LEGISLATION COMMENTS

THE CONTROL OF RENT (EXEMPTION) NOTIFICATION, 1980

The Control of Rent (Exemption) Notification[1] (hereinafter called "the Notification") was made on 21 October, 1980, pursuant to section 30 of the Control of Rent Act[2] (hereinafter called "the Act").

In the space of some forty years following the re-imposition of rent control after the outbreak of the Second World War,[3] and despite numerous calls for repeal of the Act on the ground that it has long outlived its usefulness, only two steps have been taken in that direction. The first was in 1970, with the Controlled Premises (Special Provisions) Act,[4] which only applies to properties situate in certain designated areas. Owners of these properties can recover possession if it is their intention to develop these properties. Compensation must be paid to the tenants under the terms of this Act. The second step to bring premises out of the clutches of the Act was taken more than a decade later, in 1980, and forms the subject of this commentary.

Once again, this is a partial attempt at de-control, as the Notification only applies to certain domestic premises. Therefore, it cannot apply to business premises and premises used other than for residential purposes. The Notification comprises three short clauses. The first clause is introductory. The second clause has two parts — the first relates to domestic premises owned by individuals and the second relates to domestic premises owned by corporations. In the first case, domestic premises will be exempt if at any time after 24 October 1980 (the date of coming into effect of the Notification) they "have not for any period been occupied by the owner or let to a tenant". In the second case, these premises will be exempt if at any time after 24 October 1980, they have been "occupied by or let to any director or employee" of the corporation. The third clause contains a definition of "domestic premises" for purposes of the Notification.

All three clauses occupy but one page of the Government Gazette supplement on subsidiary legislation, but any initial elation at the brevity of language quickly subsides, as a closer examination reveals a variety of problems. In the main, these centre on the following areas:-

1. The meaning of "domestic premises";
2. The meaning of "for any period" i.e. what period of time will suffice?

[1] No. S 290/1980 w.e.f. 24 October 1980.
[2] Cap. 266, Singapore Statutes, 1970 (Rev. Ed.), enacted on 20 July 1953.
[3] For a history of the Act, see T.T.B. Koh, "Rent Control in Singapore" (1966) 8 Mal. L.R. 33-45, 175-232.
[4] Cap. 267, Singapore Statutes, 1970 (Rev. Ed.).

3. The meaning of "occupied"; and
4. Who is to decide on whether certain premises fall within the Notification such as to cease to be rent controlled?

It is proposed to deal with these problems in turn, starting first with the case of domestic premises owned by individuals and then proceeding to those premises owned by corporations.

I. *Domestic Premises owned by Individuals*

1. *The meaning of "domestic premises"*

The term "domestic premises" is already defined in the Act to mean "a building or part of a building used wholly or chiefly as a separate dwelling".[5] The Notification adds a further qualification — the building or part of it that is used wholly or chiefly as a separate dwelling must have a house number allotted to it under section 46 of the Property Tax Act.

Problems have arisen in the past involving premises that are used partly for residence and partly for business purposes. In *Foo Kok Hui* v. *Saraswathy & Anor*.[6] the court calculated that seventy per cent of the premises in question was used as a dwelling and the remainder as a sundry goods shop. It was held that the premises were used "chiefly as a separate dwelling" within the definition of "domestic premises". This has led a learned writer to ask what the decision would be in the case of premises half of which are used for dwelling and the remainder for other purposes.[7] Would it qualify as "domestic premises" under the Act?

The problem stems from the meaning of "wholly or chiefly" and it is not resolved by the additional requirement of a house number. It is clearly open to the owner to apply to the Comptroller of Property Tax for a house number for that part of the premises that are used as a residence, but the problem remains — how is the Comptroller to decide if half of the premises are used for dwelling and half for other purposes?

2. *The Meaning of "occupied"*

Proceeding on the assumption that the premises in question fall within the definition of "domestic premises" in the Notification, the next issue is whether they "have not for any period been occupied by the owner or let to a tenant". What is the meaning of "occupied"? Does it require the physical presence of either the owner or a tenant? If the owner of rent controlled premises leaves some of his belongings there but resides in another house, are the premises in question "occupied"? Must "occupation" require the physical presence of a person who, in the case of domestic premises, must be using them for purposes of his residence?

5 Section 2, Cap. 266, *supra,* n. 2.
6 [1961] 27 M.LJ. 91; see also *Neo Eng* v. *Ong Hat Kiat & Ors.* [1967] 2 M.L.J. 115.
7 See T.T.B. Koh, *supra,* at p. 182.

The Act provides little assistance, as the term "occupy" hardly appears. Instead, section 16(c) which affords landlords with an additional ground for recovery of possession in the case of domestic premises, uses the term "reside" and other sections such as section 27 (on statutory tenants) use the term "possession". However, it appears that the solution is relatively simple — in cases of doubt, the owner should move all his things out, for a sufficiently definite period (which raises another question), so as to establish that the premises are indeed "unoccupied" for that period, such as to satisfy the Notification.

3. *Period of Time required*

Clause 2(a) is extremely vague on the period of time required wherein the premises "have not... been occupied by the owner or let to a tenant". It simply uses the phrase "have not for any period". What amount of time suffices as a "period"? A day? Two days? A week? Ten minutes? It is quite remarkable that such imprecision in language can find its way into our legislation. It is submitted that on a literal construction, a time lapse of one day should suffice. The only difficulty lies in proving that there was in fact such a period in which the premises were not occupied by the owner or let to a tenant, which brings us to the next issue.

4. *Who can decide and what degree of Proof is required?*

It is submitted that the greatest evidentiary and practical difficulties will arise in determining whether the premises in question are left unoccupied or untenanted so as to bring them within the terms of the Notification. Furthermore, even assuming that there is such proof that the premises were indeed, unoccupied or unlet for a stated period of time, how can the owner establish this with any degree of certainty, such as to bind a third party such as a prospective mortgagee, purchaser or tenant? The problem arises because the Notification has failed to provide the machinery for obtaining exemption. An independent party or tribunal should have been given powers to declare that certain premises fall within the Notification and are therefore exempt from control.[8] Owners of these premises can then present their case to the body or tribunal and after establishing their claim, the tribunal can give them a declaration that their property is exempt from rent control. The issue is primarily a factual one and hence the courts should not be burdened with this task. Indeed, it is suggested that the Rent Conciliation Board can easily take on the task and their

[8] Perhaps the powers of this tribunal or body should also be enlarged to encompass their adjudicating on cases where the owners of premises built before 7 September 1947, allege that their premises fall outside the Act by virtue of their being so substantially renovated as to constitute new buildings. In the past, the courts have been called upon to decide this question (see *Eastern Realty Co. Ltd.* v. *Chua Hua Seng* [1967] 2 M.L.J. 195; *Bank Negara Indonesia* v. *Philip Hoalim* [1972] 1 M.L.J. 233, [1973] 2 M.L.J. 3 P.C.). As the matter seems more a question of fact than of law, it can be adequately dealt with by a separate tribunal thus saving the court precious time. On the other hand, it is clear that the occasions in which this question arise must be few and far between, as tenants rarely agree to move out merely to enable their landlords to substantially renovate the premises. Hence the problem is not as acute in these cases and the courts can adequately deal with them, as they have done in the past. The same cannot be said of owners seeking to bring themselves within the terms of the Notification.

powers should therefore be amended to enable them to make such declarations. A provision should also be inserted that in cases of doubt, the matter can be referred to the courts. However, until this is done, the problem remains.

The following possible solutions are proposed: —

1. The owner should seek a re-valuation of his property tax. Once the premises are re-valued, it provides clear evidence that the premises have ceased to be controlled. The benefits to the owner clearly outweigh the increased rates that he will have to pay in terms of property tax. In any event, the prospective purchaser or mortgagee will always requisition the Property Tax Department to ascertain the property's valuation rate as well as ensure that there are no outstanding taxes on the property. The owner with some foresight should therefore take the initiative and submit his premises for a re-valuation. In order to do this, he must of course, establish that he falls within the terms of the Notification. This is a question of fact, and he must garner the necessary proof that the premises are in fact unoccupied or unlet for the period as alleged by him.

2. The owner could try to obtain a refund of his property tax under section 7 of the Property Tax Act.[9] This is possible under section 7(1) provided the period of non-occupation exceeds thirty days or one calendar month. However, the conditions of sub-section 3 must be satisfied, which confound the issue, for it requires the owner to satisfy the Comptroller not only that, *inter alia,* "every reasonable effort to obtain tenant has been made" but also that the rent demanded is a "reasonable" one.

3. A third possibility is of course, to apply to court for a declaration that the premises fall within the Notification and are therefore exempt from the Act. This entails expenditure in terms of legal fees and is indeed, a misuse of the Court's time as the issue is not. one of law but of fact.

II. *Domestic Premises Owned by a Body Corporate*

Clause 2(b) of the Notification exempts domestic premises "owned by a body corporate which at any time after (24 October 1980) have for any period been occupied by or let to any director or employee of the body corporate." The condition for exemption in the case of these premises is thus the reverse of those premises owned by individuals— that is, in the case of domestic premises owned by corporations, they only become exempt if they are occupied or let to the corporation's own personnel (directors or employees).

The purpose is quite apparent — it is revenue raising. The effect of this provision is felt in two quarters — firstly, in the property tax division, these premises can now be re-valued based on the market values for non-rent controlled properties; secondly, the Income Tax division also stands to benefit as the exemption of these premises raises the chargeable income of both the corporation as well as its directors

[9] Cap. 144, Singapore Statutes, 1970 (Rev. Ed.).

and employees who occupy these properties. Once again the same difficulties arise. Will the use of the corporation's rent controlled bungalow for occasional social gatherings, fall within the terms of clause 2(b) as an "occupation" of the bungalow?

The problem here is, however, not as acute, as most of these properties are in fact, let or occupied by the employees or directors of the corporate owners. In these cases, the premises cease to be rent controlled. The fact of occupation or letting out can easily be proved here, as the letting or occupation is to their own personnel, and this will be reflected in the company's records and indeed, also in the tax records of these employees or directors, as it forms part of their benefits and allowances in kind, which are taxable.

Conclusion

This commentary has focussed on the inadequacies of the Notification, particularly from the viewpoint of the owner trying to establish that his premises fall within the Notification. It is submitted that the Notification needs amendment in at least two areas :-

1. the phrase "any period" should be replaced by a more definite time period such as a week or a month;
2. a tribunal should be appointed to decide on whether premises fall within the terms of the Notification, and empowered to make declarations to that effect, which are binding on third parties.

In the meantime, it appears that the best solution is to obtain a re-valuation in property tax.

LIM-LYE LIN HENG