A MAN'S HOME IS [NOT] HIS CASTLE – *EN BLOC* COLLECTIVE SALES IN SINGAPORE

This article will discuss the legislative scheme for the collective sale process of strata developments and the implications of the cases decided by the Strata Titles Board and the High Court. It will consider the 2007 Amendments to the Land Titles (Strata) Act and the extent to which the amendments will bring about greater clarity, transparency and safeguards to affected subsidiary proprietors, which were the major concerns expressed at the Consultation stage of the Bill.[1]

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I. Introduction

1 A subsidiary proprietor's ("SP's") home is not his castle. Particularly so, if his castle is built in the air. A strata development is vulnerable to being collectively sold by the majority of owners to a purchaser for redevelopment. This is akin to compulsory purchase except that the State is not involved in the forced sale or acquisition. The *en bloc* frenzy stretching over the past two years is unprecedented and unparalleled anywhere else in the world. In 2006, collective sales hit S$8bn. In the first two quarters of 2007, 60 *en bloc* sale applications were filed at the Strata Titles Board ("STB"), of which 32 were disposed of in six months. The main incentive for sellers is the exceptional premium to be made, as a unit that is sold *en bloc* is expected to fetch a far higher price than if it were to be sold individually on the open market. Moreover, capital gains are not taxable under Singapore law. The current high demand for housing[2] is also an incentive to buyers-developers to acquire

1 It drew 400 suggestions from 100 respondents. Discussions were also held with industry players experienced in *en bloc* sales, including lawyers, property consultants, developers, academics, the Singapore Institute of Surveyors and Valuers and the Strata Titles Board.

2 Attributed to the building of two high-end casino resorts which in turn has attracted foreign investments in the property market. The Government has announced that it will increase the supply of homes and residential sites amid soaring property prices, the highest in a decade. It is also reported that *en bloc* sales will remove about 9,000 homes from the market: *The Straits Times* (2 October 2007).

old properties and redevelop them more intensively for sale at exorbitant prices.

2 The policy supporting collective sales is linked to the city-state's severe land constraints. A land area of less than 700 sq km (about 680 sq km) has to be shared among housing, recreation, industry, infrastructure, water catchment and military needs. The allocation of land uses in Singapore in 2005 showed 12% living space (housing). As at 2005, only 12,000ha of land was available for future development. With a projected population of 5.5 million in the future, about 8,000ha of land will be needed for housing.[3] This requires an optimal use of Singapore's scarcest resource, and collective sales are apparently a creative way of freeing up land and utilising increased plot ratios to realise the full developmental potential. The redevelopment of older estates has apparently been achieved as statistics show that between January 2005 and August 2007, the average age of developments applying for collective sale was 25.9 years. Since 1999, almost 70% of developments sold *en bloc* exceeded 20 years in age.[4]

3 Collective sales have made millionaires, but environmental and social costs must not be forgotten. The physical destruction of buildings may lead to a loss of historical and architectural heritage. Collective sales can be a painful process leaving SPs feeling traumatised, saddened, angered and embittered. They are the "people who may not want to sell for sentimental reasons, some who have sworn to their ancestors they will live there forever, some like the *fengshui*, *etc*".[5] However, it is not possible for legislation to cater to all these views, short of requiring unanimous consent to go *en bloc* which will in turn make it harder to either maximise land usage or to rejuvenate developments. The extent to which people go to keep their homes is demonstrated by the seven minority owners who spent S$2m on legal fees trying to keep their homes in Horizon Towers, where the *en bloc* sale process became extremely acrimonious, protracted and costly.[6]

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3 Based on this projected population, the Urban Redevelopment Authority of Singapore came up with the Concept Plan 2001 embodying a vision for the next 40 to 50 years. Conceived in 2001 and reviewed every ten years, it is a long-term strategic plan that maps out the physical development of Singapore. A key proposal in the Concept Plan 2001 is new homes in familiar places.

4 Figures released by the Law Minister reported in *The Straits Times* (21 September 2007).

5 The Deputy Prime Minister speaking at the Committee of Supply Debate on 2 March 2007.

6 *The Straits Times* (6 November 2007).

4 In a collective sale, an SP and his[7] family are losing their home, and often their only home, in a familiar neighbourhood. They are uprooted and have to relocate. Family disputes may arise over the choice of new home or location. It is disruptive to children who have to move to a new neighbourhood and leave their schools and friends behind. Some displaced SPs may find the sale proceeds insufficient to buy an equivalent replacement unit and may have to downgrade to a smaller flat or to a less choice location. Other SPs may have to wait for the sale proceeds before they are financially able to commit themselves to buying alternative homes. In the meantime, neighbourhood squabbles may erupt, law suits threatened and recalcitrant SPs misled or coerced into agreeing to the collective sale.

II. The legislative scheme for collective sales

5 The Land Titles (Strata) Act ("the Act")[8] authorises and facilitates the compulsory sale by the majority SPs of private residential, commercial and mixed developments in strata developments.[9] Strata developments involve community living, shared ownership of common property in designated values and individual ownership of strata title which is essentially airspace. At the same time, *en bloc* legislation seeks to strike a delicate balance between the socio-economic policy of urban renewal and the rights and interests of affected parties. It provides procedural safeguards and substantial powers to the STB to protect minority owners who have made valid objections to the sale.

6 The types of strata developments which can be sold collectively are specified in Pt VA of the Act. As the vast majority of *en bloc* sales are carried out under s 84A of the Act, this article will focus on collective sales of strata or flat developments registered under the Act where SPs own their units and share in the common property.

7 The significant aspects of the Land Titles (Strata) (Amendment) Act 2007[10] ("the 2007 Amendments") are summarised as follows:

(a) Additional requirement for majority consent.

(b) New rules on formation and proceedings of the collective sale committee.

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7 Throughout this article, the reference to "he" embraces "she" and "his" includes "her".

8 Cap 158, 1999 Rev Ed. Available at Statutes Online <http://www.agc.gov.sg>. Amended in 1999, 2004 and 2007.

9 Strata landed housing was introduced in 1993. Collective sales legislation does not extend to landed property nor to public housing where about 80% of Singaporeans live.

10 Act 46 of 2007.

(c) Empowering the STB to increase sale proceeds for certain minority objectors.

(d) Empowering the STB to disregard any technical or procedural irregularity that will not prejudice any SP's interest and to make an order to amend the non-compliance.

(e) Allowing a signatory to the collective sale agreement a cooling-off period to rescind his agreement.

(f) Requiring an independent valuation report reflecting the value of the development as at the date of the close of the public tender or auction.

(g) Various procedural changes to enhance transparency and certainty of the collective sale process.

8 The changes will not have retrospective effect and will not apply to developments that had obtained the majority consent of 80%/90% (based on share value) at the time the 2007 Amendments came into force on 4 October 2007. The new procedural rules are more stringent than before, and there were sale committees hastening to obtain the majority consent before the 4 October deadline.

A. Collective sale process

(1) Collective sale committee

9 Private developments are not officially earmarked for collective sale and redevelopment. Market forces determine if it is economically viable to go *en bloc*. The process is usually initiated by interested SPs or at the instigation of property developers or by so-called "condo raiders" or speculators who buy up units in condominiums considered "ripe" for redevelopment and agitate for a collective sale.

10 Prior to the 2007 Amendments, there were no rules regulating the formation and proceedings of the sale committee. Interested owners would gather to form a *pro-tem* sale committee to explore the possibility of a collective sale. The committee would liaise with a property consultant or marketing agent and the solicitors to start the *en bloc* process. The marketing agent will advise on the development potential of the estate and the land value, the minimum or reserved price for the sale, the method of distributing the proceeds of sale and the timeline for marketing the property. The committee will then canvass the proposal to fellow residents in the hope of obtaining the requisite majority support for the *en bloc* sale.

(2) New rules on formation and proceedings of the sale committee

11 In *Ling Ah Tie v Tham Kai Shui*,[11] the minority owners objected to the lack of information pertaining to the appointment of the sale committee, the marketing agent, the contents of the tender documents and the tender process. However, the STB found no evidence that the majority SPs and the sale committee had ridden roughshod over the minoritys' rights to participate in the decision-making process.

12 Nevertheless, there have been complaints that SPs were not consulted before the start of a collective sale in their estate nor when the sale committee was formed. The 2007 Amendments bring about greater clarity and transparency by requiring members of the sale committee to be formally elected by ordinary resolution at a general meeting convened by the management corporation ("MC") of the development. Instead of hearing rumours of the impending sale, SPs will be officially informed at the general meeting. Formal election will ensure only one sale committee at any one time, whereas in the past, there were condominiums having more than one sale committee which created confusion. The provision stating that the sale committee may be resolved when the CSA (collective sale agreement) expires ensures that the committee does not pursue the matter when the owners are no longer interested. The sale committee can also be dissolved by ordinary resolution at a general meeting of the MC. This may prevent all the members of the sale committee from resigning at the same time, which happened in the case of *Horizon Towers*.

13 Under the 2007 Amendments, there must be at least three but not more than 14 members in the sale committee. A candidate standing for election must declare any conflicts of interest with the property developer, property consultant, marketing agent or law firm involved in the *en bloc* sale as soon as practicable, presumably at the latest at the general meeting convened to elect the sale committee. Disclosure of any direct or indirect interest that could conflict with the proper performance of a member's functions ensures transparency. Only an eligible person who is at least 21 years of age can be elected and he must be an SP of a unit in the development or his nominee[12] who must be an immediate family member or the nominee of a company. This will prevent a recurrence of the situation in *Tan Hui Peng v Chow Ai Hwa*[13] where the minority objected to the appointment of two members of the sale committee who were not SPs. The STB held that there was then no such requirement.

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11 [2000] SGSTB 1 ("*Mandalay Court*").

12 Co-owners and certain nominees are excluded under para 1(4)(*a*) and (*b*) and see para 1(6)(*a*) and (*b*) of the Third Schedule of the Land Titles (Strata) (Amendment) Act 2007 (Act 46 of 2007).

13 [2006] SGSTB 2 ("*Eng Lok Mansion*").

14 In a progressive move, the 2007 Amendments allow an SP who is an undischarged bankrupt or who is in arrears of maintenance fees to be eligible for election to the sale committee provided he declares his status in writing at the time of nomination. That said, it is left to the good sense and judgment of the other SPs whether or not to elect him to the sale committee. Similarly, so-called "condo-raiders" or "serial *en bloc*kers" who purchase units solely for financial gain, may stand for election and again this is a matter for the good judgment of the other "condo" owners.

(3) New procedures for the sale committee

15 The new Third Schedule[14] provides that the sale committee must convene one or more general meetings in accordance with the Second Schedule[15] to consider or provide the following:

(a) appointments of solicitor, property consultant or marketing agent (usually a contentious matter);

(b) apportionment of sale proceeds;

(c) the terms and conditions of the CSA;

(d) an update on the number of SPs who, immediately before the meeting, have signed the CSA;

(e) information on the sale proposal and process;

(f) information on the number of offers received and the amounts offered; and

(g) the terms and conditions of the sale and purchase agreement.

16 Heads (a)–(c) above must be considered before any SP signs the CSA and is to ensure that there is informed consent to the *en bloc* sale.

17 Heads (d) and (e) above must be done after SPs have signed the CSA but before the sale is launched.

18 The general meeting in respect of Heads (f) and (g) above must be convened as soon as practicable after the close of the public tender or auction or at the conclusion of the private treaty.

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14 Land Titles (Strata) (Amendment) Act 2007 (Act 46 of 2007), Sch 3, para 7.

15 Paragraph 2 of the Second Schedule of the Land Titles (Strata) (Amendment) Act 2007 (Act 46 of 2007) states that the sale committee will requisition the Secretary of the MC to convene the meeting. The Chairman of the MC will preside over the meeting and the sale committee will conduct the *en bloc* proceedings.

19 Within seven days after each meeting, minutes of the meeting must be displayed on the notice board or distributed to SPs. This is to address complaints by SPs of being kept in the dark about the sale process. The sale committee must also provide updates of the consent level every four weeks instead of the eight weeks that was previously prescribed. These updates must now be certified as accurate by the lawyer appointed by the sale committee[16] and this is in response to concerns raised over the accuracy of consent level updates.

(4) Comment

20 Issues concerning the scope and nature of the duties, rights and liabilities of the sale committee remain untested. Are they jointly an agent of all the SPs or only of the majority? The new s 84A(1)(1A) states that the sale committee will be constituted to act jointly on behalf of the subsidiary proprietors of the lots. Does the sale committee owe a duty of care and a fiduciary duty to act in the best interests of all the owners? It was stated in *Yong Hwai Ming v Koh Gek Hwa*[17] and *Thevathasan Gnanasundram v Khaw Seng Ghee*[18] that the duties of the sale committee are comparable to those of mortgagees. While honesty is to be expected, what is the standard of performance in terms of due care and diligence, given that many in the sale committee are laypersons, volunteers or gratuitous agents?[19] Is it sufficient just to sell above the reserve price or must the sale committee ascertain the real market value? Can the sale committee be indemnified by the majority SPs if they have carried out the duties diligently and honestly? If the sale committee is to be held accountable to the same extent as company directors, it will be hardly surprising if no right-thinking SP will want to sit on the committee. If the majority owners who signed the sale and purchase agreement ("S&P Agreement") are sued by the buyers-developers for breach (as in *Horizon Towers*), can they in turn claim an indemnity from the sale committee? Can the sale committee be sued by the purchaser if they have not given effect to the terms of the S&P Agreement? This is not possible if they are merely agents of the majority SPs who signed the S&P Agreement. On the other hand, the CSA can authorise the sale committee to take legal action against the purchaser under the S&P Agreement for breach of contract or against an individual majority owner for any breach of the CSA or S&P Agreement. These are questions to be resolved outside the Act. The Law Minister in the Second Reading of the Land Titles (Strata) (Amendment) Bill[20] ("Amendment Bill 2007") confirmed that it was not the intention of

16 Land Titles (Strata) Act (Cap 158, 1999 Rev Ed), Sch 1 para 1(*b*).
17 [2003] SGSTB 1 ("*Dragon Court*").
18 [2000] SGSTB 4 ("*The Seedevi*").
19 See Lai Siu Chiu J in *Koh Keow Neo v Chee Johnny* [2004] 3 SLR 385 in the context of the privatisation of Waterfront View.
20 Bill 32 of 2007.

Parliament to change the substantive law regarding potential duties or liabilities of the sale committee.

21 The possibility of the sale committee being sued for breach of fiduciary duty was alluded to in *The Seedevi.* The minority objectors took issue with the sale committee for having pre-determined the selection of the marketing agent and the solicitors. They asserted that the sale committee wore two hats: one, as SPs and the other, as representatives of other SPs in the collective sale. As such, they owed a fiduciary duty to other SPs to ensure that the sale was properly conducted by making available information about the marketing agent and solicitors followed by a formal vote.

22 It is not certain whether a formal vote is a requirement under the new legislation. Paragraph 7 of the Third Schedule merely requires the sale committee to convene a general meeting to "consider" the appointment of any advocate and solicitor, property consultant or marketing agent. In fact, practitioners interpret the expression "consider" as not requiring a formal vote. The adoption of the appointment of the marketing agent and solicitor is made by each and every SP who agrees to sign the CSA.

23 Reverting to the issue whether the sale committee can be sued for breach of fiduciary duty, the STB clarified that it was not a court of equity with powers to grant remedies for breach of fiduciary duty or fraud on the minority. Its powers were confined to disapproving the sale on the grounds specified in the Act and on no other grounds. If indeed there was a breach of fiduciary duties, the aggrieved minority should institute proceedings in the courts of Singapore under s 115 of the Act which preserves these other rights and remedies of SPs under the general law.

B. The collective sale agreement

24 The objective of the CSA is to achieve a collective sale of the development. It must be executed within 12 months from the date the first SP signs the CSA and thereafter, the *en bloc* sale application must be submitted to the STB within 12 months from the date the CSA is executed.[21] To keep SPs informed, the sale committee must affix a notice once every four weeks, setting out the number of owners who have signed the CSA and their share values, to a conspicuous part of each building in the development in the four official languages.[22]

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21 Land Titles (Strata) Act (Cap 158, 1999 Rev Ed), Sch 1 paras 1(*a*) and 1A.

22 Land Titles (Strata) Act (Cap 158, 1999 Rev Ed), Sch 1 para 1(*b*).

25 The CSA, drafted by the solicitors, will generally cover:

(a) provisions for 80% or 90% majority agreement, as the case may be, and an undertaking by SPs to pay the STB's costs relating to the sale application;

(b) reserve price for sale of lots and common property in the development. As for the premium,[23] the marketing agent informs the SPs when making their presentation of the expected premium but this is usually never stated in the CSA;

(c) method of distributing the sale proceeds;

(d) validity period of the CSA;

(e) date of delivery of vacant possession by owners and retention of money by the purchaser until delivery of vacant possession;

(f) whether the sale will be subject to tenancies where vacant possession cannot be delivered by the stipulated date; and

(g) indemnities for the sale committee and between owners.

26 The issue of the validity of the CSA was raised in *Wiener Robert Lorenz v Chua It Poh/Ng Lee Beng*[24] by the objectors to the application for collective sale. They contended that the CSA had expired on 17 February 2007, a year after the date of the first signature to the CSA or, in the alternative, on 22 June 2007, the first anniversary of achieving at least 80% of the majority consent. The supplementary CSA ("SCSA") that was signed by the majority SPs could not therefore extend the deadline to 5 February 2008 on or before which date the STB's order had to be obtained. It was further contended that the SCSA could not vary the CSA because not all the original signatories of the CSA had signed the SCSA and there were new signatories to the SCSA who did not sign the CSA. In dismissing the objection, the STB took the view that the CSA and SCSA were not statutory instruments but contractual agreements that could be amended or varied. The applicants were therefore entitled to amend the CSA to extend the date for obtaining the STB's approval. In this connection, the objectors who were not parties to the CSA or SCSA were not entitled to enforce the terms of these agreements. Dealing with the related issue of whether all the signatories to the CSA must sign the SCSA, the STB dismissed the objection by referring to cl 1.9 of the CSA which provided that "the Vendors (those who had executed the CSA and any SCSA) shall not be required to execute the SCSA".

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23 Collective sale premium is the difference between the collective sale price and the most recent transaction of the same unit type in the open market.

24 STB No 53 of 2007 (unreported) ("*Gillman Heights Condominium*").

(1) Reserve price

27 How long does the reserve price remain valid? In most cases, it is about a year. In a fast moving market, even six months is a long time and the reserve price may become outdated after a while as in *Horizon Towers*. The Minister clarified in the Second Reading of the Amendment Bill 2007 that the reserve price is only an indicative value. Market conditions might cause the actual value of a development to either go up or below the reserve price. Rather than state the period of validity of the reserve price, a better approach is for the sale committee to obtain a valuation report on the value of the *en bloc* sale as at the date of the close of tender or auction. Thus, if the tender price is above the reserve price but below the latest valuation, the SPs have to decide whether or not to sell. Arising from this statement, what are the consequences if a sale committee, in the exercise of their mandate, sold above the reserve price but below the market price? Is this a failure to obtain the best price and if so, can it serve as a valid ground of objection that the sale was not carried out in good faith? Is the sale committee also liable to the majority SPs? These questions will be dealt with below.

(2) Methods of apportioning sale proceeds

28 This is invariably the main ground of objection before the STB. Sale committees usually adopt the methods of apportionment recommended by the Singapore Institute of Surveyors and Valuers ("SISV") valuation standards and guidelines. They refer to: (a) share value (favours small units); (b) strata area (favours large units); (c) average of share value and strata area; (d) valuation and share value excess; or (e) any other method – a combination of the above methods is acceptable, as long as it is fair and equitable. Share value and strata area are shown in the title deeds. Whichever method is used depends on the unit composition but the most commonly applied is a hybrid method according to share value and strata area. A valuation report together with the recommended distribution methods will be prepared by the property consultants.

29 Dissatisfaction has been expressed over these valuation guidelines. The Law Minister responded in the Second Reading of the Amendment Bill 2007 that SISV is working to refine the guidelines. However, it was not possible for the law to prescribe one standard method that could apply to units of all sizes, designs and types in all developments.

30 Concerns have also been expressed that a sale committee may simply select a method or combination of methods most likely to secure the requisite majority consent or a valuation report may be tailored to meet the marketing agent's requirement. The 2007 Amendments do not

require disclosure of the relationship or business interests between the buyer, management agent of the development or marketing agent. Any possible collusion between any of the above parties ought to be disclosed. For example, the marketing agent may collude with the buyer-developer not to charge the SPs but to take a commission from the buyer. The managing agent of the development and the marketing agent for the *en bloc* sale may be related companies. It is submitted that such conflicts of interest should be disclosed as they may affect the carrying out of the transaction in good faith. In addition, there should be a Code of Best Practices for the buyer-developer, marketing agent and managing agent of the development.

(3) New rules

31 New rules regulating the signing of the CSA have been introduced to deal with complaints by SPs of being pressurised into signing without full knowledge of the content of the agreement. First, the sale committee must highlight in a preface[25] to the CSA where to find information on the reserve price, apportionment method, fees payable to lawyers, marketing agent and others involved in handling the sale; amount of the compensation fund, if any; person entitled to any interest derived from moneys held by any stakeholder and the date of delivery of vacant possession.

32 Second, solicitors engaged in the *en bloc* sale must be present during the signing of the CSA to explain the legal terms and liabilities and to clarify any doubts. This is to ensure that owners are fully aware of the legal implications of the agreement they are signing. This, together with the certification of updates every four weeks on the level of consent, safeguards the interests of SPs but will inevitably add to legal costs. Reverting to the *Horizon Towers* case, if SPs-sellers can be sued by the buyers-developers for breach of contract, who would want to sign the CSA and S&P Agreement? Such reluctance may impede the social policy of redeveloping older estates. Furthermore, can minority owners be sued for inducing a breach of contract by instigating the majority to switch camp? Will solicitors acting for the majority and the sale committee be drawn into the dispute? These are interesting issues to ponder.

33 Third, owners who have signed the CSA have a five-day cooling-off period to rescind the agreement if they have signed. The new legislation does not require the SP to have a ground to exercise the right of rescission nor to state any reason for doing so. Examples of when an SP would decide to rescind the CSA is when he has signed the agreement as a result of duress, misrepresentation or unprofessional practices.

25 Land Titles (Strata) Act (Cap 158, 1999 Rev Ed), Sch 1 para 1B.

34 The new rules pertaining to general meetings, cooling-off period, signing the CSA before a lawyer are all intended to address the problem of SPs being harassed, threatened or intimidated into agreeing to sell.

C. Sale by public tender or auction

35 Having obtained the requisite majority to sign the CSA, the sale committee together with the property consultant will take steps to market the property. All *en bloc* sales must be launched by public tender or public auction except that in the event that no suitable offer is received, the sale committee may enter into a private contract with a purchaser. This must take place within ten weeks from the close of the tender or auction. A valuation report on the value of the development as at the date of the close of the tender or auction must be obtained by the sale committee on that date. This addresses concerns over whether the sale committee has used its best efforts to get the best price. Furthermore, the sale committee must provide owners with information on the bids received as soon as practicable after the close of tender or auction or after the conclusion of the sale by private treaty, as the case may be.

36 An objection was raised in *The Seedevi* concerning the mode of sale from public tender to private treaty. The CSA was amended to include sale by private treaty. The STB held that objectors who did not sign the CSA had no standing to raise any breach of the CSA. In any event, contractual rights are not a factor that the STB can take into account for the purpose of determining good faith under s 84A(9). It was not compulsory for every collective sale to be by public tender and sale by private treaty itself is not evidence of lack of good faith. What is important are the circumstances that brought about a change from public tender to private treaty. The change in sales strategy in the case of *The Seedevi* was brought about by external events. City Developments Limited ("CDL") was about to buy up the neighbouring Newton Point, leaving The Seedevi sandwiched between Newton Point and Ixora Court which CDL had already bought. The marketing agent reasoned that CDL was the most obvious interested party for The Seedevi. If CDL decided not to take part in the tender and other developers also opted out in view of CDL's domineering position in the area, it could put CDL in an advantageous position to negotiate. For these reasons, the STB was satisfied that the marketing agent had acted with reasonable skill and care and taken all necessary steps to ensure a fair price.

37 The same argument was raised in *Tan Yew Lee Kevin v Wee Beng & Chew Sor Teng*.[26] But the STB could find no evidence that changing from public tender to private treaty was not done in good faith under the

26 [2007] SGSTB 1 ("*Waterfront View*").

circumstances. It noted that few companies had the financial capacity for such a large purchase and in any event the offer was $15m above the reserve price. No alternative valuation was given by the respondents who had objected to the collective sale.

D. Sale and purchase agreement

38 The S&P Agreement with the successful bidder or purchaser will provide that the sale is subject to approval by the STB. The sale must be approved by the STB if consent is not unanimous. The S&P Agreement may provide SPs-sellers with the first preview and the first right of selection in the new development ahead of the official launch or possibly a "one for one" exchange[27] which ensures a replacement unit in the new development. The sale must be considered at an extraordinary general meeting ("EOGM") convened by the MC and an advertisement of the application to the STB must be published in the four official languages and placed in the relevant local newspapers.

E. Application to the STB

39 An application by the consenting majority SPs must be made to the STB to confirm the proposed collective sale.[28] The STB will either approve or disapprove the sale usually within four to six months. SPs will receive their payments within three months of the order approving the sale and are given another six months to vacate.

40 Below is a checklist of the steps to be completed before submitting an application to the STB:

(a) Convene at least one EOGM to consider the collective sale. The sale must be considered at an EOGM of the MC.[29]

(b) The requisite majority have signed the CSA.

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27 Dealing with the question about a one-to-one exchange for the elderly, the Law Minister in the Second Reading of the Amendment Bill 2007 pointed out many practical difficulties, for example, complaints that owners were being short-changed.

28 Land Titles (Strata) Act (Cap 158, 1999 Rev Ed), s 84A(1).

29 Land Titles (Strata) Act (Cap 158, 1999 Rev Ed), Sch 3 para 7.

(c) Appoint not more than three persons from the sale committee to act as representatives in connection with the sale application.[30]

(d) Include with the application to the STB a valuation report from an *independent*[31] valuer on the worth of the development as at the date the tender closes. In a fast-moving market, prices may change significantly. The report as at the tender date will help the sale committee evaluate bids and assures owners that there is no sale below market value and that this is the latest best price. This makes more commercial sense than the previous requirement for an updated valuation report that is not more than three months old at the time of the application to the STB. The sale price has been a bone of contention when property prices increase after the signing of the CSA and the majority SPs then try ways and means of getting out of the agreement. They question whether the sale committee and marketing agent have carried out due diligence. The validity of the valuation report was raised in *Ng Swee Lang v Sassoon Samuel Bernard*.[32] It was argued that in order to assess whether a property was sold at its true market value, the valuation should have been done as at the date of the S&P Agreement. Referring to the previous para 1(*e*)(vi) of The Schedule to the Act, the court held that it did not require the valuation to be undertaken with reference to the date of contract. The only requirement was that the valuation report should not be more than three months old (since amended). The objectors had not furnished any evidence that the development was sold at an undervalue and the valuer had testified that there was no substantial difference in value between that on 27 October 2006 (date of sale) and 6 December 2006 (date of valuation).

(e) Include a valuer's report on the method of distribution of proceeds.[33]

(f) Have the S&P Agreement signed by both the buyer-developer and SPs-sellers.

(g) Advertise the collective sale application in the local newspapers in the four official languages which must include information on the development, brief details of the sale proposal application and the place at which the affected parties can inspect documents for the sale application.[34] Under the 2007

30 Land Titles (Strata) Act (Cap 158, 1999 Rev Ed), s 84A(2).
31 "Independent" in the sense that he must not have an interest in the *en bloc* development. Land Titles (Strata) Act (Cap 158, 1999 Rev Ed), Sch 1 para 1(*e*)(vi).
32 [2007] SGHC 190 ("*Phoenix Court*").
33 Land Titles (Strata) Act (Cap 158, 1999 Rev Ed), Sch 1 para 1(*e*)(vii).
34 Land Titles (Strata) Act (Cap 158, 1999 Rev Ed), Sch 1 paras 1(*d*) and 3.

Amendments, the advertisement need not include owners' names and unit numbers and the names of mortgagees and chargees of relevant units in the interests of privacy and to save costs.

(h) Apply to the STB within 14 days from the publication of the advertisement.[35]

F. *Objectors to the* en bloc *sale*

41 A dissenting minority owner who has not signed the CSA is known as an objector. He, his mortgagee, chargee or other person with an interest in the unit may lodge an objection with the STB, stating the grounds for objection, within 21 days from the time notice of the application for the STB's approval is served or such further period as the STB may allow.[36] The STB has in fact allowed objectors to file their objections beyond the 21-day period. Within five days of the objection being filed, the STB must serve a copy of the objection by registered post to the representatives of the majority SPs and their solicitors.

42 The grounds upon which the STB will disapprove an *en bloc* sale are listed in s 84A(7)–(9). These are also the grounds for objecting to the sale. With regard to objections based on any of the prescribed grounds, each case must be decided on its own facts and merits.[37] Common objections to the collective sale relate to conflicts of interests, reserve price and valuation issues. By far, the most contentious and most common grounds for objection are disputes over apportionment of sale proceeds and financial loss. Other disputes relate to non-compliance with statutory procedures.

43 The notice of the application for collective sale and the accompanying documents must be served by registered post on all SPs and affixed in the four official languages to a conspicuous part of each building within the development.[38] Two new provisions require the notice to be placed in the mail boxes of SPs informing them: (a) of the application and that copies of the following documents may be obtained from the marketing agent or the collective sale committee; and (b) that their lessees may apply to the STB to determine the compensation payable under the lease.[39] The documents that must accompany the notice of application are the CSA, the S&P agreement, a Statutory Declaration by the purchaser on the nature of his relationship to any SP, a copy of the

35 Land Titles (Strata) Act (Cap 158, 1999 Rev Ed), Sch 1 para 4.

36 Land Titles (Strata) Act (Cap 158, 1999 Rev Ed), s 84A(4). As to how notice is to be effected and the accompanying documents, see s 84A(13) of the Land Titles (Strata) Act.

37 *Tan Hui Peng v Chow Ai Hwa* [2006] SGSTB 2 ("*Eng Lok Mansion*").

38 Land Titles (Strata) Act (Cap 158, 1999 Rev Ed), Sch 1 para 1(*e*) and (*f*).

39 Land Titles (Strata) Act (Cap 158, 1999 Rev Ed), Sch 1 para 1(*ea*) and (*eb*).

advertisement to publicise the application to the STB, a valuation report from an independent valuer on the value of the development as at the date of the close of the public tender or auction and a report from an independent valuer on the proposed method of distributing the proceeds of the sale due under the sale and purchase agreement.[40] In other words, the independent valuer opines on the method which has already been adopted in the CSA and captured in the sale agreement. The procedure requiring notice to mortgagees and chargees which will include the Central Provident Fund ("CPF") Board and mortgagee bank have also been simplified. Only one copy is required, irrespective of the number of units charged to the same bank or CPF Board.[41]

G. Moneys in management fund and sinking fund

44 The new s 38(9A)[42] of the Act prohibits the use of management corporation funds for any purpose of a collective sale except to convene general meetings under the Second Schedule. Furthermore, s 84A(3) provides that the majority SPs must pay the costs of the STB incurred in the mediation of any matter arising from the application and in calling for a valuation report. This means that all costs incurred in pre-sale preparations such as the valuation report and incidental costs related to the sending out of notices, circulars to owners and rental fees for meeting rooms and all costs incurred in the application to the STB cannot be paid out of MC funds. The CSA and S&P Agreement provide that these costs be deducted from the proceeds of sale following legal completion. What if the *en bloc* sale application is dismissed by the STB? The above-mentioned costs will be paid out of the moneys collected from the majority owners at the time they signed the agreements. Objectors who are not party to any of the agreements are not contractually bound to pay if the application is dismissed by the STB.

45 The 2007 Amendments prohibit the buyer-developer from getting the MC funds when the sale is completed. The new s 38(9B) provides that upon the legal completion of the collective sale, the moneys in both the management and sinking funds shall be returned to SPs as soon as is practicable according to the contributions levied on them by the MC. Such funds could run into millions of dollars and it is only just and equitable that SPs get back the money they have contributed. There can be no valid reason why the buyer-developer should take over these funds.

40 Land Titles (Strata) Act (Cap 158, 1999 Rev Ed), Sch 1 para 1(*e*).
41 Land Titles (Strata) Act (Cap 158, 1999 Rev Ed), Sch 1 para 2(*c*).
42 Also s 9A of the Building Maintenance and Strata Management Act 2004 (Act 47 of 2004).

III. Role of the STB in collective sales

46 Collective sale applications by majority SPs are subject to the approval of the STB. The affected parties will attend a mediation session at the STB and if they fail to reach an agreement, a hearing date will be fixed. The Registrar of the STB will inform all parties of the proposed panel who will hear the application and will ask if there is any objection to any panel member. A party may seek to disqualify a panel member because of conflict of interest or bias but after hearing the objections, the panel member can decline to disqualify himself, whereupon an application can be made to the High Court to disqualify him.

47 Before approving the collective sale, the STB has to ensure that:

(a) the requisite majority consent has been obtained;

(b) the prescribed procedures have been complied with; and

(c) the proposed sale is *bona fide* and at arm's length.

48 Where objections have been filed, the STB will approve the sale unless it is satisfied that any objector will incur a financial loss or the proceeds of sale are insufficient to redeem any mortgage or charge in respect of the unit.[43] This is to ensure that none of the SPs will lose out financially. An SP will be deemed to have suffered financial loss if the proceeds of sale for his unit, after such deduction as the STB may allow, including any deduction specified in the Fourth Schedule (allowable deductions), are less than the price he paid for his unit.[44] An SP will not be deemed to have suffered a financial loss in two situations: (a) if his net gain from the sale of his unit will be less than the other SPs; and (b) if the proceeds of sale, after such allowable deductions, are less than the price he paid for his unit if he had bought it after a sale committee had signed an S&P Agreement to sell the development.[45] The STB shall not approve an application if: (i) the sale committee does not consent to any order made by the STB to increase the proceeds of sale to any objector who has made a valid objection; or (ii) the STB is satisfied that the transaction is not in good faith or if the S&P agreement would require any SP who has not signed the agreement to be a party to any arrangement for the development of the estate. In considering good faith, the STB will take into consideration the following factors: (A) the sale price for the development; (B) the method of distributing the proceeds; and (C) the relationship of the purchaser to any of the owners.[46] If no objections are

43 Land Titles (Strata) Act (Cap 158, 1999 Rev Ed), s 84A(7).
44 Land Titles (Strata) Act (Cap 158, 1999 Rev Ed), s 84A(8)(*a*).
45 Land Titles (Strata) Act (Cap 158, 1999 Rev Ed), s 84A(8)(*b*) and (*c*).
46 Land Titles (Strata) Act (Cap 158, 1999 Rev Ed), s 84A(9).

filed, the STB is entitled to make its decision on the basis of available facts.[47]

49 If the application to confirm the sale is successful, the STB will make an order that: (a) all the units and land in the development be sold collectively; (b) all SPs are bound by all the terms of the S&P Agreement as if they were parties to it; and (c) all SPs execute, sign, deliver and perfect all the necessary instruments to convey the development to the buyer.[48] SPs are usually given a grace period of six months to vacate. An order for sale will terminate a tenancy no later than the stipulated date for vacant possession.

50 The STB may also appoint any person to deal with matters pertaining to any unit if the SP has died or in any appropriate circumstances. This was done in *Sim Lian (Newton) Pte Ltd v Gan Beng Cheng Raynes*[49] when the STB appointed two members of the sale committee to jointly deal with all matters in connection with the sale of the respondents' unit when the respondents failed to obey the STB Order by not delivering vacant possession within six months from the date of completion as stipulated in the S&P Agreement. The buyer applied to the High Court pursuant to O 81 of the Rules to enforce eviction. The respondents raised, *inter alia*, the argument that the *en bloc* sale process was defective and that the following deficiencies were sufficiently grave to defeat the buyer's title under the Act:

> (a) The *en bloc* committee was selected at random. The High Court held that SPs were free to select whom they wished to represent them. The 2007 Amendments require the sale committee to be elected at an EOGM convened by the MC.
>
> (b) Non-disclosure of certain relationships that a member of the sale committee was related to the owner of certain drainage reserves in the development. The High Court held this to be non-material. It clarified that the Act does not forbid a member to possess a vested interest in the sale by virtue of the fact that he owns other lots apart from his residential unit in the same development. What the Act requires is the *disclosure* of any links between the buyer and the SPs. This is to ensure that the sale is at arm's length. Even if the parties are related, this is not conclusive of whether or not the sale should be confirmed. In this case, the STB would in all probability have confirmed the sale as it could be reasonably assumed that the sale committee picked the highest bidder, which was Sim Lian. Therefore, the respondents had not

47 Land Titles (Strata) Act (Cap 158, 1999 Rev Ed), s 84A(10).
48 Land Titles (Strata) Act (Cap 158, 1999 Rev Ed), s 84B.
49 [2007] SGHC 84 ("*Lincolnsvale*").

shown a triable issue in respect of the non-disclosure of relationship.

(c) Failure to serve notice of sale and proposed application to the STB.

(d) The Act does not make it compulsory for each owner to be personally informed when an *en bloc* sale is initially proposed, except that a notice of who has assented to the CSA must be affixed to a conspicuous part of each building every eight weeks.[50] Personal notice is only required when an application to the STB is imminent and this is only required less than two weeks from the application to the STB. What Assistant Registrar Paul Tan must have meant is that personal notice is required prior to the filing of the application to the STB and not subsequent to it. As for the EOGM to consider the sale, no timelines are provided in the Act. Thus, the EOGM may be held to consider the sale after the CSA and or the S&P Agreement with the buyer are concluded. Although this would defeat the purpose of publicising and discussing the prospective sale before it is concluded, this cannot be considered to be contrary to law, in the absence of legislation stating otherwise. The court held that as long as the sale committee was able to obtain the requisite majority, it was under no obligation to bring the sale to the individual attention of each owner. It was entirely possible that the respondents had been unaware of the sale until it had been concluded. However, because the sale committee was simply following the rules laid down in the Act, this factor alone was not sufficient to raise a triable issue in respect of whether there had been a fraud on the respondents or any unconscionable conduct.

(e) The rules seek to strike a balance between majority and minority owners and if they needed to be fine-tuned, it was for Parliament and not the court to do so. As mentioned above, the 2007 Amendments ensure that all SPs are officially informed of the proposed sale at the earliest opportunity which is when the sale committee is elected.

(f) The EOGMs were void as no voting took place. The court held that under para 1(*c*) of The Schedule to the Act, the EOGMs are held to consider the sale and there is no requirement for any voting or passing of any resolution to take place.

(g) In conclusion, the respondents in *Lincolnsvale* had failed to discharge their burden and were ordered to give up possession to the buyer immediately.

50 Now every four weeks under para 1(*b*) of the First Schedule to the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed).

A. *Minority objectors*

51 The STB will also hear minority SPs who have filed their grounds of objection to the collective sale, and will not approve the sale if satisfied that the objections are valid on the ground of financial loss or that the sale proceeds are not sufficient to redeem any mortgage or charge.[51] In this regard, the Select Committee took the view in 1999 that the STB and not the High Court would be a more appropriate forum for hearing objections since most of these invariably involved non-legal issues such as claims of financial loss or transactions not being made in good faith. Such issues would be more amenable to mediation or counselling rather than to adjudication. However, as recent *en bloc* litigation in the High Court shows, more and more legal issues are likely to be raised by objectors and it may now be more appropriate for objections involving legal issues to be referred to the court instead of being heard by the STB for the reason that its panel members are drawn from both legal and non-legal professions.

52 As to what constitutes bad faith as a ground of objection, it is not possible or desirable to enumerate each and every act that is not done in good faith and the STB must work within the framework of the wording of s 84A. Thus objections not falling within the Act are not factors which the STB will consider when determining good faith.[52] The objections raised in the *Eng Lok Mansion* case were as follows: (a) the legality of *en bloc* sales of freehold property, which should be owned forever; (b) Madam Chow's late husband's spirit would not have a place to return to if Eng Lok Mansion was sold; (c) she had stayed there for 40 years and had great attachment to the place; (d) there was an outstanding dispute between the MC and objectors; and (e) all SPs should collectively redevelop Eng Lok Mansion. The plight of someone in Madam Chow's position was highlighted by a Nominated Member of Parliament, Simon Tay, during the Third Reading of the Amendment Bill 2007. He observed that:

> If I see a widow in her 60s or 70s living now alone in a flat, it is a familiar neighbourhood, near her family, the sale may proceed but it gives her only a small profit,[53] can the existing safeguards save this widow from the inconvenience of having to move at an old age? Can the guardian, the Strata Titles Board, save this widow from her situation?

51 Land Titles (Strata) Act (Cap 158, 1999 Rev Ed), s 84A(7).

52 *Tan Hui Peng v Chow Ai Hwa* [2006] SGSTB 2 ("*Eng Lok Mansion*").

53 Not in the case of Madam Chow.

53 The Law Minister replied that in respect of emotional factors:

> [T]he approach by [the] STB is not to adjudicate and decide on these matters. We should leave it to all parties, whether it is the emotional aspects of an elderly lady or widow or some other emotional aspects ... But in the end, it should be a decision left to the parties to decide.

54 If no financial loss within the meaning of the Act is established and the requirements of the new s 84A(9) are met, s 84A(7) leaves the STB no discretion but to approve the sale.[54] The STB's role in the interpretation of and application of the Act is to give effect to the fulfilment of Parliament's intention.[55]

55 *Goldenhill Condominium*[56] was the first case to go before the STB after the Land Titles (Strata) (Amendment) Act 1999[57] ("the 1999 Amendments") eased the rules to facilitate *en bloc* sales. At the mediation session, the STB had advised the objectors that their objections were non-financial in nature and were likely to be thrown out if they pursued the matter at the hearing. It resulted in the two objectors withdrawing their objections after all outstanding issues between the parties were resolved amicably. Having satisfied itself that the process had been transparent and conducted in good faith, the STB made an order for sale.

56 So far, only four applications for sale appear to have been dismissed by the STB – *Mandalay Court*,[58] *Grenville Condominium*, *Airview Towers*[59] and *Finland Gardens*[60], the first three cases for reasons of procedural irregularity. The application in *Finland Gardens* was rejected on the ground that the 80% majority consent level had not been reached and that the sale price was not obtained in good faith. The application in respect of Horizon Towers was initially rejected by the STB in *Doreen Siow v Lo Pui Sang*[61] primarily on a technical ground but was subsequently approved by the STB when the High Court remitted it back for reconsideration. *Horizon Towers* had raised a constitutional point that *en bloc* sales infringed fundamental rights. Was that a point of law beyond the jurisdiction of the STB to decide? Other objections concerned bad faith relating to the sale price and method of distribution, procedural irregularity and the majority consent level. The STB echoed the High

54 *Toh Fong Pheng v Quek Bek Kim* Singapore Law Gazette (April 2000) ("*Devonshire Court*") at p 37.
55 *Yong Hwai Ming v Koh Gek Hwa* [2003] SGSTB 1 ("*Dragon Court*") at [84]. Application to the High Court for judicial review was dismissed by Woo Bih Li J: *Koh Gek Hwa v Yang Hwai Ming* [2003] 4 SLR 316.
56 *The Straits Times* (7 January 2000).
57 Act 21 of 1999.
58 *Ling Ah Tie v Tham Kai Shui* [2000] SGSTB 1.
59 *The Straits Times* (1 December 2007).
60 *The Straits Times* (1 December 2007).
61 [2007] SGSTB 3 ("*Horizon Towers*").

Court in *Phoenix Court* when it said that the purpose of the *en bloc* provisions is to facilitate collective sales and by so saying, it has evidently shifted from a strict literal to a purposive statutory interpretation. This is again evident in the case of *Gillman Heights Condominium*[62] which will be discussed below.

B. New laws

57 There may be situations where there is no financial loss suffered by the minority objectors or a lack of good faith to justify dismissal of the sale application. Notwithstanding that, an objector may not have been treated fairly or equitably in the distribution of the total sale proceeds. In such situations, where it will be fair and equitable to do so, the STB may now increase the sale proceeds for an objector who has filed valid objections and will authorise the sale only if the sale committee consents to the increase.[63] This increase will be paid from the sale proceeds of all SPs. It is capped at an aggregate sum of $2,000 or 0.25% of the sale proceeds from each unit, whichever is the higher.[64] Any unused sum will be returned to all the SPs. The Minister clarified in the Second Reading of the Amendment Bill 2007 that it is more practical to provide a formula based on percentage of sale proceeds than to provide a specific sum. He gave the example of a minority SP incurring $200,000 worth of renovation work when there is no *en bloc* proposal. Six months later there is an *en bloc* proposal so that he has effectively been enjoying the renovation for two years before having to move out. In fact, he does not suffer financial loss but the STB may increase the sale proceeds by an amount it considers fair and equitable in the circumstances. The Minister went on to explain that just as all SPs contribute towards fees incurred in the *en bloc* sale, it will not be unfair to contribute towards an increase in the sale proceeds as ordered by the STB but the maximum amount must be capped.

58 The Fourth Schedule to the Act contains a list of permitted deductions. This is to clarify the types of allowable expenditure and improve the transparency of the process. They are: (a) stamp duty paid on the purchase of the lot or flat; (b) legal fees paid in relation to the purchase; (c) costs related to the privatisation of HUDC estates; and (d) costs incurred in the collective sale which is to be shared by all owners as provided under the CSA. This is not intended to be an exhaustive list and the STB may allow whatever other deductions it sees fit. CPF moneys and interests are not included in the list. In the case of *Waterfront View*,

62 *Wiener Robert Lorenz v Chua It Poh/Ng Lee Beng* STB No 53 of 2007 (unreported).
63 Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) s 84A(7A) and 84A(9)(*b*).
64 Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) s 84A(7B).

both the STB and the High Court[65] rejected the objection on the ground of financial loss arising from a shortfall in terms of the CPF moneys and interests to be refunded to the minority owner's CPF account. Because the CPF Board did not require him to refund that interest in full, it was held not to be a financial loss. The Minister explained in the Second Reading of the Amendment Bill 2007 that CPF funds are used for initial purchase, monthly repayments of bank loan principal and interest. The first two items are factored into the financial loss computation as they constitute part of the original purchase price. But interest is not taken into account. Otherwise there will be no parity between an owner who takes a long-term mortgage with a high component of bank interest and an owner who pays totally in cash or takes a small loan and pays off faster. As for interest foregone for CPF money that is withdrawn to pay for housing, the Minister stated that this is not relevant because there is no actual financial loss in the CPF interest foregone.

C. Appeal against decisions of the STB

59 The STB's decision is final and no appeal lies to the High Court except on points of law[66] or if there has been an alleged irregularity in the process. Hence, findings of facts forming the basis of the STB's orders cannot be the subject of challenge. The Law Minister explained in the Second Reading of the Amendment Bill 2007 that to allow appeals on non-legal points would unnecessarily prolong the whole *en bloc* process.

60 In *Lincolnsvale*,[67] the High Court held that the findings of fact by the STB that the sale was legitimate, conducted in good faith and at arm's length could not be appealed against. Similarly, when the STB accepted a valuation report that did not comply with the SISV valuation guidelines, this was held not to involve a question of law.[68] In *Phoenix Court*, the questions whether the sale price or method of distribution of the sales proceeds impacted on the *bona fides* of the *en bloc* transaction were held to be all matters of fact from which no appeal lay, unless the facts were such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In *Dragon Court*, the STB had preferred one valuation method over another method. The High Court held that it would not substitute its views unless there was an error of law.

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65 *Tan Yew Lee Kevin v Wee Beng & Chew Sor Teng* [2007] SGSTB 1, *Yeo Loo Keng v Tan Yew Lee Kevin* [2007] 3 SLR 455 (HC).

66 Section 98 of the Building Maintenance and Strata Management Act 2004 (Act 47 of 2004). What constitutes errors of law are dealt with by GP Selvam JC in *MCST No 958 v Tay Soo Seng* [1993] 1 SLR 870. See also *Koh Gek Hwa v Yang Hwai Ming* [2003] 4 SLR 316.

67 *Sim Lian (Newton) Pte Ltd v Gan Beng Cheng Raynes* [2007] SGHC 84.

68 *Yeo Loo Keng v Tan Yee Lee Kevin* [2007] 3 SLR 455.

61 Examples of errors of law are cited in *Halsbury's Laws of England*[69] including misinterpretation of a statute; taking irrelevant considerations into account when purporting to apply the law to the facts; exercising a discretion on the basis of incorrect legal principles and giving reasons which disclose faulty legal reasoning. Lord Radcliffe in *Edwards (Inspector of Taxes) v Bairstow*[70] stated that "it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination upon appeal. In those circumstances, too, the court must intervene. It has no option but to assume that there has been some misconception of the law and that this has been responsible for the determination. So there, too, there has been error in point of law."[71] The statements from *Halsbury's Laws of England* and the judgment of Lord Radcliffe were adopted by Ang J in *Phoenix Court*.[72]

62 The appeal in *Horizon Towers* identified the questions of law as follows: (a) whether the law permitted the STB to dismiss a defective application without hearing the application on its merits; (b) whether the STB had the power to amend the defect; and (c) whether the STB was right in saying that it was constituted by the application and its existence was extinguished once an application was invalid. The High Court's decision will be discussed below.

63 Apart from appealing to the High Court on points of law under s 98(1) of the Building Maintenance and Strata Management Act 2004, Paul Tan AR stated in *Lincolnsvale*, that it does not forbid the possibility of judicial review if the STB's order is *ultra vires* the Statute and or where there is illegality, irrationality or procedural impropriety in the manner in which it made its decisions.[73]

D. Requisite majority consent: s 84A

64 Originally, the unanimous consent of all owners was required but it became apparent from *Kim Lin Mansions*[74] and other cases, that a single owner could foil the whole *en bloc* process. That would impede the release of "more prime land for higher intensity development to build more

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69 Vol 1(1) (Butterworths, 4th Ed Reissue, 1989) at para 70, quoted by Selvam JC in *MC Strata Title No 958 v Tay Soo Seng* [1993] 1 SLR 870.

70 [1956] AC 14.

71 Cited in *Ng Swee Lang v Sassoon Samuel Bernard* [2007] SGHC 190 ("*Phoenix Court*") and *Koh Gek Hwa v Yang Hwai Ming* [2003] 4 SLR 316 ("*Dragon Court*").

72 *Ng Swee Lang v Sassoon Samuel Bernard* [2007] SGHC 190.

73 *Sim Lian (Newton) Pte Ltd v Gan Beng Cheng Raynes* [2007] SGHC 84 at [53]. A recent exposition on the principles of judicial review is found in *Chee Siok Chin v Minister for Home Affairs* [2006] 1 SLR 582.

74 This case was referred to during the Second Reading of the Land Titles (Strata) (Amendment) Bill 1998 (Bill 28 of 1998).

quality housing"[75] in land scarce Singapore. Parliament responded in 1999 to the numerous appeals and feedback from frustrated owners and substituted the requirement of unanimity with the principle of majority rule in "shared social and corporate life".

65 The relevant majority consent is pegged to the age of the development and is a prerequisite to filing an application with the STB for an order for sale. Under s 84A(1), if the development is less than ten years old, consent must be obtained from owners with at least 90% of the share values and at least 90% of the total area of all the units in the development.[76] If the development is more than ten years old, consent must be obtained from owners with at least 80% of the share values and 80% based on the total area of all the flats. Share value determines the maintenance contribution, share in the common property and voting rights. The additional requirement of total area of all the units was introduced by the 2007 Amendments to redress the imbalance of voting rights in mixed developments[77] where the share value is commonly 1:4:5 for residential, office and shop units respectively, resulting in uneven weightage of voting rights for *en bloc* sale purposes. This additional requirement relating to total area is more relevant to mixed projects and is likely to have little impact on residential condominiums as the distribution of voting rights based on share value will correspond quite closely to that based on total area of the units. The 80%/90% requirement is based on the age of the development. This is calculated from the date of the latest Temporary Occupation Permit ("TOP") issued on completion of any building or if no TOP is issued, the date of the latest Certificate of Statutory Completion ("CSC") for any building in the development.

66 Where neither TOP nor CSC was issued at the time of completion of certain old developments and privatised HUDC estates,[78]

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75 *Singapore Parliamentary Debates, Official Report* (31 July 1998) vol 69 at cols 601–606.

76 As shown in the Subsidiary Strata Certificate of Titles.

77 Comprising residential and commercial units, *eg*, office and retail space.

78 HUDC estates were built in the 1970s to cater to the housing needs of a "sandwich" class of Singaporeans whose income overqualified them for public housing (HDB flats) but was insufficient to enable them to purchase private property. In the mid-1990s, the Government initiated a policy of privatising HUDC estates, with a view to converting all HUDC estates to private estates to enable residents to collectively upgrade their estates to a standard comparable to private residential estates and to enjoy the status and advantages of private property owners. Upon privatisation, HUDC leases issued by the HDB are converted into strata titles under the Land Titles (Strata) Act, flat owners become subsidiary proprietors and tenants-in-common of common property such as car parks, playgrounds, open areas and whatever other amenities that are built on the estate by the HDB Management. Upon privatisation, the running of the estate is taken over by the MC comprising the owners of the estates. The first HUDC estates to be privatised were Gillman Heights and Pine Grove in 1995.

what is the age of the development for the purpose of determining the majority consent level? In the case of *Gillman Heights Condominium*,[79] the CSC was issued in 2002 in connection with the privatisation process and the TOP in 2002 when the new clubhouse and swimming pool were completed. Therefore, the minority objectors argued that the development was less than ten years old within the meaning of s 84A(1)(*a*) so that the requisite majority consent should have been at least 90% of the total share value and the application to the STB that was based on the 87.54% majority consent was clearly invalid. In rejecting this argument, the STB reasoned that the age of the development should not be determined by the date of issue of the TOP or CSC. Otherwise, the building of a shed or toilet would start time running afresh. This reasoning accords with reality. The estate was completed as long ago as 1984 and the reference to TOP and CSC to determine the age of the estate for the purpose of s 84A(1) would give rise to absurdity.

67 However, the other substantive objection that Parliament could not have intended the Act to apply to privatised HUDC estates, such as *Gillman Heights*, was glossed over and dismissed as invalid without any reasons being given apart from the bare statement that s 84A applies to all developments so long as they are registered under the Act and there is no exclusion, express or implied. While this is clearly the position after the 2007 Amendments, which do not in any case apply to *Gillman Heights*, it remains arguable that the reference to the CSC and TOP in the original s 84A indicates that an estate such as *Gillman Heights* was not within the contemplation of the Act as it was previously owned by the Housing and Development Board ("HDB") and exempted from the requirement of a TOP and CSC. Furthermore, it was not contemplated at the time s 84A was enacted that the leasehold of *Gillman Heights* could be topped up to 99 years to make it viable for collective sale and redevelopment purposes. These factors indicate that *Gillman Heights* could not have gone *en bloc* at the time s 84A was originally drafted and was therefore outside the contemplation of the Act. Furthermore, the recent enactment of s 126A to provide expressly for ex-HUDC estates shows that there was a *lacuna* in the law that could only be plugged by Parliament. Guidance may also be obtained from the recent High Court decision in *Phoenix Court* to determine whether s 126A was intended to be a truly amending provision or simply declaratory of existing law. If the former, it confirms that previously, these ex-HUDC estates were never contemplated for collective sale under the Act. If s 126A is indeed declaratory, it confirms that such HUDC developments were always within the contemplation of the Act. But such a purposive construction cannot be supported by the wording in s 84A(1). This is discussed further in the paragraphs below.[80]

79 STB No 53 of 2007.
80 See paras 88–98 of the main text below.

68 In any event, s 126A cannot salvage *Gillman Heights* as the majority consent was obtained before the new laws came into force. The question whether s 84A(1) was ever intended to apply to *Gillman Heights* remains an issue which the STB chose to side-step. Such an important point of law is more appropriately dealt with by a court than by an administrative body, such as the STB, whose panel comprises both legally and non-legally qualified members. This is not to minimise the contribution of non-legal members whose expertise and knowledge are useful in resolving issues relating to valuation, distribution of sale proceeds and good faith.

69 A decision that s 84A(1) was never intended to apply to *Gillman Heights* would be at odds with the approval of the collective sale of Waterfront View, an ex-HUDC project (completed around the same time as Gillman Heights), even though the issues of jurisdiction and the requisite consent level were never raised in the earlier case.[81]

70 The STB has approved the collective sale of Gillman Heights but it is open to the minority objectors to appeal to the High Court on points of law relating to the STB's jurisdiction and the ambit of s 84A(1). Even if a purposive statutory construction were to be adopted, it is submitted that it would amount to a rewriting of a statutory provision. Only Parliament can do that which it has done by enacting the new s 126A.

E. New laws

71 The new s 126A(6B) provides that the age of the estate can be determined from the date of issue of the Certificate of Fitness for any building (excluding any common property) in the development.[82] Where neither the TOP nor CSC was issued, the new s 126A(6A) and (6C) provide that the age of the development can be determined from the date of completion as certified by HDB.[83] The new provisions will apply where the requisite majority consent was obtained after 4 October 2007 when the new laws came into force.

81 The application for the collective sale of Waterfront View merely stated, *inter alia*, that SPs owning not less than 80% of the share value had signed the CSA.

82 This refers to HUDC developments in Phases 1 and 2.

83 This will apply to HUDC developments where the majority decision to go *en bloc* was obtained after 4 October 2007. In anticipation of this amendment, the solicitors for the majority SPs-sellers of Gillman Heights tendered a certificate from HDB certifying when the construction of the estate was completed.

(1) Comment

72 For pure academic discussion, if a collective sale does not come within the scope of the Act, its validity or legitimacy is questionable. Can it be avoided for mistake of law and are restitutionary remedies available? It is well known that at common law, the grounds for setting aside a contract for mistake are very restricted, one of which is legal impossibility. Under equity, there is support for the view that a contract can be set aside for a pure mistake of law.[84] The mistake there concerned the general law then governing the contractual capacity of married women. Subsequently, the Court of Appeal in *Solle v Butcher*[85] unanimously assumed that equity will not provide relief against a pure mistake of law. In any event, the right to rescind is lost where there is lapse of time or where the collective sale has been completed, third party rights are affected or *restitutio in integrum* becomes impossible.

73 Concerns were expressed during the Second Reading of the Amendment Bill 2007 that ten years was too short a time to tear down structurally sound buildings. While this would yield higher plot ratios, it was a waste of resources. The Law Minister explained that it was fair to require 90% for developments less than ten years old and it was best left to market forces to determine the viability and timing of *en bloc* sales. Since 1999, almost 70% of developments that had gone *en bloc* were more than 20 years old. At the relevant date, only one development that was below ten years had gone *en bloc* – a development with 44 units originally that was redeveloped into 160 units.

F. Compliance with procedure

74 As guardian for minority interests, the STB must satisfy itself that, *inter alia*, the prescribed procedures under the Act have been complied with before it makes an order for collective sale. Hence, the STB has always taken the stand that it has no power to allow amendments to the application and that any statutory non-compliance would invalidate the application. This has been the main ground for the few applications that the STB has rejected.

75 *Mandalay Court* was dismissed for procedural irregularity when the STB upheld the objection that the EOGM held on 28 December 1999 was convened without the requisite 14 days' notice. The notice dated 15 December was short of the mandatory requirement by one day. Section 84A(3) requires the majority SPs making an application to first comply with the specified statutory requirements. The STB stated that

84 *Allcard v Walker* [1896] 2 Ch 369.
85 [1950] 1 KB 671.

even if a non-compliance was due to ignorance or an oversight, it did not have the *discretionary power* to treat as valid an otherwise invalid application. Being a creature of statute that derived its powers from the Act, the STB did not have the latitude to construe the Act otherwise than in a strict manner. It was thus legally compelled to dismiss the invalid application. Again, statutory non-compliance was the ground for the STB's dismissal of the application in *Grenville Condominium*.[86] The Act requires the majority SPs who have agreed in writing to sell their development to a specific buyer, to call an EOGM before making an application to the STB. However, when the EOGM took place on 30 November 1999 the majority owners who had agreed in writing to the sale owned less than 80% of the share values. Since the mandatory requirement with regard to the consent level had not been complied with, the application was invalid and the STB dismissed it. It was reported[87] that the solicitors for the majority owners had asked the STB for leave to forward further arguments, which the STB declined because, having delivered its written decision, it was not right to consider further arguments. If a fresh EOGM had been called, the majority would have been able to comply with the requirement, just as in *Mandalay Court* – the majority called another EOGM which complied with the requisite notice period and the STB ultimately approved the application for collective sale.

76 *Mandalay Court* may be distinguished from *The Seedevi*.[88] It was there argued that due to insufficient notice for the EOGM on 27 October 1999 the application for *en bloc* sale was rendered invalid. However, another EOGM was convened on 3 March 2000 prior to the application and written notice had been sent by registered post on 15 February 2000, 16 days prior to the EOGM. The fact that the objectors were not in Singapore and hence receipt by them was delayed by 12 days was not relevant. Proper and sufficient notice of the EOGM on 3 March 2000 had been given to the objectors.

77 Notwithstanding the strict and inflexible approach with regard to procedural non-compliance, the STB was prepared to depart from it in the following two cases. In *Eng Lok Mansion*, the objection was raised that an SP who was named as proprietor had in fact died. Counsel for the applicants conceded the error. The flat had been transferred to the deceased's wife and their two children but they were not the registered owners. The daughter had signed the CSA as Attorney. Notwithstanding the technical error, the STB did not see how this error would in any way affect the manner in which the collective sale was conducted.

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86 *Karel Paul Stephen v Singterprise Pte Ltd* [2000] SGSTB 2.

87 *Business Times* (13 June 2000).

88 *Thevathasan Gnanasundram v Khaw Seng Ghee* [2000] SGSTB 4.

78 In *Tan Soo Tuan v Ranjit Singh*,[89] the original application for the STB's approval was withdrawn and a fresh application made. The objectors were allowed to refile their objections to the first application. In the new application, no EOGM was held. The only EOGM that was held was in respect of the original application which had been withdrawn. The objectors argued that since a new EOGM was not held, it did not comply with the Act. The STB concluded that the new application was in fact a re-application in content and substance. No changes were made to the terms and conditions and the minority SPs were not prejudiced in any way by the new application. The STB concluded that the omission in holding another EOGM would not invalidate the re-application. It is noteworthy that such an approach has been endorsed by the 2007 Amendments and the STB may now disregard any non-compliance if it does not prejudice minority SPs and may even order the non-compliance to be corrected.

79 However, the STB seems to have taken a step back in the recent and controversial case of *Horizon Towers*. The STB dismissed the application on the ground of procedural non-compliance arising from three missing pages bearing three consenting owners' signatures in the submitted application. The objectors argued that the STB had no powers to disregard such a clerical error. The fact that Parliament introduced changes in 2007 to give the STB power to ignore technical irregularities as long as no owner's interest was prejudiced showed that the STB had no such powers at the relevant time. The objectors invited the STB to be guided by *Mandalay Court* (where the application was rendered invalid by failure to hold the requisite EOGM prior to making the application) and *Grenville Condominium* (when at the time the EOGM was held, the majority SPs owned less than 80% of the share values). However, these cases were distinguished by the STB as relating only to the processes (conduct of EOGM) as prescribed by the Act whereas *Horizon Towers* concerned the contents of the application documents. It is difficult to see the distinction given that all three cases above related to procedural non-compliance. On the other hand, the majority owners argued that the missing pages were a technicality that the STB could overlook so that the sale could go ahead. The STB knew that the three owners in question had signed the sale and it had power to amend the application to include the missing pages. Even without the three signatures, the consenting owners still held 82.51% of share values which was above the 80% minimum requirement.

89 [2003] SGSTB 3 ("*Parkview Condominium*").

80 The STB dismissed the application on the ground that first, the application was not complete because of the missing pages and was therefore invalid. Second, the statutory declaration stating that the documents in the application were complete and correct was false, and third, the rather curious reasoning that the STB's existence was created by the application submitted to it and any incurable defect in the application brought its existence to an end. The non-compliance here was an incurable defect rendering the application invalid because the STB had no power to allow an amendment to be made to the application.

81 The majority SPs appealed to the High Court[90] on a point of law. The court first examined the nature of the defect. With regard to the missing pages, the STB had received the executed pages of the respective parties by the relevant time. Was this therefore an incurable defect? The court examined the purpose which an application under s 84A serves. It is to ensure that all the legal requirements necessary for an *en bloc* sale are satisfied and to provide an opportunity for the minority objectors to come before the STB. If there is an error or omission that prejudices the minority, the STB may, in its *discretion*, dismiss the appeal. The STB had always taken the stand that it had no power to allow the applicants to amend the application documents. In the opinion of Choo Han Teck J, if it will not prejudice the minority, the STB is empowered to allow an amendment or correction so that the record is clear. If the STB has "no power to allow an amendment even for a typographical error, then an entire *en bloc* sale could be stalled by a comma in the wrong place. The law should not have such drastic consequences when there was otherwise no prejudice. Moreover, one cannot demand absolute precision and at the same time deny the opportunity of amendment".[91] If the error is not typographical but has a material effect on the minority's rights, then, according to the judge, it is for the STB to determine and make such ruling as it deemed appropriate. Here, the error or omission could be corrected in a moment, without inconvenience and prejudice, for even without the three missing pages, the requisite 80% requirement had been satisfied. Neither did it seem to have any material effect on the decision of the minority. A similar approach was adopted by Woo Bih Li J in *Dragon Court*[92] where he stated that a statutory declaration should contain all material facts. If it does not, but the STB is apprised of the material facts before coming to a decision, then generally speaking, it should not reject the statutory declaration and dismiss the entire application "with the view to compelling the applicant to file a fresh application".

90 *Doreen Siow v Lo Pui Sang* [2008] 1 SLR 172.
91 *Doreen Siow v Lo Pui Sang* [2008] 1 SLR 172 at [9].
92 *Koh Gek Hwa v Yang Hwai Ming* [2003] 4 SLR 316 at [62].

82 The judge in *Horizon Towers* explained that from the information required, it is envisaged that some of it may become dated by the time the application is heard[93] and by the amendments in 2007, Parliament is telling the STB very categorically that it has the power to allow amendments to the application and the court has been saying the same thing in *Dragon Court*.

83 As for swearing a false statutory declaration attesting to the completeness of the application, the High Court in *Horizon Towers* hesitated to describe it as criminal in *en bloc* proceedings. It was for the STB to decide whether the error was sufficiently material or substantive and in this instance, the STB had considered the false statutory declaration to be an incurable defect since it could not allow a statutory declaration to be amended. In this event, the STB erroneously concluded that the applicants should withdraw the statutory declaration already filed and re-file a new statutory declaration to commence the constitution of the STB.

84 Dealing with the STB's conclusion that a defective application rendered its existence questionable, the High Court took the view that "it was wrong in law to have proclaimed itself non-existent. There is no need to resurrect it. It continues to exist, at least until its functions have been discharged"[94]. The STB should not have dismissed the application without hearing the evidence and deciding the case on its merits. Accordingly, the High Court allowed the appeal against the STB's dismissal of the application and remitted the case back for its consideration.

85 Following the STB's dismissal of the application, the buyers filed proceedings against the majority SPs-sellers for breach of contract and claimed up to $1bn for loss of profits. If the sale went through, the buyers would withdraw the suit against the sellers without claiming costs. It is interesting that before the appeal was heard, the buyers who were not parties to the application for collective sale, applied to the High Court, through their solicitors, to participate in the proceedings in order to protect their commercial interests. They made known their intention that in the event that the sale did not go through, they would sue the SP-sellers. The judge allowed the application "as it was not unjust or inconvenient to hear two more voices as long as he could 'mute' them if they proved disruptive".

93 Regulation 12 of the Building Maintenance and Strata Management Act 2004 (Act 47 of 2004) allows amendments before the hearing and after that under reg 13 only if the STB grants leave.

94 *Doreen Siow v Lo Pui Sang* [2008] 1 SLR 172 at [11].

86 *Phoenix Court* was another case involving procedural irregularity. The method of distributing the sales proceeds was specified in the CSA but omitted from the S&P Agreement. Did this invalidate the application? A copy of the CSA was given to all SPs and to the STB. SPs were provided with all the information that would enable them to decide whether or not to object to the sale. The STB could also determine under s 84A(9) whether the sale was in good faith, taking into account the sale price and the proposed method of distributing the proceeds of sale. The High Court held that the technical objection of non-compliance failed, taking into account the following factors: (a) that the purpose of the legislation is to make *en bloc* sales easier; (b) that there was compliance in effect if not in form with regard to the method of distribution; and (c) there was no real prejudice to the objectors.

87 In considering the *Gillman Heights* application, the STB derived guidance from the High Court decisions in *Horizon Towers* and *Phoenix Court*. The issue was whether the failure to affix the eight-week notices on a conspicuous part of each building rendered the application invalid. The STB found that although there was no strict compliance with the wordings of the Act, the provision was not capable of "extreme strict compliance" given the layout of the estate which comprised flats and walk-up maisonette blocks with one staircase serving every four unit. Hence, the applicants had complied with the substance and spirit of the Act by affixing the notices on the notice boards where they could usually be read. This is a major shift from the STB's previous stand. Where there is substantial compliance with the Act and no detriment suffered, the STB may choose to disregard the non-compliance as it did in the *Gillman Heights* case.

G. The modern approach to statutory interpretation

88 The STB's approach used to be that s 84A(3) must be strictly complied with, failing which, the application would be invalid. The High Court in *Phoenix Court* has recently reiterated the correct approach to statutory interpretation. The traditional approach was to ask whether the statutory requirement was mandatory or directory. If it was mandatory, any non-compliance would render the decision invalid but not if it was directory. The modern approach taken by the common law jurisdictions of England, Australia, Canada and Singapore[95] is:[96]

95 *R v Soneji* [2006] 1 AC 340; *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355; *Society Promoting Environmental Conservation et al v AG of Canada* (2003) 228 DLR (4th) 693; *Re Rasmachayana Sulistyo; ex p HSBC Ltd* [2005] 1 SLR 483.

96 *R v Soneji* [2006] 1 AC 340 (HL) at 350, 353 *per* Lord Steyn.

> [A] more flexible approach of focusing intensely on the consequences of non-compliance, and posing the question, taking into account those consequences, whether Parliament can fairly be taken to have intended ... total invalidity.
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> ...
>
> ... That is how I would approach what is ultimately a question of statutory construction.

V K Rajah J (as he then was) reiterated that:[97]

> [The] preferred approach in modern times in determining the validity of an Act is to understand the purpose of the relevant procedural rule as well as the scope and intent of the governing statute ...

89 After reviewing the above statements, Andrew Ang J concluded:[98]

> [T]hat the modern approach is to treat the question as one of statutory construction to be answered by looking at the whole scheme and purpose of the Act and by weighing the importance of the particular requirement in the context of that purpose and asking whether the legislature would have intended the consequences of a strict construction, having regard to the prejudice to private rights and the claims of the public interest (if any).

90 Applying this approach to the Act, Andrew Ang J held that the main purpose of the strata legislation is to make it easier for *en bloc* sales to take place. He referred to the Second Reading of the Bill which brought about the amendments in 1999.[99] There the Minister of State for Law explained that safeguards were introduced to protect minority interests, hence the detailed procedures, the purpose of which is to ensure that all relevant parties will have adequate notice of the sale and its terms. The judge concluded that:[100]

> [T]he procedures were not built in as absolute obstacles to be surmounted on pain of the Board being precluded from exercising jurisdiction if any of the procedural requirements were not met, regardless of whether and to what extent the interests of the minority were affected.

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97 *Re Ramaschayana* [2005] 1 SLR 483 at [24].
98 *Ng Swee Lang v Sassoon Samuel Bernard* [2007] SGHC 190 at [43].
99 *Singapore Parliamentary Debates*, *Official Report* (31 July 1998) vol 69 at cols 601–607.
100 *Ng Swee Lang v Sassoon Samuel Bernard* [2007] SGHC 190 at [51].

91 Applying the modern approach to the procedural irregularity of not obtaining the requisite majority consent, the court observed that Parliament would not have intended that less than the majority could drag an unwilling owner into an *en bloc* sale. A breach of this sort would be prejudicial to the rights of the minority and cannot be countenanced. It is submitted that *Grenville Condominium* is not likely to be decided differently today. Although not wishing to be categorical about it, the court observed that the instances in which the STB's approval is liable to be overturned for non-compliance must be few, bearing in mind the overall objective and scheme of the legislation.

(1) Comment

92 The STB has been advocating strict compliance with the Act for the good reason that collective sales involve compulsory acquisition of people's homes. The consequence, however, is that the STB has dismissed applications on a mere technicality, resulting in further litigation and legal costs which are well-illustrated by *Horizon Towers*.

93 The 2007 Amendments empower the STB to disregard any technical or procedural irregularity and to order rectification if it does not prejudice SPs' interests.[101] It is clear that *Horizon Tower*'s application to the STB would not have been dismissed if such a rule had been in place then. It is also very likely that *Mandalay Court* would be decided differently today.

94 Choo Han Teck J said in *Horizon Towers* that even without the amendment, the STB is empowered to disregard any technical or procedural irregularity. The same view was shared by Andrew Ang J in *Phoenix Court*. These amount to saying that the recent amendments did not change the law with regard to technical irregularities but was merely declaratory of the existing law and intended to clear the confusion caused by the conflicting decisions of various STBs. Andrew Ang J went even further to say that an interpretation that allows the application to the STB to be amended would promote the purpose of the Act which is to facilitate *en bloc* sales. This would also be consistent with the Interpretation Act[102]. Section 9A(1) states that an interpretation that promotes the purpose of the provision is to be preferred to an interpretation that would not promote that purpose. It appears that recent High Court decisions have adopted a purposive approach which gives *en bloc* provisions the widest construction possible in order to facilitate collective sales. In this connection, V K Rajah J's (as he then was) cautionary observations in *Public Prosecutor v Lee Kok Heng*[103] must be

101 Land Titles (Strata) Act (Cap 158, 1999 Rev Ed), s 84A(7C).
102 Cap 1, 2002 Rev Ed.
103 [2007] 4 SLR 183.

borne in mind. He began by saying that s 9A(1) of the Interpretation Act mandates that in statutory interpretation, the legislative intent as well as the architecture of the Act should override the literal and ordinary meaning of the words used and any common law principles of interpretation. To this, however, he cautioned that the purposive approach as that mandated by s 9A(1) should not be used such that it goes against all possible and reasonable interpretation of the express literal wording of the provision. He cited Dawson J in the Australian High Court case of *Mills v Meeking*[104] where he said that a reference to the purposes of an Act may reveal that the draftsman had inadvertently overlooked something which he would have included had his attention been drawn to it and if it is possible as a matter of construction to repair the defect, then this must be done. However, if a purposive approach is to modify the literal meaning of a provision, that modification must be necessary to give effect to those purposes and "it must be consistent with the wording otherwise adopted by the draftsman"[105]. Dawson J emphasised that s 35(a) [s 9A] "requires a court to construe an Act not to rewrite it, in the light of its purposes"[106]. This led V K Rajah J (as he then was) to conclude that s 9A should not be viewed as conferring upon judges the new role of legislators.

95 Applying this approach to former HUDC estates such as *Gillman Heights Condominium*, did the draftsman inadvertently overlook their inclusion in s 84A which he would not have done had his attention been drawn to it? This depends on whether the remaining leaseholds of these estates could be legally topped up when the 1999 Amendments were enacted so as to make it economically feasible for them to go *en bloc*. If the answer is no, then these estates could not have been within the contemplation of the Act and a purposive interpretation would not only amount to rewriting s 84A but would also be prejudicial to the interests of minority owners who do not wish to have their homes wrested from them.

96 The recent amendments on the effects of procedural non-compliance may bring time and cost savings to buyers and sellers anxious to conclude the sale as quickly as possible. But it also means that for minority objectors anxious to keep their homes, there will be fewer technical grounds to challenge the collective sale successfully.

104 (1990) 91 ALR 16.
105 (1990) 91 ALR 16 at 30–31.
106 (1990) 91 ALR 16 at 30–31.

H. **Bona fide** ***sale and at arm's length***

97 The STB is obliged to approve the collective sale under s 84A(9) unless the objectors can show that:

(a) the transaction was not entered into in *good faith*, after taking into consideration:

(i) the sale price for the unit and common property;

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

(iii) the relationship of the purchaser to any of the owners. To show that there is no collusion between the purchaser and majority SPs, the statutory declaration should state that neither developer nor any of its related companies are owners of any of the units; or

(b) the S&P Agreement requires any SP who has not signed the agreement to be a party to any arrangement for the redevelopment of the estate; or

(c) if the sale committee does not consent to any order made by the STB to increase the sale proceeds under s 84A(7A).

(1) Sale price and method of distribution of proceeds

98 The sale price is one of three factors relevant to the issue of good faith. The onus is on the party asserting lack of good faith to show that the price was not the best price reasonably obtainable by tendering an alternative valuation report or other evidence.

99 As discussed earlier, five methods of apportionment are recommended by the SISV in the "Valuation Guidelines for Collective Sales" dated 28 October 1999 ("SISV Guidelines"). In *Eng Lok Mansions*, the STB stated that although there are several methods of valuation, whichever method used should be based on the open market concept to support the selling price at the material time. Thus, the STB is usually satisfied if the method adopted causes no significant disadvantage to any SP and is equitable, having regard to the different unit sizes in the development.

100 The Law Minister in the Third Reading of the Land Titles (Strata) (Amendment) Bill 1998[107] stated that in deciding a case, the STB would not impose its own terms and conditions on the parties. If it felt that the price is too low or the method of distribution not equitable, it would not confirm the sale. The majority owners must then address this issue.

107 Bill 28 of 1998.

101 In *Dragon Court*,[108] the STB compared the duty of the sale committee with that of a mortgagee who is to act in good faith in exercising his power of sale and to take reasonable steps to obtain the best price available in the circumstances. For the purpose of s 84A(9), a comparison between the sale price and the true value of the property is relevant and the evidence here showed that the sale was transacted within the fair market range and the price was not too low as alleged.

102 *The Seedevi* raised several issues including the lack of good faith having regard to the sale price. In resolving this issue, the STB compared the duty of the sale committee with that of the mortgagee and reiterated what was said in *Dragon Court*. A mortgagee will be in breach if he fails to either act with reasonable skill and care or to take reasonably adequate steps to ensure a fair price in relation to the sale. In determining a breach, two broad areas of inquiry are involved: (a) the steps taken in relation to the sale (whether transparent and fair); and (b) the comparison between the sale price and the true price of the property. These are equally relevant for the purposes of s 84A(9). The STB took the view that a price obtained after proper steps had been taken was strong evidence of the true value of the property, but not if the price was substantially below the true value. It gave the example of a rushed and inadequately marketed and advertised sale resulting in a price below valuation price, which would not be a sale concluded in good faith. Furthermore, any evidence of collusion between the marketing agent and purchaser would taint the sale beyond redemption.

103 In *The Seedevi*, it was also alleged that the sale committee had pre-determined the selection of the marketing agent and solicitors. The STB could not see how pre-determination (not indicated by the facts) and undue pressure in the selection of the marketing agent and solicitors could affect the sale price and concluded that these did not fall within the areas of inquiry as to whether the sale was concluded in good faith.

104 In *Dragon Court*, the High Court rejected the development charge rate to support the valuation of a development as there was no valuation method as such which relied on the development charge rates to value a particular property. The development charge rates are average values of land in a particular sector which the STB rejected because, for specific properties, regard must be had to the individual piece of land in question and its peculiarities, as well as its specific location within each sector.

108 *Yong Hwai Ming v Koh Gek Hwa* [2003] SGSTB 1 ("*Dragon Court*") came within s 84D of the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed).

105 The valuation report in *Phoenix Court* showed that the sale price of $88.1m was above the valuation of $87.5m and the reserve price of $88m. The objectors had failed to present any valuation or other evidence to challenge the *bona fides* of the sale price.

106 The minority SPs in *The Seedevi* also objected to the conduct of the marketing agent. The STB gave an example of misconduct as follows – if the marketing agent deliberately sets the reserve price low, leaked the information to prospective buyers and then proceeded to close the sale with one of these, whether by tender or private treaty, that would be a very clear instance of a sale not being in good faith. The majority would have, through their agent, failed to exercise reasonable skill and care or taken reasonable steps to secure a fair price. In the STB's view, the majority together with the sale committee could be sued for breach of fiduciary duty. However, the STB accepted the marketing agent's explanation that by setting a reserve price lower than the neighbouring project, Ixora Court, the asking price when marketing The Seedevi, which he agreed had to be higher than the reserve price, would not be an unrealistic one that would deter prospective purchasers. The STB found the explanation to be consistent with good professional practice and standards of property consultants.

107 In support of the majority's contention of good faith having regard to the price, the STB noted that the valuation report showed that the open market value of $42.78m and reserve price of $43m were lower than CDL's conditionally agreed price of $44.6m. The valuation report dated 26 February 2000 was a current one in relation to the date of the conditional S&P Agreements and the sale committee had engaged an independent valuer after receiving CDL's offer, apparently to verify that the offer was a fair price before the conditional S&P Agreements were signed. The fact that the valuation report was an independent one, not prepared by the marketing agents, further strengthened the majority's case that the sale price was a fair market price and the sale was at arm's length. The objectors (like those in *Eng Lok Mansion*) had not furnished an alternative valuation report nor adduced expert evidence to show that the sale price should have been higher. The STB noted that the objectors were not objecting to the sale price of $44.6m as not being a fair or best price but were unhappy about not having had their way in the collective sale process.

108 Another objection related to the selection of members and the conduct of business by the sale committee. It was alleged that all members, save one, were related by blood or marriage and so owned more than half the share values in The Seedevi. But there was no evidence that the related SPs had used their dominant position to the disadvantage of the other SPs, where the sale price or method of distribution were

concerned. The STB found the sale process to be rather consultative, with numerous meetings convened with regard to the collective sale.

109 The minority objectors also took issue with the failure to have the minutes of meetings verified and approved by SPs. The STB found it unrealistic to expect lay people to conduct meetings according to standards normally expected of managing agents. The STB concluded that the objections had no merit under s 84A(9) and approved the collective sale of The Seedevi. The sale committee is now required to keep minutes of meetings under para 9 of the Third Schedule.

110 One of the allegations made in *Horizon Towers* was that the sale was not made in good faith, having regard to the following factors: (a) the low sale price which did not represent the true market value at the time the option to purchase was granted to the purchaser; (b) failure to review the reserve price of S$500m. The price was recommended by the marketing agent and reflected in the CSA. The sale committee did not seem to have engaged independent valuers to ascertain whether the recommendation was an accurate reflection of the value of the development at the time the CSA was executed. Furthermore, the sales committee made no effort to review and update the reserve price at the time the tender was called and when the option was granted to the purchaser; (c) failure to obtain a valuation report; (d) failure to consider market sentiment; and (e) failure to comply with the mandate. The STB rejected the objections and approved the *en bloc* sale based on the merits of the case.

111 One of the issues in *Tan Jui Meng v Hoong See Chye*[109] was whether the collective sale price was below market price. The STB stated that a sale is done in good faith if the majority SPs have contracted the collective sale with the genuine intention of obtaining a premium and not for some ulterior objective. The STB gave two illustrations of bad faith: (a) where the real price was suppressed and a lower price declared so that the majority could share the difference; or (b) where a higher price could be extracted from the purchaser by a dominant group of SPs who can influence the decision to sell but that is not done in order to do a favour to the purchaser because of the relationship between the dominant SPs and the purchaser.

112 The STB then turned to the meaning of "too low". In one sense, the price is not too low if the collective sale price achieved a premium for each lot, which is the main function of a collective sale. The other possible meaning is that it was sold too cheaply in comparison to what it could reasonably have fetched but the STB found no evidence of that. The STB bore in mind that valuation is not an exact science but part science

109 [2005] SGSTB 1 ("*Kim Tian Plaza*").

and part art requiring subjective judgments to be made. Whilst valuations are very useful aids and should be given every due consideration, what is more important is what the market itself had to say. The price offered was the highest on offer from an adequately informed market at that point of time. The property was marketed and a public tender organised. The STB rejected the argument that the timing of the sale was not desirable and that it could have fetched a higher price if the sale had been postponed to a later date. The fundamental basis of an *en bloc* sale is that if there is a difference of opinion, the majority decision is to prevail, provided the majority acted in good faith within the meaning of s 84A(9). If the decision is not made in bad faith, the STB cannot question the majority timing on the ground that there might be a better price if they had delayed the *en bloc* sale.

113 Another objection raised was that the price could not have been right because when the proceeds of sale were allocated, seven to eight SPs suffered financial loss within the meaning of s 84A(7) read with sub-s (8). Notwithstanding the private settlement between them and the majority SPs, it was argued that the deficiencies showed that the price was too low to begin with. The STB rejected this contention. The price is unobjectionable if it is a price secured by the majority SPs generally acting in good faith and specifically through adequate marketing which results in a premium. If any SP suffers a financial loss despite the higher price achieved for every one, as a matter of practicality, the majority SPs will have to deal with this issue if any objection is filed with the STB. Otherwise, their application under s 84A(1) will be dismissed. However, this was a separate issue and had no bearing on whether the price was too low or otherwise.

114 In *Parkview Condominium*,[110] the STB stated that the fair market value may be supported by market evidence of transactions of similar properties in the locality and saw no reason to doubt that the collective sale of the development was not transacted at market value.

115 In *Gillman Heights Condominium*,[111] the objectors contended that the sale price was well below the market value as at 5 February 2007, the date of the S&P Agreement. The applicants relied on two valuation reports both using February 2007 as the reference date for valuation: the first valuing the estate at $530m and the second at $545m. The objectors relied on two valuation reports: the first valuing the property at $580m as at 5 February 2007 which was revised in September to $660m. The STB found that the sale price was $20m above the reserve price and within the range of the first three valuations and could not find any lack of good faith. As for the fourth valuation, the STB did not believe the explanation

110 *Tan Soo Tuan v Ranjit Singh* [2003] SGSTB 3.

111 *Wiener Robert Lorenz v Chua It Poh/Ng Lee Beng* STB No 53 of 2007 (unreported).

given for it. The STB reiterated that valuation of property is not an exact science and that certain fundamental considerations are used, such as the tenure of the land, the location and the prospect for redevelopment.

(2) Method of distributing proceeds

116 The method of apportioning the sale proceeds is one of three factors relevant to the issue of good faith.

117 In *Parkview Condominium*,[112] it was argued that share value was not the best basis for determining the apportionment of proceeds. The STB took the view that considering the condominium comprised four different types of units with different strata floor areas and share values, an average figure based on share value, floor area and valuation as proposed by the expert witness was not unreasonable as this was a good compromise for the different flat types.

118 In *Ridrigues Edmund v Chan Swee Chng*,[113] the sale price here was higher than the reserve price. The method of tender from 22 November to 10 December 1999 was within market norms. There was no evidence suggesting a rushed or inadequately marketed sale and the STB was satisfied that the sale price was achieved at arm's length. As for the method of apportionment, it was based on strata area but the objectors contended that the valuation method was fairer as that would take into account the recent renovations done to the units. Even if the valuation method is adopted, unit renovations are usually disregarded in valuing properties for *en bloc* sales according to the SISV Guidelines.[114] The STB found no evidence suggesting that the strata area method of distributing proceeds caused any significant disadvantage to the minority, having regard to the general uniformity of property types within the development (with 70 units of exactly the same size and one penthouse of twice the area). Other methods of distributing proceeds were presented before the EOGM which was well attended and there was no evidence of undue influence or irregular procedures being employed. In the absence of such evidence, the fact that a large majority supports one method is, *prima facie*, evidence that the method was arrived at in good faith.

119 A similar objection was raised in *Waterfront View*[115] that the method of distribution by share value was unfair as it enhanced the proceeds for the lower-floor units at the expense of higher-floor units or those facing the Bedok Reservoir which had been bought at a premium.

112 *Tan Soo Tuan v Ranjit Singh* [2003] SGSTB 3.
113 [2000] SGSTB 3 ("*Viewpoint Condominium*").
114 According to the SISV, even if the valuation method is adopted, the renovations, facing, floor level of the unit will be disregarded.
115 *Tan Yew Lee Kevin v Wee Beng & Chew Sor Teng* [2007] SGSTB 1.

The STB observed that the method of distribution is a very difficult and complex issue as each owner would view his own unit as better than the next. There is no simple solution to this complex problem. The method of distribution is an issue for the SPs to decide and the STB would not impose its subjective views on them. However, it will not approve the sale if satisfied that the method of distribution is not done in good faith.

120 The method of distribution was challenged in *Eng Lok Mansions* on the basis that all SPs would be paid the same amount notwithstanding the different built-in floor areas. Evidence was adduced by the applicants that previous attempts at selling were unsuccessful due to the method of distribution which was based on differences in size, facing and unit level. The sale committee comprised four SPs from larger units and two from smaller units and had decided, after considering the various methods, that the most suitable was that based on share value. The STB also took into account the process of the collective decision-making. The overwhelming number of owners of the larger lots did not object to this method based on share value and the STB found no reason to change the decision of the majority and rejected the minority objection.

121 In the case of *Holland Hills Mansion*,[116] the dissenting owner, Dynamic Investments, owned the largest unit. It contended that the distribution of the proceeds should be based solely on floor area as it would otherwise stand to lose about $2.4m. The agreed method was 50% based on the share value and 50% based on the floor area. Dynamic owned a 642 sq m penthouse and had a share value of six while the smallest unit of about 57 sq m had a share value of three. However, the STB found that such a method was not made in bad faith. Dynamic Investments argued that the STB had erred in law as the sale was not made in good faith given the distribution method adopted. The majority owners, however, counter-argued that this was a question of fact, not of law, and there could therefore be no appeal on the facts. The High Court agreed and accepted that the STB's decision was made in good faith.

122 One of the issues concerning *Kim Tian Plaza* was whether the method of distribution did justice to the minority SPs in this mixed development. The method of distribution used was "50% strata area and 50% valuation method". The STB stated that, under s 84A(9), a sale is transacted in good faith if the majority SPs have adopted a method of distribution of the sale proceeds which can be justified as being rational and designed to be as fair as possible to all the SPs in the circumstances of the case.

116 *Dynamic Investments Pte Ltd v Lee Chee Kian Silas* [2001] SGHC 216.

123 The method of distribution is part of the good faith requirement which can be satisfied only if it is equitable. In *Kim Tian Plaza*,[117] the complaint was that Level 1 to 3 lots comprising shops and offices, had been given too big an allocation and the residential lots too little. But there was no complaint that among the residential lots themselves, there had been an inequitable distribution. Based on the evidence, it was not unreasonable because: (a) the allocation of share values in the common property for shop and office units was higher than that of the apartment units (apartment owners will be unduly disadvantaged if the share value method is adopted); (b) unit sizes vary widely from 34 sq m to 1165 sq m (smaller unit owners would be unduly disadvantaged if strata area method is adopted); and (c) the valuation method adopted enabled all unit owners to enjoy the same percentage gain from the *en bloc* sale proceeds consistent with their existing values. The STB could find no inequity in the method of distribution adopted.

124 The minority SPs in *Gillman Heights Condominium*[118] objected to the method of distribution based on 50% strata area and 50% share value on the ground that this method favoured flat owners but was prejudicial to maisonette owners who would receive a lower sale price based on area when they had originally paid a higher purchase price. In particular, the National University of Singapore ("NUS") which owned nearly 50% of all the units in the estate would be the main beneficiary of this method of distribution since they owned flats. However, the STB was not satisfied that this method of distribution was not made in good faith. It was an acceptable method based on strata area and share value which was not an unreasonable method of distribution. Furthermore, the NUS as a majority owner was not favoured in any way as it did not participate in any of the *en bloc* proceedings and agreed to abide by the majority decision of the other SPs as to whether or not to sell the estate collectively.

(3) Relationship of the purchaser to any of the SPs

125 In determining whether the transaction is in good faith and at arm's length, one important factor is the relationship of the purchaser to any of the proprietors. The following inquiries are relevant: (a) whether the majority SPs (who have a relationship with the purchaser) used their dominant position to the disadvantage of the other SPs; (b) any pressure or undue influence; (c) deliberate suppression of material facts; and (d) collusion by majority owners and buyer so as to oppress the minority. In *Dragon Court*,[119] there was a relationship between Limau, the intended purchaser, and Philando, owners of nine of the 14 units. The two entities were controlled by the Liem family. However, it was clear that Philando

117 *Tan Jui Meng v Hoong See Chye and Tan Lem Yee* [2005] SGSTB 1.
118 *Wiener Robert Lorenz v Chua It Poh/Ng Lee Beng* STB No 53 of 2007 (unreported).
119 *Yong Hwai Ming v Koh Gek Hwa* [2003] SGSTB 1.

only agreed to sell at a price above the reserve price and not at any price. It played no part in the decision to award the tender or interfered when the marketing agent went out to seek other developers after the tender closed. The STB was satisfied that Philando had not used its dominant position to the disadvantage of the others SPs. There was only one bidder for that sale and there was no reason to suggest that the buyer was unfairly chosen. The STB's order for the collective sale to proceed was upheld by the High Court.

I. Financial loss

126 The STB will not approve the collective sale if it is satisfied that any objector will incur a financial loss, for example, by showing that the proceeds to be apportioned following the distribution formula would be insufficient to redeem the subsisting mortgage over the unit. The STB has the discretion to decide whether an expense item relating to the unit should be taken into account in computing financial loss. However, it is clear from s 84(8)(*c*) that the purchase price of a unit will not be considered for financial loss claims if it was sold after a collective sale has been awarded to a buyer.

127 Financial loss is deemed to be incurred if an SP's sale proceeds after any deduction allowed by the STB is less than the price he paid for his unit.[120] Before the 2007 Amendments, there was no clear definition of the allowable deductions. Four types of allowable deductions are stipulated in the new Fourth Schedule. The list is inclusive and not exhaustive but provides some indication to SPs intending to make financial loss claims. Previous precedents set by the STB show that renovation costs cannot be deducted.

128 As discussed earlier, under s 84A(7B), the STB can now increase the sale proceeds for minority SPs who have filed valid objections and will authorise the sale only if the sale committee agrees. In *Eng Lok Mansion*,[121] Madam Chow had claimed financial loss on the basis of replacement costs. The STB decided that it is financial loss within s 84A(7) that is relevant and not replacement cost. Madam Chow had bought her unit for $40,000 in 1969 and $280,000 for her son's unit in 1981. Interestingly, she argued that there was a financial loss as she would get a return which was the same as that of an owner of a smaller unit. The STB found this to be irrelevant for determining financial loss or a lack of good faith. Section 84A(8)(*b*) states that a proprietor shall not be taken to have suffered financial loss by reason only that "his net gain from the sale of his flat will be less than that of the other proprietor".

120 Land Titles (Strata) Act (Cap 158, 1999 Rev Ed), s 84A(8)(*a*).
121 *Tan Hui Peng v Chow Ai Hwa* [2006] SGSTB 2.

129 The 11th respondents in *Waterfront View* raised the issue of financial loss to their CPF accounts because the net proceeds were insufficient to fully repay the outstanding bank loan and fully refund their CPF moneys withdrawn for the purchase of the property. They argued that the CPF amounts should constitute an allowable deduction by the STB under s 84A(8)(*a*). The CPF Board treated the shortfall between the total CPF used plus the accrued interest and the net sale proceeds as a financial loss to their CPF accounts. The respondents contended that the net proceeds of the sale were insufficient to redeem their mortgage and CPF charge and this amounted to a financial loss. The argument made under s 84A(7)(*b*) that the sale proceeds were insufficient to pay off the mortgage failed. In view of the CPF Board's letter that they will allow the redemption, the respondents could with the proceeds of sale redeem the mortgage and discharge the charge. The STB was therefore satisfied that the objection did not come within the ambit of s 84A.

130 The STB also re-examined the issue of what deductions are allowed under s 84A(8)(*a*) and concluded that the costs of privatisation of *Waterfront View*, being an expense, should be an allowable deduction. The process of converting the title is a necessary expense without which *Waterfront View* will not be eligible for a collective sale. Renovation costs have been disallowed by earlier decisions of the STB. Legal fees and stamp duty incurred at the time of the purchase of the property have always been allowed as a deduction. The respondents did not, therefore, suffer financial loss based on the net proceeds of sale less the allowable deductions comprising legal costs and stamp duty at the time of purchase and the costs of privatisation. They had not suffered any financial loss even if the allowable deductions are taken into account. Privatisation costs, stamp duty and legal fees are now listed as allowable deductions in the Fourth Schedule to the Act.

131 The claim for financial loss in *Parkview Condominium* comprising renovation cost and replacement cost for acquiring a similar flat to the original was rejected. The STB stated that financial loss should not be so widely construed as to take into account the pricing of the future replacement property which the respondent is considering as this would depend on the varied circumstances of the respondent concerned. The STB's view was that allowable deductions should pertain to the property subject to the collective sale, such as the original purchase price, costs incidental to the purchase and interest charges. Here, the sale proceeds, after factoring in the allowable deductions, was more than the original purchase price and the respondents had failed to show financial loss.

132 The first and second respondents in *Gong Ing San v Questvest (S) Pte Ltd*[122] were corporate owners. They claimed financial loss based on "holding costs" for the reason that if interest incurred in the housing loan in holding the units over the period of ownership were taken into consideration, they would have suffered a financial loss. As corporate owners which purchased the units for rental purposes, they asked the STB to take into account bank interest charges, bank expenses and operating expenses. The latter included depreciation, management fee and sinking fund, repair and maintenance, valuation fee, property tax, advertisement, telecommunication, professional fee, agents' fee, legal fee, secretarial fee, bank charges, front-end fee and interest on overdraft. The STB was asked to decide whether holding costs should be an allowable deduction. Under the Act, an SP is taken to suffer a loss if the proceeds of sale after any deduction allowed by the STB are less than the price he paid for his lot. Therefore, holding costs and/or interest on bank charges should not be considered as a deduction. Previous decisions of the STB had not dealt with this issue. The law was silent as to what deductions should be allowed by the STB and each case must be viewed on its merits. While the STB must be consistent with its decision, it is not bound by previous decisions. *Parkview Condominium* can be distinguished as it did not decide on the issue of interest on bank charges but commented that even if it was deductible, there was still no financial loss. The issue was not argued or considered and hence the comment is not binding. It was just a general remark that allowable deductions should pertain to the subject property for the collective sale such as the original purchase price, costs incidental to the purchase and interest charges.

133 Reverting to the present case, the STB reasoned that if interest on bank charges or holding costs were to be allowed, then virtually no *en bloc* sale would ever succeed in Singapore. The sum total of all the interest paid by SPs would be so substantial that it would be impossible to sell the development at a price that would cater to all the bank interest and holding costs and the purchase price of the various SPs. This would defeat the purpose of the Act which is to facilitate *en bloc* sales. Thus, holding costs should not be a deduction that the Board should consider. Holding costs are recurring and the method of calculating would vastly differ from owner to owner. To permit such a deduction would open the floodgate for all sorts of claims as to what income each SP might have earned or had lost.

134 In *Dragon Court*, the STB once again disallowed renovation costs. The renovation had been carried out ten years before and would have depreciated. The respondent also claimed that for the purpose of obtaining a bank loan and withdrawing funds from her CPF account to finance the purchase of the unit, she had incurred interest paid on the

122 [2005] SGSTB 4 ("*One Tree Lodge*").

bank loan and accrued interest repayable to the CPF Board. The STB pointed out that s 84D(5)(*a*) and (*b*) were confined to situations where objectors incurred financial loss or if the proceeds of sale are insufficient to redeem any mortgage or charge in respect of the unit and there was no provision under the Act to allow the heads of claim. At the end of the day, the respondent had suffered no financial loss as the proceeds were sufficient to redeem her mortgage or charge.

135 The 21st objector in the *Gillman Heights Condominium* case complained of financial loss arising from the penalty of $15,091 that his late wife had to pay as a result of resigning from the Civil Service which provided a housing scheme under which she had purchased the unit. The STB rejected this amount as a deductible for the purpose of computing financial loss. The penalty was a contractual issue between his late wife and the Civil Service. The permissible objections are clearly spelt out in the Act and the STB could not take into account emotional reasons and replacement costs.

IV. Implications of the recent developments

136 The 2007 Amendments introduced more than 30 amendments after extensive industry and public consultation and feedback. While the 1999 Amendments facilitated *en bloc* sales, the recent amendments seek to regulate the market more and to "minimise complaints of harassment, unfairness and lack of transparency".[123] This was reiterated by the Law Minister in the Second Reading of the Amendment Bill 2007 when he said that the new laws are intended to provide additional safeguards rather than to facilitate *en bloc* sales. Recent High Court decisions appear to be at variance with this statement. While purposive statutory construction is the preferred modern approach, it is timely to heed judicial warnings that this should not ignore the scope and intent of the governing statutory provision nor amount to a judicial rewriting of legislation. Purposive statutory interpretation should not be carried too far.

137 The new rules also address the imbalance in voting rights in a mixed development and provide greater transparency by regulating the formation and proceedings of collective sale committees whose members must now declare conflicts of interest. The latter requirement does not go far enough as it does not require the disclosure of other conflicting interests amongst the property consultant, marketing agent, management agent or the developer-buyer which might affect the interests of the SPs.

123 Stated by the Minister for Law in *The Straits Times* (21 September 2007).

138 Would having to comply with more procedure make it harder for *en bloc* sales to go through? Industry opinion is that the new rules are unlikely to slow down such sales. Apparently, it is market forces that will affect the pace of collective sales rather than the recent amendments regulating the market more. In fact, it was reported that after a record year of $12.5bn worth of estates sold *en bloc* in 2007, the market has cooled. Of 40 estates launched for sale since October 2007, only eight deals were concluded by November 2007.[124]

139 Furthermore, procedural or technical non-compliance will not automatically result in the dismissal of an application for collective sale as the STB can now exercise its discretion in deciding whether or not to approve the sale, taking into consideration the consequences of non-compliance on minority interests. As pointed out earlier, only a handful of objections have succeeded and mainly on technical grounds. With the recent developments, it is anticipated that even fewer objections can succeed. While the current legislative scheme seeks to protect SPs, the vast majority of cases reveal that it is an uphill task for minority objectors to succeed on grounds related to valuation, sale price, distribution of sale proceeds, financial loss or lack of good faith. These are matters which no legislation can adequately provide for. At the same time, it has become apparent that more and more legal issues are involved in the objections filed and in the appeals to the High Court against the STB's decisions. It may be timely to consider whether the legal composition of the STB's panel should be increased in order for it to deal competently with legal issues such as jurisdictional or constitutional issues or whether these issues should be referred directly to a court of law.

140 *En bloc* sales will continue to "strike raw nerves, especially from those who don't view their property as investments but as homes at whatever price".[125] The minority objectors in that case had repeatedly beseeched the court to exercise mercy and sympathy in their favour, but this could only be done within the framework of the law. Today, this may translate to an increase in sale proceeds for minority objectors whose objections are valid and where it would be just and equitable for the STB to make an adjustment.

141 The 2007 Amendments represents pragmatic responses to certain concerns raised. No doubt the legislative scheme for collective sales is not cast in stone and will have to be reviewed, refined and amended as new issues arise.[126]

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124 *The Straits Times* (18 December 2007).

125 *Sim Lian (Newton) Pte Ltd v Gan Beng Cheng Raynes* [2007] SGHC 84 at [101].

126 This was envisaged by the Law Minister in the Second Reading of the Amendment Bill 2007.

142 Public reaction to the recent Amendments has been mixed. While largely positive, some found the changes too onerous whilst others wanted more safeguards.[127] It is indeed a delicate balance to strike between the need to facilitate *en bloc* sales and the need to safeguard the rights and interests of SPs. Singapore aims to be a thriving world-class city. It has to juggle the needs and ideals of its people, its limited resources, uniqueness, identity and history with intensive land use and redevelopment. As long as there is strong economic growth and stability and a booming property market, the demand for land will exceed supply and *en bloc* sales will continue to flourish. One has to give up one's castle in the national interest.

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127 Stated by the Law Minister in the Second Reading of the Amendment Bill 2007 on 20 September 2007.