

Commentary on Main Proposed Amendments to the Building Maintenance and Strata Management Act

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Introduction

1. The Building Maintenance and Strata Management Act (Cap 30C) (“BMSMA”) introduced on 1 April 2005, provides a legal framework for the management and maintenance of Strata-Titled developments in Singapore.
2. As part of an ongoing review of the BMSMA, the Building and Construction Authority (“BCA”) has previously conducted two rounds of public consultation to seek feedback on key areas in the BMSMA and proposed amendments.
3. On 1 February 2017, BCA opened a third and final round of public consultation, releasing a list of proposed amendments to be incorporated to the draft Bill. The list can be viewed at: [https://www.bca.gov.sg/bmsm/public_consultation_on_BMSM_Bill/Table%20of%20proposed%20amendments_Final_r1_28Jan17%20\(003\).pdf](https://www.bca.gov.sg/bmsm/public_consultation_on_BMSM_Bill/Table%20of%20proposed%20amendments_Final_r1_28Jan17%20(003).pdf).
4. In this update, we consider some of the main proposed amendments.

Proxy System (Item 1)

5. Under the BMSMA, owners can appoint a proxy to attend a general meeting of a management corporation on their behalf, and to vote on their behalf. Currently, there is no restriction on the number of proxies a person can hold. This can potentially be abused by persons who garner large numbers of proxy votes.
6. The proposed amendment would limit the number of proxies to either 2% of the total number of lots in the development or 2 subsidiary proprietors, whichever is higher.
7. The proposed amendment is a step in the right direction. It makes it difficult for a single owner to collect numerous proxies to out-vote others, but at the same time allows some owners who may have legitimate reasons for not being able to attend the meeting, to vote by proxy.

Payment of Honorarium to Council Members (Item 2)

8. There are currently no provisions for the payment of honorarium to Council Members, and Council Members perform their functions on a voluntary basis.
9. The proposed amendment would provide management corporations the option of paying Council Members an honorarium capped at S\$250 a year, where authorised by a Special Resolution.

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10. The cap of S\$250 a year makes it unlikely that Council Members will be adequately compensated for their time and other expenses. Yet, some owners may now feel more entitled to make demands on the Council Members who are now “paid” to do the job.

Approval of Maintenance Charges before Sale Launch of a Development (Item 5)

11. Currently, the Developer of a new development must seek approval from the Commissioner of Buildings prior to the collection of maintenance charges as to the rate of monthly maintenance charges payable per share value. This is usually just before the issuance of the Temporary Occupation Permit (TOP), which could be many months after the sale of the units has commenced.
12. At the time of the sale of the units, the Developer or its agents marketing the development will typically give estimates as to the quantum of maintenance charges payable. This can lead to disputes where the actual amounts subsequently approved exceed the estimates by a significant amount.
13. The proposed amendment would require the Developer to seek approval from the Commissioner for the quantum of maintenance charges before the sale of any unit. This would be useful to potential purchasers as they would then be able to consider the affordability of the units, both in terms of cost of purchase and cost of maintenance.
14. However, the proposed amendment may present difficulties for the Developer, as it may be difficult for the Developer to accurately estimate the maintenance charges payable for projects to be completed a few years down the road. Due to wage inflation and other costs, the Developer may be forced to give a conservative and therefore higher estimate. Perhaps, there can be provisions to allow the rate of maintenance charges approved by BCA to be adjusted within a certain range, should the eventual quantum turn out to be either insufficient or excessive.

Expanding the Commissioner’s Monitoring Powers (Item 7)

15. Presently, Section 112 of the BMSMA allows any single owner to make an application to the Strata Titles Board to appoint a managing agent to exercise all the powers, duties and functions of the management corporation. This is useful where there is no Council governing the estate, and there is either no managing agent or the managing agent has no one to report to. However, in past cases, owners have been reluctant to spend the time and money to make the application.
16. The proposed amendment would allow the Commissioner to appoint a Receiver to manage the estate during an emergency or critical situation, on the application from subsidiary proprietors comprising at least 20% of the aggregate share value of the total lots or not less than 25% of the total number of lots.
17. However, it may be difficult to garner the support of subsidiary proprietors comprising at least 20% of the aggregate share value of the total lots or not less than 25% of the total number of lots for such an application, especially in estates where there is no Council.

Safety Grills (Item 9)

18. Prescribed by-law 5 under the Second Schedule to the Building Maintenance (Strata Management) Regulations 2005 ("BMSMR") states that subsidiary proprietors or occupiers of lots shall not be prevented from installing any structure or device to prevent harm to children.
19. In the case of *Sujit Singh Gill v MCST Plan No. 3466* [2015] SGSTB 2 ("*Sujit Singh Gill*"), the Strata Titles Board held that the prescribed by-law, when read as a whole, served to authorise subsidiary proprietors to install and to prevent the management corporation from refusing to allow subsidiary proprietors 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.*
20. However, prescribed by-law 5(4) of the Second Schedule to the BMSMR requires that any such safety structure must be in keeping with such guidelines as the Management Corporation may prescribe regarding such installations. Some Management Corporations take this to mean that safety structures cannot be installed if there are no such guidelines, and tell subsidiary proprietors that they need to obtain general body approval for such guidelines before they can install the safety structures.
21. The proposed amendment is welcome as it makes clear that where there are no such guidelines, the Management Corporation must not prevent subsidiary proprietors from installing safety grilles to prevent harm to children.
22. A related issue is that some Management Corporations impose purported 'guidelines' which effectively seek to prevent the installation of safety grilles at balconies. In *Sujit Singh Gill*, the Management Corporation imposed 'guidelines' stating that safety grilles should be installed inside the sliding doors between the living room and the balcony (and not at the balcony perimeter), and argued that safety grilles should therefore not be allowed at the balcony perimeter. The Strata Titles Board held that the purported guidelines applied only to installation of safety grilles inside the sliding doors, and not at the balcony perimeter.
23. It would therefore be useful if 'design guidelines' can be defined with some clarity in the proposed amendment, to prevent Management Corporations from imposing guidelines that are for anything other than the actual design of the safety structures (e.g. colour / material as opposed to location).

Developer's Liabilities with Regard to Payment to the Maintenance Fund (Item 10)

24. Presently, the relevant provisions are unclear. The proposed amendment clarifies that the Developer will be given a 4-week waiver of the maintenance charges. This should clear up the ambiguity in the present provisions.

Definition of “Common Property” (Item 12)

25. Prior to 1 April 2005, “common property” was defined under Section 3 of the Land Titles (Strata) Act (“LTSA”) as:
- “unless otherwise described specifically as comprised in any lot in a strata title plan and shown as capable of being comprised in such lot, includes — foundations, columns, beams, supports, walls, roofs, lobbies, corridors, stairs, stairways, fire escapes, entrances and exits of the building and windows installed in the external walls of the building”.*
26. Under Section 2 of the BMSMA, “common property” is currently defined as an element in relation to any land and building shown in the strata title plan which is not comprised in any unit and is also used or capable of being used or enjoyed by occupiers of 2 or more units. This simplified definition of “common property” has given rise to confusion and ambiguity in interpretation.
27. In *MCST Plan No. 367 v Lee Siew Yuen and another* [2014] SGHC 161, it was held that the simplified definition was not meant to exclude from the definition of common property the specific structures listed in the previous edition of the LTSA. Rather, it was meant to avoid having to rely on an exhaustive list of structures so as to accommodate future developments in technology and architecture.
28. The proposed amendment will make clearer the definition of “common property” to include key structural elements, fire sprinkler and central air-conditioning systems and any conduit, pipe, cable, and ducts that service two or more lots but may be embedded within one strata lot. The proposed amendment is welcome as it would reduce the confusion and ambiguity in the interpretation of “common property”.

Membership of the Council in a Mixed Development of a Single-Tier MCST (Item 15)

29. Currently in nominations for election to the Council of mixed development (single-tier) Management Corporations, no distinction is made between those who are owners of residential units and those who are owners of commercial / office units.
30. The proposed amendment would automatically allocate one seat in the Council to each property user group (e.g. residential / office / commercial).
31. The proposed amendment is welcome as it will reduce the likelihood of the Council being dominated by one user group to the exclusion of others, which may occur where one user group holds a large proportion of the share value.
32. However, there should be a prescribed procedure for how nomination and election is to be carried out. It is unclear how the automatic allocation of seats in the Council would be applied where Council members still have to be voted in.

Usage of Management Fund (Item 19)

33. Under the BMSMA, the management fund can only be disbursed for certain listed purposes, primarily for the maintenance and management of common property.
34. The proposed amendment allows the use of the management fund for social and sports activities, obtaining legal advice (subject to obtaining an ordinary resolution) and payment of honorarium to council members (subject to obtaining a special resolution). The estimated expenses for social and sports activities and obtaining legal advice must be included in an annual budget and approved at an Annual General Meeting.
35. The proposed amendment is useful in that it expressly allows the abovementioned expenses. However, the requirement that management corporations must get the estimated expenses for legal advice approved at an Annual General Meeting may be impractical. Management Corporations are often in need of urgent legal advice (e.g. where they receive letters of demand with a 14 day deadline for reply, are charged with an offence or need to assess their legal position close to the end of a limitation period or the term of a warranty). It would not make sense for the Management Corporation to have to wait for the next Annual General Meeting to get approval for the estimated expenses for legal advice on these matters.
36. The proposed amendment should also allow usage of the management fund for the payment of bonuses to the managing agent staff or service contractors, subject to the passing of an ordinary resolution authorising the same. Management Corporations do commonly wish to make such payments.

Electronic Service of Notices (Item 21)

37. Under the BMSMA, notices must be served through post or facsimile or by leaving at the subsidiary proprietor's address or affixing the notice to the front door of the lot.
38. The proposed amendment would allow service of a notice by electronic mail, and require inclusion of the subsidiary proprietor's email address on the strata roll.
39. The proposed amendment is a step in the right direction. However, the same principle should be applied to notice boards. It is increasingly difficult to put all pages of notices and minutes of meetings on the notice board. There is usually insufficient space. Management Corporations should be allowed also to display notices on a website instead of a physical notice board. Most owners would find this easier and more convenient. For those without internet access, copies of the notices can always be made available for inspection at the management office.

Proceedings of General Meetings of the MCST or Subsidiary MCST (Item 23)

40. Under the BMSMA, the Secretary of the Council is required to prepare and distribute minutes of meetings of the management corporation, as well as display them on the notice board. However, there is no guidance and therefore some uncertainty over what needs to be included in the minutes. As the minutes will often include personal data (e.g. names of owners), the distribution and display of minutes may amount to a breach of the Personal Data Protection Act 2012 ("PDPA").

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41. The proposed amendment would specify the minimum mandatory information required to be recorded in the minutes of general meetings. It will be most welcome to management corporations as they would be assured that their distribution and display of that minimum mandatory information would not be in breach of the PDPA.

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