

2 June 2020

## ALTERNATIVE ARRANGEMENTS FOR COLLECTIVE SALE MEETINGS DURING THE COVID-19 OUTBREAK

### Introduction

1. Under the Land Titles (Strata) Act (“LTSA”), the owners of a strata titled development are required to meet at various times during the collective sale exercise.

There are 3 kinds of collective sale meetings required under the LTSA. They are:-

- (a) general meetings of the management corporation (“**General Meetings**”), for the following purposes:-<sup>1</sup>
  - (i) constitution of the collective sale committee (“**CSC**”);
  - (ii) to approve the appointment of the lawyer and property agent;
  - (iii) to approve the method of apportionment of the sale proceeds; and
  - (iv) to approve the terms of the collective sale agreement (“the **CSA**”);
- (b) meetings of owners (“**Owners’ Meetings**”), as follows:-<sup>2</sup>
  - (i) once the required number of owners (“the **Required Percentage**”)<sup>3</sup> have signed the CSA, but before launching the development for sale – to inform owners of the number of owners who have signed the CSA and to provide information on the sale proposal and process; and
  - (ii) after the close of the public tender or auction for the development or signing of a sale agreement with a collective sale purchaser – to inform owners of the bids received and the terms of such agreement; and
- (c) meetings of the collective sale committee (“**CSC Meetings**”).<sup>4</sup>

Different requirements and procedures must be complied with, depending on the kind of meeting.

2. The LTSA contemplates that all 3 kinds of meetings be physical or “sit-down” meetings, that is, meetings where the owners are physically present. The LTSA does not provide for meetings by alternative or virtual means (e.g. conference calls, video-conferencing, etc).

<sup>1</sup> Paragraphs 1(1) and 7(1) of the Third Schedule to the LTSA.

<sup>2</sup> Paragraphs 7(3) and (4) of the Third Schedule to the LTSA.

<sup>3</sup> Either 80% or 90% of owners by both share value and strata area, depending on when the latest Temporary Occupation Permit or Certificate of Statutory Completion for any building in the development was issued, whichever is later. See e.g. section 84A(1) of the LTSA.

<sup>4</sup> Paragraph 8 of the Third Schedule to the LTSA.

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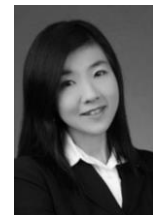
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3. To control the spread of the COVID-19 outbreak in Singapore, the Government imposed various measures, including restrictions on movement of people and business activities. The Government has announced that the restrictions will be lifted gradually.<sup>5</sup>

Because of these measures, it may not be possible to hold physical meetings as required under the LTSA, for the time being.

### ***Alternative Arrangements for Collective Sale Meetings***

4. The Government has passed new laws dealing with collective sale meetings under the LTSA, namely:-
- (a) the COVID-19 (Temporary Measures) Act 2020 (“the **COVID-19 Act**”) which, among other things, allows the Minister for Law to issue orders prescribing alternative arrangements for meetings; and
  - (b) the COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings for Management Corporations, Subsidiary Management Corporations and Collective Sale Committees) Order 2020 (“the **Order**”).

The Ministry of Law has also issued a set of Guidance Notes for the Conduct of General Meetings for En Bloc Sales and Meetings of Collective Sale Committees via Alternative Electronic Means (“the **Guidance Notes**”).

5. Briefly, the Order provides for alternative arrangements for (among others) General Meetings and CSC Meetings.<sup>6</sup> In particular:-
- (a) General Meetings and CSC Meetings can be conducted partly or wholly by electronic means, from 27 March 2020 to 30 September 2020 (“the **Relevant Period**”);<sup>7</sup>
  - (b) the Order defines “electronic means” as electronic communication, video-conferencing, teleconferencing or other electronic means;<sup>8</sup>
  - (c) management corporations (“**MC**”) can choose to defer their General Meetings until 30 September 2020;<sup>9</sup> and
  - (d) all meetings held in accordance with the Order during the Relevant Period are treated as satisfying the requirements under the LTSA.<sup>10</sup>

Note that it is not compulsory for General Meetings and CSC Meetings to be held by electronic means. MCs and CSCs can still choose to hold physical meetings, once they are able to do so.

### ***Analysis***

6. The Order has helped to clarify the status of ongoing collective sales which may be affected by the COVID-19 outbreak.

In particular, owners are given more time to get ready to start signing of the CSA.

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<sup>5</sup> Ministry of Health press release dated 19 May 2020, “End of Circuit Breaker, Phased Approach to Resuming Activities Safely” (<https://www.moh.gov.sg/news-highlights/details/end-of-circuit-breaker-phased-approach-to-resuming-activities-safely>).

<sup>6</sup> Paragraph 4 of the Order.

<sup>7</sup> Paragraph 5(2) of the Order.

<sup>8</sup> Paragraph 2 of the Order.

<sup>9</sup> Item 1 of the Second Schedule to the Order.

<sup>10</sup> Section 27(3) of the COVID-19 Act.

Under the LTSA, signing of a CSA must start within 12 months of constitution of a collective sale committee, otherwise the collective sale process will end.<sup>11</sup>

Signing of the CSA cannot start until the requisite General Meetings are held, and the owners vote in favour of the method of apportionment and the terms of the CSA at such meetings.<sup>12</sup>

With the Order, owners who are unable to hold the necessary General Meetings due to the COVID-19 outbreak can, with the MC's agreement, defer such meetings until 30 September 2020.

7. However, there are several outstanding issues relating to ongoing collective sales which the Order has not addressed, namely:-
- (a) the Order does not cover Owners' Meetings. It is still unclear whether Owners' Meetings can be held by electronic means and what requirements must be complied with for such meetings;
  - (b) the Order does not extend other deadlines to be fulfilled by the owners under the LTSA, such as the following:-<sup>13</sup>
    - (i) the Required Percentage of owners must sign the CSA within 12 months from the date the first owner signs the CSA;
    - (ii) the owners must sign a sale agreement with a collective sale purchaser and file an application with the Strata Titles Boards ("**STB**") for a collective sale order, within 12 months from the date the Required Percentage is reached.

Arguably, owners in an ongoing collective sale would benefit from extension of such deadlines, given the practical difficulties in having owners sign the CSA or marketing the development during the COVID-19 outbreak;

- (c) an owner signing the CSA in Singapore must do so before the lawyer appointed by the collective sale committee.<sup>14</sup> It is unclear whether the lawyer can witness signing of the CSA remotely, that is, without being physically present in the same place as the owner. Remote witnessing of CSA signings may become necessary, especially if physical meetings continue to be restricted.

### ***Outstanding Issues***

8. While the Order was meant to deal with an exceptional and unprecedented situation, some of its provisions could be permanently included in the LTSA, to help facilitate the conduct of collective sales.

For example:-

- (a) CSCs could be allowed to meet by electronic means, so that they can more quickly deal with critical or time-sensitive matters (e.g. considering tender bids, deciding who to sell the development to) and without the need to have a physical quorum;
- (b) for owners living overseas, MCs could be allowed to serve notices of General Meetings via electronic means or permit electronic voting by such owners.

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<sup>11</sup> Paragraph 12(2) of the Third Schedule to the LTSA.

<sup>12</sup> Paragraph 7(2) of the Third Schedule to the LTSA.

<sup>13</sup> Paragraphs 1(a) and 2(1)(a) of the First Schedule to the LTSA.

<sup>14</sup> Paragraph 4 of the First Schedule to the LTSA.

In the same spirit, other amendments could be made to the LTSA to streamline the collective sale process and to save time and costs, such as the following:-

- (a) lawyers could be allowed to remotely witness CSA signings by owners. This would be particularly helpful where it is not practical for the lawyer to visit the owner (e.g. the owner is overseas);
- (b) when it comes to applying for the collective sale order:-
  - (i) notices of the application could be served electronically, to the email address given by the owner to the MC;
  - (ii) the documents to be served together with the application<sup>15</sup> could be delivered electronically (e.g. on a secure file-sharing website), or more compact physical means (e.g. a CD-ROM), with owners to be given hard copies of the documents on request;
  - (iii) applications could be submitted online, on a website stated in the LTSA. Owners could also file objections online, on the same website;<sup>16</sup>
  - (iv) provision could be made for applications to be heard by the STB and the Courts via electronic means, to dispense with the need for the appointed representatives of the CSC or owners objecting to the collective sale to personally attend the hearing, in appropriate cases.

In the final analysis, a comprehensive review of the collective sale process under the LTSA may be required now, not just to properly resolve the issues faced by owners and CSCs due to the COVID-19 outbreak, but to ensure that the law on collective sales addresses the practical difficulties encountered in a collective sale process, and remains relevant moving forward.

## About Lee & Lee

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<sup>15</sup> Paragraph 1(e) of the First Schedule to the LTSA.

<sup>16</sup> A good example of an online framework for dispute resolution can be found in the COVID-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 ("the **Regulations**"). Under this law, contracting parties can seek relief from inability to perform certain kinds of contracts due to the COVID-19 outbreak, by applying online at a specific website. If a dispute occurs, the parties are to apply online to ask for an Assessor to be appointed to decide on the matter. The Assessor can communicate with the parties via email, and may conduct a hearing via electronic means See paragraphs 9, 12 and 18 of the Regulations.