

5 December 2018

AMENDMENTS TO THE BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT AND REGULATIONS TO COME INTO OPERATION ON 14 DECEMBER 2018 AND 1 FEBRUARY 2019

1. The Building Maintenance and Strata Management (Amendment) Act 2017 (“**BMSMA 2017**”) was passed in Parliament on 11 September 2017 and received the President’s Assent on 3 October 2017.
2. More than a year later, sections 2(d) and (f) and 58(a) and (c) of BMSMA 2017, in relation to the definitions of “*lift*” and “*escalator*”, and regulations in relation to the use and maintenance of lifts and escalators, will come into operation on 14 December 2018.
3. The rest of provisions, with the exception of sections 15, 27(e) and 53, will come into operation on 1 February 2019.
4. The following new regulations will also be coming into operation on 1 February 2019:-
 - a. Building Maintenance and Strata Management (Small Management Corporations – Exemption) Order 2018 (“**S 781/2018**”);
 - b. Building Maintenance and Strata Management (Strata Units) (Amendment) Regulations 2018 (“**S 782/2018**”);
 - c. Building Maintenance and Strata Management (Composition of Offences) (Amendment) Regulations 2018 (“**S 783/2018**”); and
 - d. Building Maintenance (Strata Management) (Amendment) Regulations 2018 (“**S 784/2018**”).
5. This is the first major amendment to the Building Maintenance and Strata Management Act (“**BMSMA**”) and the relevant regulations since they were introduced in 2005, which follows a long process of public consultations by the Building and Construction Authority (“**BCA**”) since 2012.
6. During the second reading of the Building Maintenance and Strata Management (Amendment) Bill (“**Bill**”) on 11 September 2017, the Second Minister for National Development, Mr Desmond Lee, highlighted that the Bill focuses on “*striking a balance between maintaining the flexibility that underpins self-governance, while having sufficient oversight and structure to prevent abuse of the system*”.

For any queries relating to this article, please contact:

Toh Kok Seng
tohkokseng@leenlee.com.sg

Daniel Chen
danielchen@leenlee.com.sg

Kelley Wong
kellelywong@leenlee.com.sg

Authors:
Toh Kok Seng
Daniel Chen
Kelley Wong

Lee & Lee
50 Raffles Place, #06-00 Singapore
Land Tower, Singapore 048623
Tel: +65 6220 0666

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7. The Minister classified the amendments into the following three areas:-
 - a. setting clear boundaries for good governance and transparency;
 - b. safeguarding the interests of subsidiary proprietors (“**SPs**”); and
 - c. clarifying existing provisions to facilitate stakeholders’ understanding of their roles and responsibilities.

8. Our full comments on some of the key amendments (before they were passed by Parliament) are set out in our Legal Update dated 22 August 2017.¹ In this article, we highlight some of the notable amendments that will now come into operation as well as some comments from the Parliamentary debate at the second reading of the Bill.

Definition of Common Property (Sections 2(b) - 2(c) of the BMSMA 2017)

9. The definition of “*common property*” has been amended to specifically include certain elements, whether situated within or outside a strata lot.

10. The Minister explained that the definition of “*common property*” was amended for clarity. This makes clear that the responsibility for maintenance and repair of such services and structural elements is on the Management Corporation (“**MCST**”) and not individual SPs, unless the individual SPs were responsible for the damage.

11. In our Legal Update on the key amendments (see footnote 1), we opined that while there are no issues with many of the items now deemed to be part of the common property, Example (b) under the new definition of “*common property*” may prove to be problematic. 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.”

12. In Parliament, Non-Constituency Member, Mr Dennis Tan Lip Fong (“**Mr Dennis Tan**”) opined that this amendment may become a “*double edged sword*” as it leaves more room for misunderstanding or disputes between the SPs and the MCST. Some SPs may take the opportunity to push the boundary and responsibilities towards their MCST.

Notice Periods for Meetings (Sections 2(l) - 2(m) of the BMSMA 2017)

13. The phrase “*of which at least 14 days’ notice*” has been changed to “*held on the 15th day (or later) after the notice*”. Similarly, “*within 21 days*” has been changed to “*held on the 22nd day (or later) after the notice*”.

¹ See <https://www.leenlee.com.sg/wp-content/uploads/2017/08/COMMENTS-ON-THE-BMSM-AMENDMENT-BILL.pdf>

Collection of Maintenance Charges (Section 15 of the BMSMA 2017)

14. Section 18 of the BMSMA has been amended to make it clear that owner developers are not allowed to collect any maintenance charges that is more than the maximum rate approved by the Commissioner.
15. The Minister explained that this new requirement is in light of the feedback that some purchasers were misled as to the amount of maintenance charged at the point of sale. This is because under the previous BMSMA, there was no stipulation as to when the Commissioner's approval must be obtained and developers often sought approval just before handing over the strata lots to purchasers.
16. This amendment therefore ensures that the maximum quantum of charges will be transparent at the point of sale. It also supports the amendments to the statutory forms for Option to Purchase and Sale and Purchase Agreement, which require the approved maintenance charge rate to be reflected.
17. However, this section will not be coming into operation yet.

Power to Improve or Enhance Common Property (Section 20 of the BMSMA 2017)

18. Section 29 of the BMSMA has been amended to state that improving the common property extends to replacement or removal of facilities and structures on common property, or changing the use of common property, when so directed by a special resolution.
19. The Minister mentioned that the clarification as to what changes to common property are allowed was triggered by a recent dispute over an MCST's intent to permanently remove a facility on common property. This refers to the unreported case of *Yap Choo Moi v MCST Plan No. 361 HC/TA 10/2017* where the High Court held that a MCST had the power to remove common property.²

Improvements or Additions to Lots (Sections 21 and 25 of the BMSMA 2017)

20. The new sub-section 37(4A) of the BMSMA empowers the MCST by notice in writing to require any SP to rectify works which allegedly contravene sections 37(1) or 37(3) at the SP's own expense, even if the SP is not responsible for the contravening works. The transitional provisions state that the new sub-section 37(4A) applies even to contravening works existing before the operative date of this amendment.

² See <https://www.leenlee.com.sg/wp-content/uploads/2017/09/Leonie-Towers-Case-Update-Final4.pdf>

21. In response to a query by Mr Dennis Tan as to the situation where a MCST takes action against a current SP for contravening works carried out by former SPs, the Minister explained that if the Sale and Purchase Agreement between the current and former SPs follows the Law Society of Singapore's Conditions of Sale 2012, then the new SP has the recourse of referring to adjudication under the Fourth Schedule of the Conveyancing and Law Property (Conveyancing) Rules 2011.
22. This refers to Condition 10.1 of the Law Society of Singapore's Conditions of Sale 2012 where the former SP represents and warrants to the new SP that the former SP has not carried out any unauthorised additions or alterations to the lot. The Minister also highlighted that the MCST may initiate action against the former SP under common law for any breach of duty and care in relation to the duties set out under section 37(3) and 37(4).
23. However, there are at least three scenarios in which the new SP may be left without any recourse against the former SP:-
 - a. Parties can contract out of Condition 10.1 and it is common for vendors to do so;
 - b. The former SP's representation and warranty refers only to additions and alterations carried out by him. He does not represent or warrant that there are no unauthorised additions and alterations by SPs preceding him; and
 - c. The former SP may no longer be contactable or even resident in Singapore.

Installation of Safety Equipment Permitted (Section 26 of the BMSMA 2017)

24. The new section 37A of the BMSMA expressly allows SPs to install "*safety equipment*".
25. The Minister made clear that with this amendment, MCSTs can no longer disallow installations of "*safety equipment*" such as grilles installed at windows or balconies. Instead, the new sub-section 37A(2) will place the onus on SPs to ensure that their installations maintain a certain degree of uniformity of appearance.
26. The Minister highlighted that developers and MCSTs are encouraged to provide design guidelines for such installations upfront, to guide SPs in achieving the overall desired appearance.
27. What constitutes "*safety equipment*" will depend on the purpose of the equipment. For example, grilles when installed at a balcony will be deemed "*safety equipment*" as they serve the purpose of preventing fall from height.
28. It should be noted that this amendment does not amend or revoke paragraph 5(3) of the prescribed by-laws which had been relied upon by both the Strata Titles Board ("**STB**") and the Courts to allow safety grilles in balconies against the objections of the MCST.

Use of Management Funds and Approval of Budget (Section 27 of the BMSMA 2017)

29. The amendment under section 27(e) expressly allows moneys to be disbursed for:-
- a. organising any social, cultural, educational, sports or other similar activity, that is for the benefit of all the SPs and occupiers;
 - b. engaging legal services for the MCST; and
 - c. remuneration payable under section 126B(5) to an official manager.
30. The amendment under section 27(f) 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. An extraordinary general meeting (“**EOGM**”) will be required to approve a supplementary budget for unforeseen or urgent expenditure for the above items.
31. In Parliament, Mr Dennis Tan noted that the requirement to approve a budget may be cumbersome for the MCST and SPs, and they may be put off by the trouble to try and hold an EOGM in order hold a simple event for residents which was never budgeted previously. This may also lead to MCSTs resorting to the practice of setting aside a “*kiasu budget*” which is needlessly larger than necessary and may not encourage prudence.
32. Curiously, while section 27(f) of the BMSMA 2017 being the requirement for the approval of budgets for organising social, cultural, educational, sports or other similar activities and engaging legal services will come into operation on 1 February 2019, section 27(e) which expressly empowers MCSTs to disburse management funds for such purposes will not be coming into operation yet.

Strata Roll to include Email Address (Section 33 of the BMSMA 2017)

33. The new sub-section 46(3A) of the BMSMA allows SPs to provide email addresses to be entered onto the strata roll as an address within Singapore for service of notices.

Reserved Council Office for Mixed-Use Developments (Sections 38 and 45 of the BMSMA 2017)

34. This amendment reserves one seat on the council for SPs of strata lots of each “*class of use*”. There will be voting on which SP should be elected to each reserved council office, and 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.

35. The classes of use are:-
- a. Residence;
 - b. Office;
 - c. Commercial (other than as an office), such as a shop, food establishment or theatre;
 - d. Boarding premises, such as hotel, serviced apartment or nursing home; and
 - e. A prescribed purpose.

Nomination of Candidates for Council Elections (Section 38 of the BMSMA 2017)

36. Under this new section 53B of the BMSMA, nominations and consents for council elections are now required to be made orally at the meeting or in writing 48 hours before the elections.

Official Management of Management Corporation (Section 53 of the BMSMA 2017)

37. This amendment introduces the new concept of “*Official Management*” by an “*Official Manager*”.
38. The Minister clarified that this is an interim solution meant to ensure that management and routine maintenance of the estate are not impeded while internal issues are sorted out. The Minister highlighted that the Commissioner of Buildings will only intervene at the behest of SPs and as the last resort.
39. However, this amendment will not be coming into operation yet.

Service of Notices (Section 55 of the BMSMA 2017)

40. This amendment allows service of notices by email if a copy of the notice is also posted. The email notice will be deemed served when the email becomes capable of being retrieved by the addressee.
41. The amendment also deems posted notices to be served on the 3rd working day after the day of posting if sent by prepaid registered post and on the 4th working day after the day of posting if sent by prepaid ordinary post.

Instrument of Proxy (Section 59(I) of the BMSMA 2017)

42. An appointed proxy can now only represent a maximum of 2 lots or 2% of the lots, whichever is higher.
43. The Minister said that there was overwhelming support for this amendment during the public consultations, which was seen to help rein in abuse and the ensuing spats. As an added safeguard, a prescribed proxy form has been introduced to allow the proxy giver to explicitly direct his proxy to vote as he intended instead of the current situation where proxy holders are essentially given “*blank cheques*”.

44. The Minister also agreed on the need to strike a balance but said that the 2% cap was a calibrated point between tightening the system and keeping it practicable.

Fees Payable for Electronic Copies of Documents or Records (Sections 2 and 6 of S 784/2018)

45. Currently, the Building Maintenance (Strata Management) Regulations 2005 (“**Strata Management Regulations 2005**”) prescribes that the fee payable for taking a physical copy of a document under sections 17(6)(b) and 47 of the BMSMA is 50 cents per page. There have been instances where SPs have requested for copies of building plans in A2 or A1 size, which cost more than the prescribed fee. It is also not uncommon for SPs to request the MCST to email them the documents, in which case it is unclear whether the MCST is entitled to charge for the same and if so, how much to charge.
46. The amended regulations introduce the following fees:-
- a. Reduces the fee payable for physical copies not exceeding A4 size from 50 cents to 30 cents per page;
 - b. Increases the fee payable for physical copies not exceeding A3 size to 60 cents per page, and to \$3 per page for copies exceeding A3 size; and
 - c. Sets the fee at 40 cents per 100 megabytes (or part thereof) for electronic copies, including copies sent by way of email.
47. There was also some uncertainty as to whether an audio or visual recording, which is not written, constitutes a document that a SP may be entitled to take a copy of, as there were no prescribed fees for such recordings. However, the STB has clarified that MCST records under section 47 BMSMA includes audio recordings (*Tan Hee Chye v MCST Plan No 395* [2016] SGSTB 1 and *Timothy Siah Yang Teck v 28th Management Council to MCST 1420* STB No. 82 of 2017³). The new prescribed fees will also take care of audio and visual recordings which are in electronic format.

Statutory By-laws (Section 11 of S 784/2018)

48. The statutory by-laws found at the Second Schedule to the Strata Management Regulations 2005 have been amended to include two new provisions.
49. Firstly, under paragraph 20 of the amended Second Schedule, the MCST may enter into arrangements for the provision of concierge services and shuttle bus services, by way of special resolution. There is a trend of new developments offering such services.

³ See <https://www.leenlee.com.sg/wp-content/uploads/2018/04/STRATA-TITLES-BOARD-OUTLINES-MCSTS'-DUTY-UNDER-S47-BMSMA-INSPECTION-OF-MCST-RECORDS-AND-DOCUMENTS-AND-ITS-INTERACTION-WITH-PDPA-2012.pdf>

50. Secondly, a new by-law has been added under paragraph 21 of the amended Second Schedule to allow a SP to install a fire sprinkler protection system and its appurtenances on his lot, or to make alterations to a fire sprinkler protection system and its appurtenances on his lot, with the consent of the MCST.

Re-classification of Classes of Use (Section 2 of S 782/2018)

51. The amendment to the Building Maintenance and Strata Management (Strata Units) Regulations 2005 ("**Strata Unit Regulations 2005**") has amended the classes of use.
52. The new classes of use are as follows:-
- a. Residence;
 - b. Office;
 - c. Commercial (other than as an office), such as a shop, food establishment, theatre or car park;
 - d. Boarding premises, such as a hotel, serviced apartment or nursing home; and
 - e. Industrial, including use as a warehouse, showroom or business park.
53. Notably, the current "*hotel*" use at section 2(2)(d) of the Strata Unit Regulations 2005 will soon be known as "*boarding premises*" instead. The amendments have also simplified the definition of "*commercial*" use to examples such as "*shop, food establishment, theatre or car park*". Lastly, "*industrial*" use will expressly include a "*business park*".
54. These classes of use closely mirror the classes of use under the new section 53A of the BMSMA for the reserved council office for mixed-use developments (see paragraph 35 above).

Extension of Regulations to Staged Developments (Section 3 of S 782/2018)

55. The Strata Unit Regulations 2005 are presently not applicable to staged developments as they are excluded under section 3. The regulations will now be applicable to staged developments.

Filing Fees for Strata Units (Section 5 of S 782/2018)

56. The respective filing fees for a development set out at the Schedule to the Strata Unit Regulations 2005 will be doubled.

Exemption for Small Management Corporations (S 781/2018)

57. The existing Building Maintenance and Strata Management (Exempt Treasurers) Order (O 1) exempts treasurers of MCSTs with 10 or fewer lots from certain statutory restrictions, provided a resolution by consensus is passed.

58. The new Building Maintenance and Strata Management (Small Management Corporations – Exemption) Order 2018 (“**Exemption Order 2018**”) revokes the existing Order and replaces it with a more general Order which exempts all three office bearers (chairperson, secretary and treasurer) from certain statutory restrictions for small management corporations. A “*small management corporation*” refers to MCSTs constituted for a strata title plan with 10 or fewer lots.
59. Sections 37 and 40 of the BMSMA 2017 essentially provide that a person who has been elected, re-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, and that a person who has held office as treasurer for 2 consecutive terms shall be not be eligible for election or re-election to office as treasurer for a 3rd consecutive term.
60. Sections 3 to 5 of the Exemption Order 2018 exempts individuals in a “*small management corporation*” from the said restrictions to election, re-election or appointment. The requirement for a resolution by consensus has been removed.

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The following partners lead our departments:

Kwa Kim Li
Managing Partner
kwakimli@leenlee.com.sg

Quek Mong Hua
Litigation & Dispute Resolution
quekmonghua@leenlee.com.sg

Owyong Thian Soo
Real Estate
owyongthiansoo@leenlee.com.sg

Tan Tee Jim, S.C.
Intellectual Property
tanteejim@leenlee.com.sg

Adrian Chan
Corporate
adrianchan@leenlee.com.sg

Louise Tan
Banking
louisetan@leenlee.com.sg