

Strata Management Act 2013 (Act 757) and Strata Management Industry Challenges

The coming into force of the Strata Management Act (SMA) 2013 in June 2015 along with the Strata Management (Maintenance & Management) Regulations 2015 and Strata Management (Strata Management Tribunal) Regulations 2015 have repealed the Building and Common Property (Maintenance and Management) Act 2007 (Act 663). The SMA 2013 incorporates the management component of the Strata Titles Act 1985 while maintaining some of the existing provisions of Act 663. The SMA 2013 also saw the introduction of several new provisions which included amongst others, the following, making it a comprehensive enacted statute which covers all aspects of strata management and maintenance:

- Introduction of Schedule of Parcels;
- Formula for the computation of allocated share units;
- Provision for limited common property and subsidiary management corporation;
- Revised AGM and EGM provisions for the Joint Management Body (JMB) as well as Management Corporation (MC); and
- Introduction of Strata Management Tribunal

The Strata Management Act and its Regulations are intended to ensure uniformity as well as promote transparency and accountability in stratified developments. As at May 2016, all State Governments in the Peninsula have gazetted this new legislation. However, some states namely Perlis, Terengganu, Federal Territories of Labuan and Putrajaya have not enforced certain provisions of the Act such as the SIFUS calculation that caused difficulty to developers when submitting their building applications. Today, a year

after the implementation of the Act and its Regulations, certain provisions in the enactment have brought about uncertainty to the industry. The following are some of the challenges currently faced by the industry:

■ Schedule of Parcel

Clause 6 of the Act makes it compulsory for developers to file their Schedule of Parcel (SOP), indicating the proposed share units of each parcel or proposed parcels and the total share units of all parcels to the Commissioner of Building before they can proceed with any sales of parcels or proposed parcels. In the case of phased development, the SOP submitted to the Commissioner must include the proposed quantum of provisional share units for each provisional block.

This effectively means that developers can no longer make any amendments to their building plans. Any amendments to the SOP can be made only (i) as per requirement by the local authorities or (ii) with the agreement of all purchasers of the parcel in the development area. In case of such changes, developers must submit within 30 days from the date of amendment or revision of building plans and the amended SOP.

In regards to phased developments, similar exemption is also stated in Regulation 7(2) under the Strata Management Regulations whereby alteration and revision are only permissible with requirement by the local authorities or if there is a full consensus from all parcel purchasers of all affected provisional block in the development area. In addition, such alterations or revisions have to be approved by the local authority and there should not be any changes in the proposed quantum of provisional share units for the affected provisional block.

The need to allocate share units of each parcel or proposed parcels

effectively means that developers will need to determine their development from the on-set and will not be allowed to make any changes except under the two abovesaid conditions. This restricts developers from making changes and adjustments to their development or proposed development according to the market condition or buyers' demand. Furthermore, there may be circumstances which require changes due to site constraints or architectural and engineering issues.

■ Charges and Sinking Fund for Provisional Blocks

Under Clause 59(2)(a) and 61(3) of the SMA, the Management Corporation (MC) has the duty and power to collect maintenance charges as well as sinking fund from the proprietor of provisional blocks based on the provisional share units. It further states under Clause 60(5) and 61(5) that the MC has the authority to recover such unpaid sum amount in the manner set out in Clause 78 which includes written notice, filling claim at the Tribunal and if *"any proprietor who, without reasonable excuse fails to comply... commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both."*

Clause 60(3)(b) of the SMA also provides for the MC to determine the charges imposed in respect of provisional blocks. Although there is no specific provision that requires developers to pay 100% charges for provisional blocks, Clause 60(3)(b) provides the MC with the power to do so. Such determination of charges is unjust and inequitable taking into consideration that as proprietors of provisional blocks, the developer does not enjoy the use of common facilities, common services such as security and cleaning service as well as administrative resources

which are only accessible to the occupants of completed units.

■ Deposit to Rectify Defects on Common Property

Clause 92 of the Act requires the developer to *"deposit with the Commissioner such sum as may be determined by the Commissioner for the purpose of carrying out any work to rectify any defects in the common property of the development area after the completion of the common property."* It further states in the Strata Management Regulation 47(1) that the *"Commissioner shall determine the amount of deposit required to be deposited by the developer under subsection 92(1) of the Act, which shall not be less than 0.5% of the estimated cost of construction or fifty thousand ringgit, whichever is higher."* This will invariably increase the cost of doing business for developers as such deposit will not be accessible and cannot be used productively in their business cash flow. Moreover, the deposit is only refundable upon the expiry of the defect liability period of the common property.

As the purpose of the deposit is to enable the Commissioner to rectify defects of common properties in the event developer fails to remedy those defects, such deposit should not be based on the overall construction cost of the development but rather should be proportionate to the construction cost of the common property only.

■ Tenure of Committee Members of the Management Corporation

According to Clause 2(5) of Second Schedule of the Act, no chairman, secretary or treasurer shall hold office for more than two consecutive years whereas Clause 2(6) states that members of the management committee shall not hold office for more than three consecutive terms. These restrictions can only work on

Regulations (2015):

the premise that there are many parcel owners willing to volunteer and serve in the JMBs or MCs. Unfortunately, in reality, that is not the case as many JMBs and MC are hard-pressed for volunteers to serve in the JMBs or MCs.

Punitive Penalties on Committee Members

The reluctance of parcel owners to serve in JMBs or MCs has been further compounded by punitive penalties introduced in the Act imposing heavy fines and even imprisonment if the management bodies fail to adhere to certain provisions. This includes Clause 26(5) which addresses the duties of committee members related to accounts and Clause 72(3) on strata roll which states that "If the joint management body fails to comply with... every member of the joint management committee commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both." Furthermore, when a JMB or MC breaches any related provisions of the Act, the penalties will apply to every committee member including those who have voted against the penalised course of action.

The implementation of the Strata Management Act and its Regulations, although timely and lauded for the intent of ensuring clarity and better governance of stratified properties, to a certain extent, demand property developers to adopt changes in their workflow process to ensure compliance with the new Act and its Regulations.

REHDA will continue to engage the Ministry and other relevant authorities to address the challenges and issues faced by the industry in the interest of not only developers and the industry but also the home owners.

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Much of the knowledge and ideas learnt throughout the years have been transcribed into real projects in the many cities of Malaysia, especially Kuala Lumpur. Pedestrianisation, bicycle lanes, opening up city rivers for public spaces, greater art and design into the city are many of the initiatives that were born from the WCSC series throughout the years.

Themed 'City Spaces, Public Places', this year's theme is chosen such that Kuala Lumpur and other cities in this country will address and focus on the benefits of greater accessibility and better public spaces that will enhance social, economic and environmental elements of the city and its livability. Urban public spaces – sidewalks, parks, squares, traditional markets, and small plazas — and how people use them – humanise cities.

The Sustainable Development Goals launched by the United Nations in September 2015 also stressed on the importance of public spaces through Goal 11 – 'Make cities and human settlements inclusive, safe, resilient and sustainable' and specifically Goal 11.7 which states that "By 2030, provide universal access to safe, inclusive and accessible, green and public spaces, in particular for women and children, older persons and persons with disabilities".

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