

## **FORCED SALE OF A STRATA UNIT BY THE MANAGEMENT CORPORATION TO RECOVER ARREARS OF CONTRIBUTIONS**

05 September 2022

For any queries relating to this article, please contact:

Toh Kok Seng  
[tohkokseng@leenlee.com.sg](mailto:tohkokseng@leenlee.com.sg)

Sharon Tay  
[sharontay@leenlee.com.sg](mailto:sharontay@leenlee.com.sg)

Daniel Chen  
[danielchen@leenlee.com.sg](mailto:danielchen@leenlee.com.sg)

### **Authors:**

Toh Kok Seng  
Sharon Tay  
Daniel Chen  
Enzel Tan  
Faith Quek

### **Lee & Lee**

25 North Bridge Road  
Level 7  
Singapore 179104  
Tel: +65 6220 0666

For more legal updates, please visit the News & Publication Section of Lee & Lee's website at [www.leenlee.com.sg](http://www.leenlee.com.sg), or follow Lee & Lee's Facebook page at [www.facebook.com/leenlee.com.sg/](https://www.facebook.com/leenlee.com.sg/) and Lee & Lee's LinkedIn page at <https://lnkd.in/g6bNfv8G>.

**Disclaimer:** The copyright in this document is owned by Lee & Lee.

No part of this document may be reproduced without our prior written permission.

The information in this update does not constitute legal advice and should not form the basis of your decision as to any course of action.

### ***Background***

1. Under the Building Maintenance and Strata Management Act 2004 ("BMSMA"), there are various options available to the Management Corporation ("MCST") when seeking to recover arrears of contributions and interest thereon from Subsidiary Proprietors ("SPs"). The MCST can commence legal proceedings to sue for a debt in any court of competent jurisdiction or file a claim with the Small Claims Tribunals. The MCST can also commence private criminal prosecution.
2. Additionally, the MCST may lodge an instrument of charge against the lot with the Registrar of Titles. Upon registration of the instrument of charge by the Registrar, the MCST has, subject to certain conditions, the power of sale and all other powers relating or incidental thereto as if the MCST is a registered mortgagee.
3. The forced sale of a strata unit to recover arrears of contributions and interest thereon may in some circumstances be the most appropriate or sometimes only option available to the MCST.
4. In a recent case, Lee & Lee successfully assisted the MCST in carrying out a forced sale of a strata unit at the Arc@Tampines residential condominium.

### ***Considerations***

5. In considering whether to embark on the process of forced sale, various factors can be relevant. Although not an exhaustive list, these are some we have come across in our practice.
6. First, if other methods of recovery have been attempted and have failed to recover the arrears in contributions and interest thereon, the MCST may have no other option but to attempt forced sale of the strata unit in question.
7. Second, if for some special reason the other methods of recovery are not feasible (e.g., if the subsidiary proprietor is based overseas and cannot be served Court papers personally), the MCST may also have no other option but to attempt forced sale of the strata unit in question.

8. Third, forced sale can be undertaken only if the amount due is large enough to convince the general body of the need for a forced sale. The MCST must be aware that it is required to pass a special resolution at a general meeting, to approve the forced sale. Subsidiary proprietors may not agree to approve a forced sale where the amount due is small, unless there are special circumstances.

### ***Objectives***

9. The main objective of embarking on a forced sale is to compel the SP to make payment of the outstanding contributions. As long as the SP pays up, the forced sale will be called off.
10. Alternatively, if the process can result in the mortgagee bank (since most properties are mortgaged) impressing upon the SP not to be in default of the contributions, the main objective would have been accomplished. The MCST is also more than happy if the mortgagee bank decides to exercise its power of sale, as the registered MCST charge is not overreached in the event of such sale .

### ***Procedural Requirements***

11. As the lodgement of an instrument of charge against the lot and subsequent forced sale of the lot are serious matters, it is important to comply with the procedural requirements.
12. A written demand for the contributions due must be served on the SPs properly at their address for service of notice. It is only if the amount remains unpaid after 30 days after service of the written demand that the MCST may lodge an instrument of charge with the Registrar of Titles.
13. The MCST must next pass a special resolution at its next general meeting, for the lot to be sold. The special resolution must cover the essential steps of the forced sale process. Following that, a notice of the intended sale must be published once in one or more daily newspapers approved by the Registrar of Titles. It is only when no payment has been received during the period of 6 weeks after the date of such publication, for the amount of contribution due and the cost of publication, and there is no legal action pending in court to restrain the sale, that the forced sale may proceed .
14. Although there are differing views on this point, our view is that there is no need and no basis for the MCST to obtain an Order of Court for vacant possession of the strata unit, prior to exercising its power of sale.

### ***Difficulties and Challenges***

15. If the lot is encumbered with prior mortgages and charges, which is often the case, the first difficulty is getting the cooperation of the prior mortgagees and chargees. The mortgagees and chargees will invariably refuse to provide information on the amount outstanding under the mortgage or charge, making it difficult, if not impossible, to ascertain if the net proceeds of sale will be sufficient to satisfy all prior registered mortgages and charges as well as the amount owing to the MCST. In some cases, there may also be caveats and/or orders of court lodged against the lot.

## LEGAL NOTE



16. The nature of a forced sale also means that you will likely not get the SPs' co-operation throughout the entire process. This means an inability to access the property for valuation and viewing by potential buyers. The property would have to be sold without vacant possession. The successful purchaser may have to evict the occupiers of the property, if any.
17. In some cases, the consent of the head lessor, to the sale, may have to be obtained and the head lessor may grant consent subject to terms and conditions including the payment of fees, which may be substantial.
18. In cases where the SPs are uncooperative and/or uncontactable, if there are balance sale proceeds, there may also be difficulties in paying the balance sale proceeds to the SPs. If there are multiple SPs, another potential issue arises as to how to apportion the balance sale proceeds among them. The MCST may also be unable to obtain withholding tax confirmation from the SPs required under section 45 of the Income Tax Act 1947.
19. Upon a successful sale, neither the person who purchased the lot from the MCST nor the Registrar of Titles is to be concerned to inquire into the regularity or validity of the sale or transfer. For the purpose of the transfer, the Registrar may dispense with the production of the relevant duplicate subsidiary strata certificate of title.
20. The Conditions of Sale must be carefully drafted to deal with all the above potential issues. In the Arc@Tampines case, there was in fact a shortfall; the net proceeds of sale were insufficient to satisfy all prior registered mortgages and charges as well as the amount owing to the MCST. The problem was compounded by the fact that one SP was bankrupt and we had to liaise with the private trustee. The other SP was missing and not contactable.
21. A forced sale by a MCST is uncommon and not familiar to some banks and government authorities. Some of them may ask for the Order of Court when none exists. Most will take longer than usual to respond, such as providing the redemption statement very late. The Singapore Land Authority's online eLodgment system contains no template for a Transfer pursuant to a MCST forced sale.

## **Conclusion**

22. The process of a forced sale by the MCST is often fraught with difficulties and challenges, as the experience with the Arc@Tampines case shows, but they are not insurmountable. As long as the MCST is willing to take a calculated risk and with proper advice from legal and other professionals, it can be done.
23. If your MCST needs to consider a forced sale of a lot, do feel free to contact us.

## **About Lee & Lee**

*Lee & Lee is one of Singapore's leading law firms being continuously rated over the years amongst the top law firms in Singapore. Lee & Lee remains committed to serving its clients' best interests, and continuing its tradition of excellence and integrity. The firm provides a comprehensive range of legal services to serve the differing needs of corporates, financial institutions and individuals. For more information: visit [www.leenlee.com.sg](http://www.leenlee.com.sg).*

The following partners lead our departments:

Kwa Kim Li  
Managing Partner

[kwakimli@leenlee.com.sg](mailto:kwakimli@leenlee.com.sg)

Quek Mong Hua  
Litigation & Dispute Resolution

[quekmonghua@leenlee.com.sg](mailto:quekmonghua@leenlee.com.sg)

Owyong Thian Soo  
Real Estate

[owyongthiansoo@leenlee.com.sg](mailto:owyongthiansoo@leenlee.com.sg)

Tan Tee Jim, S.C.  
Intellectual Property

[tanteejim@leenlee.com.sg](mailto:tanteejim@leenlee.com.sg)

Adrian Chan  
Corporate

[adrianchan@leenlee.com.sg](mailto:adrianchan@leenlee.com.sg)

Louise Tan  
Banking

[louisetan@leenlee.com.sg](mailto:louisetan@leenlee.com.sg)