

No. S 57

**CONSTITUTION OF BRUNEI DARUSSALAM
(Order made under Article 83(3))**

HOUSING DEVELOPERS (CONTROL AND LICENSING) ORDER, 2012

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CONSTITUTION OF BRUNEI DARUSSALAM
(Order made under Article 83(3))

HOUSING DEVELOPERS (CONTROL AND LICENSING) ORDER, 2012

In exercise of the power conferred by Article 83(3) of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

PART I

PRELIMINARY

Citation, commencement and long title.

1. (1) This Order may be cited as the Housing Developers (Control and Licensing) Order, 2012 and shall commence on a date to be appointed by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification published in the *Gazette*.

(2) The long title of this Order is “An Order for the control and licensing of housing developers, and for matters connected therewith or incidental thereto”.

Interpretation.

2. In this Order, unless the context otherwise requires —

“Board” means the Board of Housing Developers established by section 3(1);

“housing accommodation” includes a building or tenement wholly or principally constructed, adapted or intended for human habitation or partly for human habitation and partly as business premises;

“housing developer” means any person who engages in housing development;

“housing development” means —

(a) the development or construction or the causing to construct in any manner of more than 4 units of housing accommodation, and includes carrying on of any building operations for the purpose of erecting housing accommodation in, on, over or under any land; or

(b) the sale of more than 4 units of housing lots by the landowner or his nominee with the view of constructing more than 4 units of housing accommodation by the landowner or such nominee;

“housing lot” means any land surveyed and registered under the provisions of the Land Code (Chapter 40) which has a registered special condition of title for residential use;

“licence” means a licence granted under section 9(3);

“licensed housing developer” means a housing developer holding a licence granted under this Order;

“Minister” means the Minister of Development;

“project account” means an account opened and maintained by a licensed housing developer pursuant to section 14;

“register” means the register of licensed housing developers referred to in section 8;

“Registrar” means the Registrar of licensed housing developers referred to in section 7.

PART II

THE BOARD OF HOUSING DEVELOPERS

Establishment and membership of Board.

3. (1) There is hereby established a board known as the Board of Housing Developers which shall consist of the following members —

(a) the Permanent Secretary, Ministry of Development, who shall be the Chairman;

(b) the Director General of Public Works Department;

(c) the Commissioner of land;

(d) the Commissioner of Town and Country Planning;

(e) the Director of Housing Development Department; and

(f) any other members to be appointed by the Minister.

(2) Members appointed under section 3(1)(f) shall hold office for a term of 3 years and be eligible for re-appointment.

(3) The Minister may, at any time, revoke the appointment of any member appointed under section 3(1)(f) and the Minister shall as soon as practicable,

appoint a new member in his place and the member so appointed shall hold office for the remainder of the term for which his predecessor was appointed.

(4) All acts done by the Board shall, notwithstanding any vacancy in the Board or that it is afterwards discovered that there was a defect in the appointment of any person purporting to be a member thereof, be valid as if no such vacancy or defect had existed.

Disqualification of members.

4. No person shall be appointed or shall continue to hold office as a member of the Board if —

(a) he is of unsound mind;

(b) he becomes bankrupt;

(c) he is convicted of any offence involving fraud or dishonesty;

(d) in the case of member appointed under section 3(1)(f), he is absent, without leave of the Chairman, from 3 consecutive meetings of the Board.

Proceedings of Board.

5. (1) The Board shall meet at least once in 3 months and at such other times as may be considered necessary by the Chairman.

(2) At any meeting, the Chairman shall preside, and in his absence the members present shall elect from among themselves a member to preside over that meeting.

(3) The quorum of the Board shall be a simple majority of the members present.

(4) Decisions of the Board shall be taken by a simple majority of votes and in the event of equality of votes, the Chairman or, in his absence the member presiding over the meeting, shall have a casting vote.

(5) The Chairman may at any time invite any person to attend a meeting of the Board and to take part in its deliberations, but such person shall not have a vote.

(6) Subject to this Order, the Board may determine its own procedure and shall cause a proper record of its proceedings to be kept.

Functions of Board.

6. The functions of the Board shall be —

(a) to keep and maintain a register of licensed housing developers;

(b) to approve applications for licences under section 9(3);

(c) to vary or revoke existing conditions of licences or impose conditions or additional conditions under section 9(4);

(d) to approve applications to withdraw money from the project account under section 14(5);

(e) to approve applications to enter into an arrangement or reconstruction under section 15(1);

(f) to approve applications for appointment of auditors under section 16(1) and to appoint auditors under section 16(2);

(g) to refer cases under section 17 to the Minister;

(h) to consider cases for revocation of licences under section 12(1);

(i) to hear and consider representations from licensed housing developers as to why their licences should not be revoked or conditions on their licences should not be so amended.

Appointment and duties of Registrar.

7. (1) The Board, with the approval of the Minister, shall appoint a public officer to be the Registrar of the Board.

(2) The Registrar shall be under the general direction of the Board and shall record all entries required to be entered in the register of licensed housing developers and sign all approvals or rejections as directed by the Board.

Register.

8. (1) The Registrar shall keep and maintain the register which shall be in such form as the Board may determine.

(2) Such register shall contain the names and addresses and such other particulars, as the Board may determine, of all persons who are registered therein.

PART III

LICENSING OF HOUSING DEVELOPERS

Housing development to be carried out only by licensed housing developers.

9. (1) No housing development shall be carried out or undertaken in Brunei Darussalam except by a licensed housing developer.

(2) A housing developer desiring to carry out or undertake housing development in Brunei Darussalam shall apply to the Board in the prescribed form for a licence and shall supply such documents and audited accounts as may be required by the Board.

(3) Upon receiving an application under subsection (2), the Board may, subject to section 10, grant a licence with conditions or without conditions.

(4) The Board may at any time vary or revoke any conditions of a licence or impose conditions or additional conditions, but —

(a) the Board shall, prior to such action, notify its intention to do so to the licensed housing developer and give him an opportunity to submit reasons or an explanation in writing why such conditions should not be so varied or revoked;

(b) any variation or revocation of the conditions, or any additional conditions imposed under this subsection, shall not have retrospective effect.

(5) Where a licence is subject to conditions, the housing developer shall comply with such conditions.

(6) Any housing developer aggrieved by a decision of the Board under subsections (3) or (4) may, within 14 days after having been notified of the decision, appeal to the Minister whose decision shall be final.

(7) Any housing developer who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 3 years or both.

(8) Any licensed housing developer who fails to comply with any condition of his licence is guilty of an offence and liable on conviction to a fine not exceeding \$2,000.

Restrictions on grant of licence.

10. A licence shall not be granted under section 9(3) where —

(a) if the applicant is an individual, he has been convicted of an offence involving fraud or dishonesty or is an undischarged bankrupt;

(b) if the applicant is an unincorporated body of persons, one of its members or partners has been convicted of an offence involving fraud or dishonesty or is an undischarged bankrupt;

(c) if the applicant is a body corporate, an individual holding office as a director, manager, treasurer or secretary has been convicted of an offence involving fraud or dishonesty or is an undischarged bankrupt.

Restriction on use of words “housing developer” and certain other words.

11. (1) Except with the consent in writing of the Board, no person, not being a licensed housing developer, shall assume or use in relation to any business or any part of a business carried on by him the words “housing developer” or any of its derivatives or any words indicating the carrying on of housing development.

(2) Any person, not being a licensed housing developer, who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$2,000, imprisonment for a term not exceeding 3 years or both.

Revocation of licence.

12. (1) If any licensed housing developer —

(a) is, in the opinion of the Board, carrying on business in a manner detrimental to the interests of its purchasers or of the public;

(b) has insufficient assets to cover his liabilities;

(c) is contravening any of the provisions of the Order; or

(d) has ceased to carry on housing development in Brunei Darussalam,

the Board may revoke any licence granted to him but shall, prior to such revocation, notify its intention to take such action against him and shall give him an opportunity to make representations why his licence should not be revoked.

(2) Where a licence has been revoked under subsection (1), the housing developer may, within 30 days of being notified of the revocation, appeal to the Minister whose decision shall be final.

Duties of licensed housing developer.

13. (1) A licensed housing developer shall —

(a) within one month of the making of any alterations in or to any of the documents submitted to the Board under section 9(2), furnish to the Board written particulars of such alterations;

(b) every year appoint an auditor in the manner required by section 16;

(c) within 3 months after the close of his financial year, send to the Board a copy of the report of the auditor prepared pursuant to section 16 together with a copy of his balance-sheet and profit and loss account;

(d) where he considers that he is likely to become unable to meet his obligations to the purchasers, forthwith inform the Board of such fact.

(2) Any licensed housing developer who fails to comply with subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$500 for every day during which the failure to comply continues.

Licensed housing developer to open and maintain project account.

14. (1) Subject to subsection (9), every licensed housing developer shall open and maintain a project account with a bank for each housing development undertaken by him.

(2) Where a housing development is to be developed in phases, the licensed housing developer shall open and maintain project accounts for each phase of such housing development.

(3) Before proceeding with any housing development or any phase of any housing development, the licensed housing developer shall deposit into the project account a sum equivalent to 10 percent of the amount required to complete all units of housing accommodation included within such housing development or such other lesser sum as the Board may determine, and shall furnish the Board with documentary evidence of such deposit having been made.

(4) The licensed housing developer shall pay into the project account of a housing development the purchase moneys received by him from the sale of housing units in the housing development and such other sums of money which are required by any regulations under this Order to be paid into the project account.

(5) The licensed housing developer shall not withdraw any money from the project account except as authorised by regulations made under this Order.

(6) Subject to subsection (7)(b), all moneys in the project account shall, notwithstanding any other written law, be deemed not to form part of the property of the licensed housing developer if –

(a) he enters into any composition or scheme of arrangement with his creditors or has a receiving order or an adjudication order made against him; or

(b) being a body corporate, he goes into voluntary winding-up or into winding-up by the Court.

(7) Upon the happening of any of the events referred to in subsection (6)(a) or (b) –

(a) the moneys in the project account shall vest in the Official Receiver, trustee in bankruptcy or liquidator, as the case may be, to be applied for all or any of the purposes for which moneys in the project account are authorised by regulations made under this Order to be withdrawn; and

(b) any money remaining in the project account, after all payments have been made pursuant to paragraph (a) of this subsection and all liabilities and obligations of the licensed housing developer under the sale and purchase agreements in respect of the housing development have been fully discharged, shall be held by the Official Receiver, trustee in bankruptcy or liquidator, as the case may be, as money belonging to the licensed housing developer to be applied in accordance with the law relating to bankruptcy or the winding-up of companies.

(8) Notwithstanding any other written law, all moneys in the project account shall not be garnished until all liabilities and obligations of the licensed housing developer under the sale and purchase agreements in respect of the housing development have been fully discharged.

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

(10) Any licensed housing developer who contravenes or fails to comply with subsections (1), (2), (3) or (5) is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 3 years or both.

Sale or disposal of business requires approval of Board.

15. (1) Every licensed housing developer shall inform the Board of any proposed arrangement for any sale or disposal of its business relating to housing development, whether by amalgamation or otherwise, and of any proposal for reconstruction.

(2) The Board may approve or withhold approval of such proposed arrangement or reconstruction.

(3) Any licensed housing developer aggrieved by a decision of the Board under subsection (2) may, within 14 days of being notified of the decision, appeal to the Minister whose decision shall be final.

(4) Any licensed housing developer who fails to comply with subsection (1) is guilty of an offence.

Appointment of auditors.

16. (1) Every licensed housing developer shall appoint annually an auditor, who shall be approved by the Board, whose duties shall be to make a report to the Board upon the annual balance-sheet and accounts of the housing developer. The auditor shall in every such report state in his opinion whether —

(a) the balance-sheet is fully, fairly and properly drawn up;

(b) the balance-sheet exhibits a true and correct statement of the licensed housing developer's affairs;

(c) the accounting and records examined by him have been properly kept; and

(d) if the auditor has called for any information from the licensed housing developer, that information has been satisfactory.

(2) If a licensed housing developer fails to appoint an auditor under subsection (1) or at any time fails to fill a vacancy for an auditor, the Board shall have power to appoint an auditor and shall fix the remuneration to be paid by the licensed housing developer to that auditor.

(3) Every auditor shall have the right of access at all times to the accounting and other records of the licensed housing developer and shall be entitled to require such information as he desires for the purpose of audit from the licensed housing developer or from any other person who is in possession of or who could give such information.

(4) No person having an interest in the business of a licensed housing developer, whether as a shareholder or otherwise, and no director, officer, employee or agent of that licensed housing developer shall be eligible for appointment as the auditor to that licensed housing developer.

Action by Minister if licensed housing developer unable to meet obligations or conducting business to detriment of purchasers or public.

17. (1) Where —

(a) a licensed housing developer informs the Board —

(i) that he considers that he is likely to become unable to meet his obligations; or

(ii) that he is about to suspend his housing development;

(b) a licensed housing developer becomes unable to meet his obligations to the purchasers or to the public;

(c) a licensed housing developer is carrying on his business in a manner detrimental to the interests of its purchasers; or

(d) the licence of a housing developer has been revoked under section 12(1),

the Board may refer such matter to the Minister who may, in his discretion, take such action as he may consider necessary in the circumstances.

(2) Without prejudice to the generality of subsection (1), the Minister may for the purposes of taking action under that subsection —

(a) require the licensed housing developer or housing developer to take such steps as he may consider necessary to rectify any matter;

(b) appoint any person to advise the licensed housing developer or housing developer in the conduct of his business or in the termination of his business;

(c) with the concurrence of the Minister of Finance, direct a person to assume control of and to carry on the business of the licensed housing developer upon such conditions as the Minister may determine; or

(d) direct the licensed housing developer to present a petition to the Court for the winding-up of the business of the licensed housing developer or housing developer.

Punishment of failure to comply with directions of Minister.

18. A licensed housing developer or housing developer who fails to —

(a) take such steps as may be required by the Minister under section 17(2)(a);

(b) act in accordance with the advice given by any person appointed by the Minister under section 17(2)(b);

(c) if he is a body corporate, present a petition to the Court for the winding-up of the body corporate in accordance with a direction made by the Minister under section 17(2)(d),

is guilty of an offence and liable on conviction to a fine not exceeding \$2,000, and to a further fine not exceeding \$500 for every day during which the offence continues after conviction.

Control of business by another person.

19. Where any person has assumed control of the business of a licensed housing developer in pursuance of section 17(2)(c), the following provisions shall apply —

(a) that person shall remain in control and continue to carry on the business of the licensed housing developer until such time as the Minister may in writing direct; and

(b) every such assumption and cessation of control of the business pursuant to a direction of the Minister made under section 17(2)(c) shall be published by the Board in the *Gazette*.

Power of Minister to give general directions.

20. (1) Notwithstanding any other provision of this Order, the Minister may, at any time, give directions in writing to a licensed housing developer to ensure compliance with the provisions of this Order, and any such directions shall be binding on the licensed housing developer to whom they are made.

(2) Any licensed housing developer who fails or omits to act in accordance with the directions of the Minister under subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, and to a further fine not exceeding \$500 for every day during which the offence continues after conviction. The housing developer may, in addition to such punishment, be liable to have his licence revoked by the Board.

Licensed housing developer under control of another person to co-operate with that person and Board.

21. (1) Where another person has assumed control of the business of a licensed housing developer in pursuance of section 17(2)(c), the licensed housing developer shall submit his business to the control of that person and shall provide him with such facilities as the Board may require to enable him to carry on that business.

(2) Any licensed housing developer that fails to comply with subsection (1) or with any requirement of the Board is guilty of an offence and liable on conviction to a fine not exceeding \$2,000, and to a further fine not exceeding \$500 for every day during which the offence continues after conviction.

PART IV

GENERAL

Individuals not eligible to take part in management of business of licensed housing developer.

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

(a) if he enters into any composition or scheme of arrangement with his creditors or has a receiving order or an adjudication order made against him; or

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

(2) No person who has been a director of, or directly concerned in the management of, the business of a licensed housing developer carried on by a body corporate that has been wound-up by the Court shall, without the approval in writing of the Minister, act or continue to act as a director of, or be directly concerned in, the management of the business of any other licensed housing developer.

(3) Any person who acts in contravention of subsections (1) or (2) is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 3 years or both.

Penalty for offences not otherwise provided for.

23. Any person guilty of an offence against this Order for which no penalty is expressly provided is liable on conviction to a fine not exceeding \$10,000.

Offences by bodies corporate.

24. (1) Where an offence under this Order which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in such capacity, he as well as the body corporate shall be guilty of that offence and liable to be proceeded against and punished accordingly.

{2} Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Regulations.

25. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make such regulations as are necessary or expedient for the purpose of carrying out the provisions of this Order and for the due administration thereof and without prejudice to the generality of the foregoing provisions, such regulations may –

(a) regulate payments by the purchaser before, during and after the construction of the housing accommodation, including the amount of the payments, the time when the payments become due and the requirements that shall be fulfilled before the licensed housing developer can ask for the payments due;

(b) prescribe forms including the form of the contract that shall be used by a licensed housing developer, his agent or nominee and a purchaser as a condition of the grant of a licence under this Order;

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

(d) prescribe the fees to be paid on the issue of, and annually for, a licence;

(e) regulate the project account including the prescription of moneys which shall be paid into or withdrawn from the project account;

(f) prescribe anything required to be prescribed under this Order.

Saving.

26. Any housing development which commenced before the commencement of this Order shall be exempted from the provisions of this Order.

Made this 11th. day of Ramadhan, 1433 Hijriah corresponding to the 31st. day of July, 2012 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM