LEGAL UPDATE

COMMENTS ON THE BUILDING MAINTENANCE AND STRATA MANAGEMENT (AMENDMENT) BILL (BILL NO. 29/2017)

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Introduction

1. The Building Maintenance and Strata Management (Amendment) Bill (Bill No. 29/2017) was read for the first time in Parliament on 1 August 2017.

2. The Bill follows three rounds of public consultations by the Building and Construction Authority ("BCA") dating back to April/May 2012. A brief summary of the consultation process is as follows:

   a. First public consultation in April/May 2012.
   b. Release of consultation paper by BCA on 25 September 2013.
   c. Second public consultation in September/October 2013.
   d. Release of table of key proposed amendments to the to the Building Maintenance and Strata Management Act (Cap 30C) ("BMSMA") on 1 February 2017.
   e. Third round of public consultation from 1 February 2017 to 21 February 2017.

3. The Bill excludes a number of proposed amendments that were previously mentioned in the consultation papers and/or the table of key proposed amendments, but includes a number of new amendments that were not previously discussed.

4. In this article, we examine some of the key amendments that are being proposed or left out.

Definition of Common Property (Clauses 2b – 2c of the Amendment Bill)

5. The definition of *"common property"* will be amended to specifically include certain elements, whether situated within or outside a strata lot. This was the same approach taken under the former Land Titles (Strata) Act ("LTSA"), prior to the enactment of the BMSMA. New terms *"structural defect"* and *"structural element"* are also introduced. All of these arose as a result of the decision in *MCST Plan No 367 v Lee Siew Yuen* [2014] SGHC 161 *("Highpoint Condo"),* which held that structural beams above the ceilings of a master bedroom toilet and the kitchen of a unit in question are part of the common property although situated within a lot.

6. Whilst there are no issues with all the other items deemed to be part of the common property, Example (b) under the new definition may create some problems. The said example reads:

   "An external wall, or a roof or façade of a building which is used or enjoyed, or capable of being used or enjoyed, by occupiers of 2 or more lots, proposed lots or non-strata lots."

7. The terms "external wall" or "façade" are not defined. Many strata units have private balconies, private enclosed spaces ("PES") or roof terraces ("RT"). There will be one or more walls within the balcony, PES or RT. These walls, together with everything else in the balcony, PES and RT, even though they are clearly situated within and part of the strata lot, will be visible from outside and form the façade of the building. Presently, section 37(4)(a) BMSMA provides that a subsidiary proprietor cannot effect any improvement within his lot, which might affect the façade.

8. Under the proposed amendment, will such a wall now be considered an "external wall", since it is visible from outside? If the wall, balcony, PES and RT are now deemed to be part of the common property, does it mean that the subsidiary proprietor must seek a 90% resolution from the management corporation under Section 33 BMSMA if he wants to affix anything to his wall, PES or RT? Will the management corporation now be responsible for the maintenance and repair of the balcony, PES or RT, and any wall within it, since they are now part of the common property?

9. It is proposed that "external wall" be defined to refer only to the wall at the perimeter of the strata lot, and to exclude any wall that is within the lot. The "façade" should not be deemed to be common property. Section 37(4)(a) BMSMA already provides that a subsidiary proprietor cannot effect any improvement within his lot, which might affect the façade. The existing approach is better.

Computation of Notice Periods (Clauses 2l – 2m of the Amendment Bill)

10. The proposed amendments make drafting amendments to different notice periods but it is stated that *"there is no intention to change the law".*

11. There is no ambiguity in the present phrase *"of which at least 14 days' notice".* It means you must give a minimum of 14 days' notice. If you want to hold the meeting two Saturdays from now, you must give notice by this Saturday. The proposed change to *"held on the 15th day (or later) after the notice"*, in fact adds one day to the notice period.

12. Similarly, there is no ambiguity in the present phrase *"within 21 days'* or *"within 7 days".*

13. Although BCA stated that notice periods will be calculated in terms of working days, this does not appear to have been done. There is considerable advantage to keeping notice periods to multiples of 7 days (and not working days), so that the period is easily ascertained as the last day always falls on the same day of the week.

Alteration of Share Values (Clause 10(c) of the Amendment Bill)

14. The proposed amendments expand the situations where the share values may be altered.

15. One of the situations where the share value of a lot may be altered is when there is subdivision of a lot or the amalgamation of 2 or more lots, under Section 34(4) BMSMA or Section 11(4) and 12(2) LTSA. In line with amendments to other provisions (e.g. Clause 24), the approval of the management corporation should be obtained by at least an ordinary resolution at a general meeting. Presently, there is no requirement for any general meeting resolution.

Duties of Owner Developer as regards Maintenance Funds (Clause 14 of the Amendment Bill)

16. The proposed amendments seek to clarify when owner developers must start paying maintenance charges collected into the maintenance funds.

17. Section 16 BMSMA is amended to require the Developer to set up a maintenance fund on or after the date the first temporary occupation permit ("TOP") is issued, which means the fund will invariably be established sometime after TOP.

18. The amended Section 17(1) states the following:-

    a. For sold units, the Developer must pay into the fund an amount equivalent to the amount of maintenance charges which would have been payable by the purchaser until such time maintenance charges are due and payable from the purchaser;

    b. For sold units, the Developer must collect from the purchaser all maintenance charges payable by the purchaser; and

    c. For unsold units, the Developer must pay into the fund an amount equivalent to the amount of maintenance charges which would have been payable by the purchaser if sold.

19. The amended Section 17(2) states that notwithstanding Section 17(1):-

    The Developer is *"authorised to pay all maintenance charges" "into the relevant maintenance fund with effect"* from 4 weeks after TOP, or when the maintenance fund is established, whichever is later.

20. It is unclear whether the amendment to Section 17(2) is intended to give the Developer a 4 week credit period to make payment or a waiver in respect of these 4 weeks. If there is a waiver, there will be nobody responsible for payment of the maintenance charges for this 4 week period, which may be detrimental to the maintenance fund if there are a large number of units involved.

21. A re-drafting of the provisions back to the pre-BMSMA position as desired by BCA might be good as it is simple and straightforward:-

    a. Developer to bear all costs incurred in the maintenance of the common property from TOP to the date the maintenance fund is established;

    b. Maintenance fund to be established when the first purchaser starts paying (or is liable to pay); and

    c. Developer to pay the equivalent amount of maintenance charges payable from the date the maintenance fund is established to the date a purchaser starts paying (or is liable to pay) (this applies to both sold and unsold units).

Collection of Maintenance Charges (Clause 15 of the Amendment Bill)

22. The proposed amendments make it clear that owner developers are not allowed to collect maintenance charges from purchasers unless the amount is approved by the Commissioner.

Transfer of Monies by Owner Developer to Management Corporation (Clause 17 of the Amendment Bill)

23. The proposed amendments simply require the owner developer to transfer *"all moneys standing to the credit"* in the general maintenance fund to the bank account opened in the name of the management corporation. Whilst the Bill states that *"any deficit in these funds is not transferable",* this is not expressly stated but is implied.

Power to Improve or Enhance Common Property (Clause 20 of the Amendment Bill)

24. This amendment clarifies the power of the management corporation to improve or enhance common property by extending it to acts such as removal or change of use of common property. It reverses the decision of the Strata Titles Board ("STB") in *Yap Choo Moi v MCST Plan No. 361* wherein the STB held that the MCST has no power to remove common property, a result which created problems for many management corporations.
(Note: The STB decision has since been reversed by the High Court in HC/TA 10 of 2017)

Improvements or Additions to Lots (Clauses 21 and 25 of the Amendment Bill)

25. Under Sections 37(1) and 37(3) of the BMSMA, no subsidiary proprietor of a lot can effect improvements in or upon his lot which increase or are likely to increase the gross floor area ("GFA") or affect the appearance of the building, except with the requisite approval of the management corporation. It is common for the management corporation to apply to the Court or STB for an order that the subsidiary proprietor remove the improvement in question. The Court or the Board will then make an appropriate ruling based on the facts of each case.

26. The proposed Section 37(4A) empowers the management corporation by notice in writing to require any subsidiary proprietors to rectify works which allegedly contravene Sections 37(1) or 37(3) of the BMSMA at the subsidiary proprietor's own expense, even if the subsidiary proprietor is not responsible for the contravening works. The transitional provisions state that the new Section 37(4A) applies even to contravening works existing before the operative date of this amendment.

27. By virtue of another amendment to Section 30, if the subsidiary proprietor fails to carry out the works, the management corporation can proceed to carry out the works and recover the costs from the subsidiary proprietor. Pursuant to existing provisions under Section 31 BMSMA, the management corporation will have powers of entry to carry out such works, and any person who obstructs or hinders the management corporation in the exercise of such power will be guilty of an offence.

28. The new Section 37(4A) can result in innocent subsidiary proprietors being very unfairly penalized. A management corporation may have done nothing for decades but choose to take action against a subsidiary proprietor who has just purchased the unit without knowledge that there are contravening works, which may require a lot of money to rectify. In some cases, the "contravening works" may even have been built by the owner developer and sold to the subsidiary proprietor. The owner developer, who is still in control of the management corporation, now decides to take action against the subsidiary proprietor.

29. Whether or not an improvement affects the appearance of the building can be very subjective and is often unclear. With the amendment, a management corporation can simply satisfy themselves that a particular improvement affects the appearance of the building, demand entry to remove the

improvement work, and if the subsidiary proprietor disagrees, threaten criminal proceedings against him for obstruction. Being "satisfied" is not a high bar to meet.

30. That an improvement affects the appearance of the building is in fact the main excuse given by management corporations for objecting to subsidiary proprietors' installations particularly in the case of safety equipment such as invisible grilles. This decision is often made by the council, managing agent or even the condominium manager. The proposed amendments elevate the status of such a decision to the same level as a notice served by a public authority or an order of the STB.

31. It is therefore proposed that:

a. Clause 21(b) of the Amendment Bill be removed, and Clause 25(c) be amended to exclude mention of subsection (3) (of Section 37 BMSMA), so that management corporations will not automatically have these enhanced powers in cases where the complaint is simply that an improvement affects the appearance of the building. It remains open for the management corporation to apply to the STB or the Court to seek the appropriate orders; and

b. To balance the rights of all parties, Section 47(1)(c) BMSMA should be amended to require the management corporation to inform prospective purchasers of the existence of any contravening works so that the prospective purchasers are put on notice and able to resolve the matter with the subsidiary proprietor before completion of the purchase. A management corporation which fails to inform a prospective purchaser of any contravening work when asked, should be estopped from taking any action against the purchaser subsequently, by virtue of Section 47(3) BMSMA.

Installation of Safety Equipment Permitted (Clause 26 of the Amendment Bill)

32. This new Section 37A to expressly allows subsidiary proprietors to install safety equipment. Despite various STB decisions in *Sujit Singh Gill v MCST Plan No. 3466* [2015] SGSTB 2 *("One-North Residences")* and *Zuo Xiong v MCST Plan No. 2360* [2017] SGSTB 3 *("19 Shelford Road"),* numerous BCA circulars and press reports, many management corporations still resist the installation of safety equipment, even for invisible grilles which are among the least intrusive.

33. Methods employed by management corporations to frustrate the attempts of subsidiary proprietor include but are not limited to the following:-

a. Arguing that the safety equipment affects the appearance of the building;

b. Arguing that the provisions apply only to certain types of opening e.g. arguing that BCA's circulars indicate that safety grilles should be allowed only for *"balconies*" but not to the subsidiary proprietor's *"roof garden";*

c. Insisting that the decision needs to be approved by the general meeting but making no serious effort to convene such a meeting;

d. Allowing the installation but on condition that the subsidiary proprietor must remove the same and change it to another design if the general meeting decides otherwise subsequently;

e. Allowing the installation but at an unreasonable location e.g. requiring the grilles to be installed away from the edge of the balcony, somewhere in the balcony itself or at the area between the hall and the balcony; and

f. Prescribing design guidelines which are not workable, impractical, not feasible, or which do not address the safety issue adequately e.g. approving only half height acrylic sheet or horizontal wire grilles.

34. We note that the new Section 37A places a duty on the subsidiary proprietor to ensure that the installation is in keeping with the appearance of the building, before the subsidiary proprietor can install the safety equipment. There is no requirement that the management corporation must have prescribed design guidelines. This is not consistent with BCA's oft stated position that safety is paramount and the STB's position, as stated in *Sujit Singh Gill v MCST Plan No 3466* [2015] SGSTB 2), that:

"The prescribed by-laws rules 5(1) to 5(5) of Regulations 2005, when read as a whole, serve to authorise subsidiary proprietors to install and to prevent the MCST from refusing to allow subsidiary proprietors (like the Applicant in this case) to install safety structures such as grilles, even if such installation is mounted on common property and even if it alters the appearance and façade of the building."

35. To ensure that safety remains paramount and that management corporations are not allowed to place the appearance of the building above safety, it is proposed that the new Section 37A(2)(b) exclude the words *"and has an appearance, after it has been installed, in keeping with the appearance of the building"*.

36. If it is desired to give the management corporation a chance to prescribe any design guidelines, these words can be replaced *with "and complies with any design guidelines the management corporation may have prescribed*". These amendments would be consistent with the existing approach under the Building Maintenance (Strata Management) Regulations 2005, as interpreted by the STB.

37. We would also propose the following:-

a. The words *"which is facing outdoors"* in Section 37A(1) should be deleted. Safety equipment should be permitted to be installed at any opening, whether facing indoors or outdoors. A subsidiary proprietor on a high floor may be prevented from installing safety equipment at his window facing an internal yard or area on the grounds that it is not *"facing outdoors".*

b. The word *"window"* before "*grille*" in Section 37A(3)(a)(i) should be deleted. Otherwise, subsidiary proprietors will be prevented from installing grilles at balconies and other openings, on the grounds that grilles are only applicable for "*windows*".

Use of Management Funds and Sinking Funds (Clause 27 of the Amendment Bill)

38. *"Common property"* under the BMSMA and LTSA typically refers to immovable property such as land, together with buildings and fixtures on the land. Common property is not owned by and does not belong to the management corporation. Common property belongs to the subsidiary proprietors in undivided shares according to their share values, and this is stated in their subsidiary strata certificate of titles ("SSCTs"). The management corporation's role is simply to control, manage and administer the common property for the benefit of all subsidiary proprietors.

39. The management corporation may own movable property. These are strictly speaking not part of the common property but property belonging to the management corporation.

40. The proposed amendment for the management corporation to pay into the management fund *"the proceeds of sale or other disposal of movable property that is part of the common property and belongs to the management corporation"* may be confusing as it assumes that the movable property is part of the common property which is owned by the management corporation.

41. The proposed amendment to allow moneys to be disbursed for *"organizing any social, cultural, educational, sports or other similar activity"* is welcome. However, what remains missing is the ability to pay bonuses to managing agent staff or service contractors. Some management corporations do want to recognize the exemplary efforts of some of their contract staff and this should be allowed to incentivize the staff.

Approval of Budget (Clause 27 of the Amendment Bill)

42. The proposed Section 38(3A) requires a budget to be approved at the annual general meeting ("AGM") for estimated expenses for social, cultural, educational or sports activities as well as for engaging any legal services. The proposed Section 38(3B) requires an extraordinary general meeting ("EOGM") to be convened to approve a supplementary budget for unforeseen or urgent expenditure for the above items.

43. The implication is that the management corporation cannot use the management fund for any social, cultural educational or sports activities, and any engagement of legal services beyond what is provided for in the annual budget, without the approval of a supplementary budget by way of an ordinary resolution at an extraordinary general meeting.

44. This is impractical in many situations. Management corporations are not always able to predict when legal services will be required. For example, if a management corporation is unexpectedly threatened or served with legal process, often times it has very limited time to respond. The next AGM may be months away and it takes time (usually between 4 to 6 weeks) to prepare and call for an EOGM. The cost of holding an EOGM (which may include rental of venue and equipment) can be significant and can easily exceed the cost of holding a social, cultural, educational or sports activity. The council is bound by the budget passed at the previous AGM in which they were elected.

45. Section 38 BMSMA should remain simply as an empowering section i.e. to empower the management corporation to disburse moneys for purposes stated therein. The requirement for a budget and supplementary budget should be removed. If there is a need to restrict the ability of the management corporation to spend beyond a certain amount of money, be it on maintenance, social activities or legal services, the management corporation can impose the appropriate restrictions under Section 59 BMSMA, which is typically the case.

Strata Roll to include Email Address (Clause 33 of the Amendment Bill)

46. The move to allow email addresses to be entered onto the strata roll is welcome. However, it is unclear as whether the email address can be supplied in lieu of the postal address. If it is desired that the email address (if provided) is to be in addition to the postal address, then perhaps the *words "in addition to the postal address"* should be added.

Records, etc., of Management Corporation (Clause 36 of the Amendment Bill)

47. The proposed amendment makes it an offence for a person who has control of records or other property of the management corporation to refuse to return it within a specified period after service on him of a council resolution requiring him to do so.

48. This was the old position under Section 65 of the Land Titles Strata Act (Cap 158) (Rev. Ed. 1999), which was removed with the enactment of the BMSMA in 2004.

Office Bearers holding Dual Appointments (Clauses 37 and 40 of the Amendment Bill)

49. The proposed amendments essentially provide that:

a. A person is ineligible for election, re-election or appointment to office as a chairperson if he is already the treasurer or secretary;

b. A person is ineligible for election, re-election or appointment to office as a secretary if he is already the chairperson or treasurer; and

c. A person is ineligible for election, re-election or appointment to office as a treasurer if he is already the chairperson or secretary.

50. It is not clear why it cannot simply be provided that *"a person who has been elected or appointed to office as chairperson, secretary or treasurer shall not be elected, re-elected or appointed to any of the other two offices*".

Reserved Council Office for Mixed-Use Developments (Clauses 38 and 45 of the Amendment Bill)

51. The proposed amendments reserve one seat on the council for subsidiary proprietors of strata lots of each "class of use". There will be voting on which subsidiary proprietor should be elected to each reserved council office, and that the remaining members of the council will be determined from among those who are not successful in getting elected to the reserved council office, in order of the votes received in the earlier voting.

52. While this amendment guarantees participation in the council by subsidiary proprietors of strata lots with different "class of use", it may create a lot of problems for the following reasons:-

a. The classes of use are not clear. The list does not appear to correspond to the list under the Planning Act, which has 18 classes of use. The list appears to be closer to the land use zoning under the Master Plan but there exist properties with dual zones;

b. The requirement to conduct a vote for each reserved council office followed by counting of votes for the remaining unsuccessful candidates may prove to be complicated and troublesome. For two tier management corporations, there is a further need to take into account Section 80(4) BMSMA; and

c. Under Section 61 BMSMA, all council members are required to act in the best interest of all the subsidiary proprietors as a whole, and not for any particular group. Under this proposal, members occupying reserved council offices may be expected to represent and fight for the interest of the particular classes of use they are representing.

53. Crucially, the same voting process determines both who should represent a single "class of use" and which of the unsuccessful candidates for the reserved council office are elected into the council. This gives rise to two issues:

a. It seems incongruent that the entire general body should be asked to determine who should represent a class of use; and

b. Candidates running for election in a class of use where there are less candidates will have an unfair advantage over candidates running for election in a class of use where there are more candidates. A candidate who is one of only two candidates for a reserved council seat for his class of use will invariably get more votes because the votes are split between only two candidates. A candidate who is one of 12 candidates for a reserved council seat for his class of use will invariably get less votes as the votes are split between 12 candidates.

54. If it is desired to have a reserved office for each class of use, one possibility is to have a single election for council (as is done presently), and then fill the council seats as follows:

a. Reserved council office to be filled from among the candidates eligible for election to that reserved office, if any, on the basis of the number of votes received; and

b. All other seats to be filled from among all candidates on the basis of the number of votes received.

Nomination of Candidates for Council Elections (Clause 38 of the Amendment Bill)

55. Under this proposed amendment, nominations and consents for council elections are now required to be made orally at the meeting or in writing 48 hours before the elections.

Vacation of office of member of council (Clause 39 of the Amendment Bill)

56. Clause 39 is a consequential amendment to clause 38. However, it introduces another amendment to Section 54(1)(e) BMSMA.

57. Section 54(1)(e) BMSMA currently states that council members shall vacate their office *"at the end of the next annual general meeting at which a new council is elected or upon the election at a general meeting of another person to that office, if earlier"*. Strictly speaking, this can be read to mean that council members will remain as council members if no new council is elected at the AGM.

58. The proposed amendment makes it clear that council members will vacate their office at the end of the next annual general meeting.

59. It is unfortunate that the opportunity is not taken to clarify the meaning of Section 54(4) BMSMA which deals with the situation when a council member resigns or vacates his office, and the remaining members may want to appoint a replacement. Under paragraph 2(1) to the Second Schedule, the quorum for a council meeting is the majority of the members of the council. But under Section 54(4),

it is stated that *"the members for the time being of the council shall … constitute a quorum".* It is not clear if the quorum is the majority of the remaining number of council members or all remaining number of council members.

Notices to be Given by Subsidiary Proprietors (Clause 42 of the Amendment Bill)

60. The proposed amendment amends the notices to be given by subsidiary proprietors and mortgagees.

61. The inclusion of an email address (if provided) is good but the inclusion of a facsimile address is odd considering that the strata roll under Section 46 BMSMA does not require the inclusion of facsimile addresses. If it is intended to allow notices to be given by facsimile, in addition to by post, then Section 46 BMSMA should be similarly amended.

Further Insurance by Management Corporation (Clause 43 of the Amendment Bill)

62. It is proposed to be compulsory for the management corporation to insure council members against any liability incurred by them because of any act or omission, committed or omitted in good faith, in performing the functions of their office. This kind of policy is commonly called an Errors and Omissions Policy.

63. The management corporation may also decide to insure against any other potential liability, by way or ordinary resolution instead of special resolution, which was previously the case.

Management Corporation's Representation of Subsidiary Proprietors in Legal Proceedings (Clause 46 of the Amendment Bill)

64. This clause introduces a new requirement for the management corporation to pass an ordinary resolution for the management corporation to represent subsidiary proprietors in legal proceedings for or with respect to the common property.

65. Common property belongs to the subsidiary proprietors in undivided shares according to their share value. The management corporation does not own common property. Hence, section 85 BMSMA empowers the management corporation to sue or be sued on behalf of some or all of the subsidiary proprietors, for or with respect to common property.

66. The requirement to seek general meeting approval for such proceedings may be odd since no such requirement is imposed for all other proceedings that do not involve common property e.g. the management corporation suing or be sued for defamation, or negligence not involving common property.

67. If there is a need to ensure that the management corporation seeks approval for legal proceedings, it must apply to all legal proceedings whether involving common property or not. This control should be via the new proposed Budget requirement, or preferably under Section 59 BMSMA by imposing restrictions on the Council.

68. Secondly, it is not clear if this new requirement applies only to a very specific type of legal proceedings. As drafted, Section 85 BMSMA appears capable of applying to many types of legal proceedings including those for breach of by-laws e.g. obstruction of common property. To require an ordinary

resolution before commencement of legal proceedings means that an EOGM has to be called to approve every legal action, and this can be troublesome and costly. There is also a need to clarify whether *"proceedings*" refer only to civil proceedings or it extends to criminal proceedings (e.g. Section 40(10) BMSMA), Small Claims Tribunal proceedings (Section 40(8) BMSMA) or lodgement of Charge (Section 43 BMSMA).

69. The management corporation should be allowed to authorize legal proceedings either generally (e.g. for recovery of arrears cases) or in a particular case.

Order to Invalidate Proceedings (Clause 48 of the Amendment Bill)

70. Section 103 BMSMA allows a subsidiary proprietor to apply to the STB for an order to invalidate resolutions and elections at general meetings of the management corporation. The proposed amendment expands the jurisdiction of the STB to cover meetings of the council and executive committee.

Official Management of Management Corporation (Clause 53 of the Amendment Bill)

71. This amendment introduces the new concept of "Official Management" by an "Official Manager".

72. When the Commissioner of Buildings receives a written request from subsidiary proprietors holding at least 20% of the share values or 25% of the lots, and the Commissioner is satisfied that the management corporation refuses or is unable to carry out its duties under the BMSMA that must be urgently carried out in order to remove any danger to the health or safety of the subsidiary proprietors and occupants, the Commissioner may place the management corporation under Official Management and appoint an Official Manager with full powers to transact any business of the management corporation.

73. The proposed Section 126A(4) states that the Official Manager will hold office for 15 months or till the next AGM, whichever is earlier. The proposed Section 126A(6) states that the Official Manager will hold office till the Commissioner is satisfied that the reasons for appointing the Official Manager have ceased. The two sections appear to be inconsistent, and if so, section 126A(4) should be deleted.

General Penalties (Clause 54 of the Amendment Bill)

74. This amendment increases the general penalty for offences under the BMSMA, from $3,000 to $10,000.

Service of Notices (Clause 55 of the Amendment Bill)

75. This amendment allows service or giving of notices by email. However, the usefulness of this new provision is limited by the following:

a. Service by email is only effective if a copy is also served by post. This requirement should not be necessary for subsidiary proprietors who have provided their email address for service of notices.

b. The email is seemed to be duly served only *"when it becomes capable of being retrieved by the addressee at an electronic address designated by the addressee"*. This is near impossible for the sender to prove. A more reasonable approach may be to deem the email duly served after 48

hours provided the sender is not notified that the email has not reached the recipient e.g. the sender receives an out-of-office message, mailbox full message or delivery error message.

76. The amendment deems posted notices to be served on the 3rd working day if sent by prepaid registered post and on the 4th working day if sent by prepaid ordinary post.

Inaccuracies in Notices etc (Clause 56 of the Amendment Bill)

77. Very often, the names that appear on the strata roll differ slightly from the names that appear on the subsidiary strata certificate of title. Sometimes, even the address is spelled differently. This amendment allows such inaccuracies to be disregarded if the person, premises or building or other thing named is nevertheless identifiable. Proceedings taken under or by virtue of the BMSMA will also not be rendered invalid by reason of want of form.

Conduct of General Meetings (Clause 59 of the Amendment Bill)

78. There is now a prescribed list of motions that must be included in the agenda for the Annual General Meeting.

79. The procedure for nomination of candidates for election and adjournment of general meetings is now provided.

80. The requirement for the Chairperson of the meeting to immediately fix the time and place for the adjourned meeting may not be practical. Meetings may be adjourned because members want to wait for the outcome of some investigation, report or audit, and the adjourned meeting should only take place after this is completed. For some management corporations who hold their meetings outside of the estate, the managing agent needs to check the availability of the venue.

81. Once the date and time of the adjourned meeting is finalized, the management corporation needs to give notice under paragraph 3A(3) anyway. If it is felt that the meeting should be held by a certain date, this can be set out in the resolution to adjourn the meeting.

82. It is noted that for adjournment of council meetings, there is no requirement to immediately fix the time and place for the adjourned meeting.

Election of Council or Executive Committee (Clause 59(d) of the Amendment Bill)

83. The proposed amendments require the chairperson of the general meeting to announce the names of the candidates and call for oral nominations after which the management corporation must decide, "*in accordance with this Act",* the number of members of the council or executive committee.

84. It is unclear whether this decision on the number of members should be made by ordinary resolution according to share values (which would be the case for most decisions) or by way of one vote per lot (which would be the case for council elections). It is better that this issue be clarified.

Manner of Voting (Clause 59(f) of the Amendment Bill)

85. The manner of voting and the contents of the voting slips are prescribed.

86. Whilst it is reasonable to require the motion number to be indicated on the voting slip, and for the voter to indicate whether he is voting for or against the motion, it is probably unnecessary to also require the voting slip to indicate the type of motion that is being passed, and the capacity in which he is exercising his right to vote. The capacity of the voter should be indicated on the meeting attendance sheet. For various control reasons, voting slips are typically issued only at the meeting to eligible voters.

87. Whilst the Instrument of Proxy may direct a proxy to abstain a voting, the voting slip should not have a "Abstain" column. Requiring persons to cast an "abstain" vote does not serve any useful purpose since many people who abstain will simply not vote, and you may end up with two groups of "abstain" voters.

List of Persons Entitled to Vote (Clause 59(g) of the Amendment Bill)

88. The amended regulation clarifies the information to be displayed on the notice board 48 hours before the meeting. This is an area of dispute which has been referred to the Personal Data Protection Commission ("PDPC"). The issues are whether more personal data than necessary has been disclosed, and/or for longer than necessary.

89. In Case No. DP-1607-B0117, the PDPC heard a complaint that copies of the eligible voter list (containing names, unit numbers and voting shares) were displayed on the notice board and web portal. The PDPC noted that paragraph 7 of the First Schedule to the BMSMA requires only a list of the names of eligible voters to be displayed. Nevertheless, the PDPC considered that unit number and voting shares were publicly available information, and therefore could be disclosed without consent. On a complaint that the voter list was displayed on the notice board for 2 months, the PDPC considered that as the minutes of the meeting had to be displayed for at least 14 days, 2 months was not an unreasonably long period.

90. The proposed amendments now require both the names and unit numbers to be displayed. For the avoidance of doubt, it is good to expressly include display of the share values, as this is commonly done.

91. The proposed amendments now require the minutes to include more detailed information such as names of subsidiary proprietors or their proxies and the results of very vote. Our opinion is that it is no longer necessary to keep the voter list displayed on the notice board after the meeting, and we agree with BCA's view that the list should be removed as soon as practicable after the meeting. However, if it is desired to allow the voter list to be displayed when the minutes are displayed, we suggest that the voter list can be displayed up till 14 days after the minutes are first displayed on the notice board.

Minutes of General Meetings (Clause 59(h) of the Amendment Bill)

92. The proposed amendments now stipulate the information to be contained in the minutes.

Instrument of Proxy (Clause 59(l) of the Amendment Bill)

93. An appointed proxy can now only represent a maximum of 2 lots or 2% of the lots, whichever is higher.

94. Although the move to impose a limit on the number of proxies a person can hold is good, a balance must be struck. There are good reasons to allow voting by proxy, especially since the owners now can direct the proxy to vote in a certain way. A preferred limit would be a maximum of 2 lots or 5% of the lots, whichever is higher. It is noted that when BCA did a survey, 64.1% of the respondents felt that a 5% limit would be most appropriate, compared to only 17.0% who opted for a 2% limit. A 5% limit is also imposed under the Queensland legislation.

Method of Holding Meetings (Clause 60 of the Amendment Bill)

95. Provision is now made for the council or executive committee to hold meetings by means of teleconference, video conferencing or other electronic means of communication, provided that all of the members who wish to participate in the meeting have access to the technology needed to participate in the meeting.

96. Provision should also be made for subsidiary proprietors who wish to exercise their right under paragraph 5 of the Second Schedule to the BMSMA, to attend council meetings.

Notice Board (Clause 60(c) of the Amendment Bill)

97. The council must now display the minutes of council meetings within 14 days and minutes of general meetings within 45 days. Presently, the minutes of council meetings have to be displayed within 7 days, which is a bit short, and there is no time period prescribed for the minutes of general meetings.

98. A notice board for this purpose can also be an online notice board maintained on the website of the management corporation. This is a welcomed amendment as presently many management corporations find it difficult to display all the minutes on the notice board, together all other information that needs to be displayed. An online notice board is also easier for many subsidiary proprietors and occupiers to access.

99. However, it is not clear why an online notice board is only allowed for the purpose of displaying minutes and not for many of the other purposes under the BMSMA such as displaying address for service (section 28), display of by-laws (section 32(8)(b)), list of eligible voters (paragraph 7 of First Schedule) and notice of council meetings (paragraph 4 of Second Schedule). The definition of notice board under those sections should also be similarly amended.

Adjournment of Council or Executive Committee Meetings (Clause 60(f) of the Amendment Bill)

100. Provision is made on how council and executive committee meetings may be adjourned.

Minutes of Council or Executive Committee Meetings (Clause 60(i) of the Amendment Bill)

101. The proposed amendments now stipulate the information to be contained in the minutes.

Proposals that Have been Excluded from this Bill

102. The Bill excludes a number of proposed amendments that were previously mentioned in the Consultation Paper and/or table of key proposed amendments. Notably:

a. The proposed payment of an honorarium to council members capped at $250 per year per council member has been dropped. This was never a good idea and most people were not in favour of it.

b. The proposal to give management corporations the power to enact by-laws to impose fines for breach of a restricted list of prescribed by-laws has also been excluded. This proposal requires careful consideration. Although it is useful to empower management corporations to impose fines, there are many cases of overzealous management corporations passing all kinds of oppressive by-laws and imposing various fines, fees and charges. Very often, the affected subsidiary proprietors are not able to do anything because they are prevented from voting at the general meeting on account of their non-payment of these fines, fees or charges. The subsidiary proprietors who control the council (and therefore the management corporation) continue to be able to pass new by-laws and get themselves re-elected into council without much opposition.

c. The proposal to require managing agents to attend prescribed training has also been excluded.

d. The proposal to make it a requirement for management corporations to engage lawyers to provide legal advice on provisions of the BMSMA has also been excluded.

Collective Sales under the Land Titles (Strata) Act ("LTSA")

103. Although this Bill makes consequential amendments to the LTSA, the clauses do not seek to amend the provisions of the LTSA as regards the conduct of general meetings for the purposes of collective sales. It remains to be seen whether Parliament will introduce similar amendments to the LTSA, where different considerations may apply.

About Lee & Lee

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