fine which shall not be less than <del>five</del>ten thousand ringgit but which shall not exceed <del>ten</del>fifty thousand ringgit or to imprisonment for a term not exceeding two years or to both.</p>
8	-none-	<p><b><u>Section 18A. Offences relating to abandonment of housing development by a licensed housing developer.</u></b></p>

		<p>(1) Any <b>licensed</b><sup>[9]</sup> housing developer who abandons or causes to be abandoned a housing development or any phase of a housing development which the licensed housing developer is engaged in, carries on, undertakes or causes to be undertaken shall be guilty of an offence and shall, on conviction, be liable to a fine which shall not be less than <b>two hundred and fifty thousand ringgit</b> but which shall not exceed <b>five hundred thousand ringgit</b> or to imprisonment for a term not exceeding three years or to <b>both</b>.</p> <p>(2) For the purpose of this section, “abandons” means refuses to carry out or delays or suspends or ceases work continuously for a period of <b>six months</b> or more or beyond the stipulated period of completion as agreed under the sale and purchase agreement. <sup>[10]</sup></p>
9	<p><b>24. Powers to make regulations.</b></p> <p>(1) Subject to this section, the Minister may make regulations for the purpose of carrying into effect the provisions of this Act.</p> <p>(2) In particular and without prejudice to the generality of the foregoing power, the regulations may –</p> <p>...</p> <p>(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 twenty thousand ringgit and a term of imprisonment so provided shall not exceed five years, and in addition thereto may also provide for the cancellation and suspension of a licence</p>	<p><b>24. Powers to make regulations.</b></p> <p>(1) Subject to this section, the Minister may make regulations for the purpose of carrying into effect the provisions of this Act.</p> <p>(2) In particular and without prejudice to the generality of the foregoing power, the regulations may –</p> <p>...</p> <p>(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 <del>fifty</del><b>twenty</b> thousand ringgit and a term of imprisonment so provided shall not exceed five years, and in addition thereto may also provide for the cancellation and suspension of a licence</p>

<sup>9</sup> JFY: the word “licensed” is used here: does it mean those unlicensed/whose license had expired can escape from this clause?

<sup>10</sup> JFY: This is a newly inserted provision specifically to curb the abandoned projects problem. But note: now that no booking fee or any other payment can be collected **before** the signing of the SPA, many Developers may find themselves with cash flow/funding problems after signing the SPAs; and unable to proceed with the project. Yet, they are not allowed to exit from such signed SPAs (see amended **s8A** above) and at the same time, will be guilty of the offence under this new **s18A**.



	issued under this Act; ... <i>[no other change...]</i>	issued under this Act; ... <i>[no other change...]</i>
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