

## **Recent Amendments to the Building Maintenance and Strata Management Act and the Impact on MCSTs**

### **Introduction**

On 1 February 2019, a large number of changes to the Building Maintenance and Strata Management Act<sup>1</sup> (“**BMSMA**”) came into force after the Building Maintenance and Strata Management (Amendment) Act 2017 was passed on 11 September 2017 and received the President’s Assent on 3 October 2017.

Mr Desmond Lee, Second Minister for National Development, highlighted during the Parliamentary Debates that there were three areas of focus for the recent amendments to the BMSMA:

- Setting clear boundaries for good governance and transparency;
- Safeguarding subsidiary proprietors (“**SPs**”) interests; and
- Clarifying existing provisions to facilitate stakeholders’ understanding of their roles and responsibilities.

In this article, we highlight some of the salient changes to the BMSMA and how these changes would impact the duties and responsibilities of MCSTs.

### **Changes relating to General Meetings**

#### 1. Proxy System

A person may only be appointed as the proxy holder for either 2% of the total number of lots in the development or 2 lots, whichever is higher.<sup>2</sup> If the proxy holds more than the cap, the additional proxy held is void.<sup>3</sup> This amendment was made in light of the ‘proxy wars’ which occurred at general meetings due to the lack of limitations pertaining to proxies.

For example, a development with 701 strata lots would allow for a person to hold a maximum of 14 proxies. In contrast, a development with only 14 strata lots would allow for a person to hold a maximum of 2 proxies, since 2% of 14 would be a number much lower than 2.

In addition, a proxy form<sup>4</sup> is now prescribed in the BMSMA and requires the signatures of both the person appointing the proxy and the proxy. The new proxy form provides a table to list the resolutions which would be voted for at the general meeting, ensuring that the proxy exercises each vote for each motion clearly in accordance to the proxy-giver’s decision.

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<sup>1</sup> Chapter 30C, 2008 Revised Edition

<sup>2</sup> First Schedule Paragraph 17 (5) of the BMSMA

<sup>3</sup> First Schedule Paragraph 17 (6) of the BMSMA

<sup>4</sup> First Schedule Paragraph 17 (2) of the BMSMA

Finally, all proxy forms are required to be documented and kept as MCST's records. A list of the subsidiary proprietors who have appointed proxies and the names of the proxies present at the meeting is to be included as part of the minutes of the general meeting.<sup>5</sup>

## 2. Proceedings of General Meetings of the MCST or Subsidiary Management Corporation

### a. Notice Requirements for Annual General Meeting

The notice for an Annual General Meeting shall include a motion for each of the following<sup>6</sup>:

- (i) For the adoption of the statement of accounts of the management corporation ("MC") and the auditor's report on the accounts of the MC;
- (ii) To confirm the minutes of the last annual general meeting;
- (iii) To decide the number of members of the council to be elected;
- (iv) For the election of members of the council;
- (v) To determine the amount to be raised for the management fund and the sinking fund;
- (vi) To approve the proposed annual budget of the MC for the new financial year;
- (vii) To decide if any matter or type of matter is to be determined only by the MC in a general meeting; and
- (viii) For the appointment of an auditor.

### b. Minutes of General Meeting

Minutes of every general meeting must contain these information<sup>7</sup>:

- (a) The date, time and place of the meeting;
- (b) The names of the subsidiary proprietors present at the meeting;
- (c) The names of the subsidiary proprietors who have appointed proxies;
- (d) The names of the proxies present at the meeting;
- (e) The result of the votes on every motion submitted at the meeting; and
- (f) The text of every resolution passed at the meeting.

This amendment would help to ensure that the proceedings of every general meeting are properly documented for record keeping purposes.

### c. Adjournments of General Meeting

General meetings of a MC or subsidiary MC may be adjourned for any reason if a motion to adjourn is passed at the meeting.<sup>8</sup> However, the time and place for general meeting to be resumed must be fixed by the person presiding at the general meeting.<sup>9</sup>

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<sup>5</sup> First Schedule Paragraph 10A of the BMSMA

<sup>6</sup> First Schedule Paragraph 1(3)(b) of the BMSMA

<sup>7</sup> First Schedule Paragraph 10A of the BMSMA

<sup>8</sup> First Schedule Paragraph 3A(1) of the BMSMA

<sup>9</sup> First Schedule Paragraph 3A(2) of the BMSMA

The notice of the time and place fixed for the general meeting must be given by the secretary at least 14 days before the time fixed for the meeting to resume by displaying a notice on the notice board and serving the notice on every proprietor.<sup>10</sup>

**d. Amendment of Motions during a General Meeting**

Motions can be amended during a general meeting if notice of the original motion had been given and the amendment does not change the subject matter of the original motion<sup>11</sup>.

**Changes relating to the Council Members of a Management Corporation**

A council member can only hold one office bearer post at a time (i.e. Chairman – Secretary – Treasurer).<sup>12</sup> Further, a council member cannot be treasurer for more than two consecutive terms.<sup>13</sup> Previously, without this prohibition, a person could hold all three posts at the same time. This could lead to poor governance, potential conflicts of interest and inadequate checks and balances. In reality, many MCSTs face the challenge of getting sufficient SPs to step forward to form the council member.

To allow for sufficient representation within a mixed-used development, each property user group (e.g. residential/office/commercial/boarding) in a mixed-used development of a single-tier MCST is automatically allocated one seat in the Council of the MCST.<sup>14</sup> This would help to ensure that different classes of uses in mixed developments, which would have different needs, would have a voice within the Council of the MCST.

**Changes relating to Roles and Responsibilities under the Amended BMSMA**

**1. Types of Resolutions to be passed**

An ordinary resolution is required to be passed in a general meeting of an MCST for:

- Executing a lease of part of the common property for a period less than a year<sup>15</sup>;
- Approving the subdivision or amalgamation of lots<sup>16</sup>;
- Determining the amount of maintenance contributions for both the management fund, sinking fund and additional levies<sup>17</sup>;
- Imposing restrictions on the council of the MCST<sup>18</sup>;

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<sup>10</sup> First Schedule Paragraph 3A (3) of the BMSMA

<sup>11</sup> First Schedule Paragraph 1 (4)(b) of the BMSMA

<sup>12</sup> Section 53(9A) of the BMSMA

<sup>13</sup> Section 53(9B) of the BMSMA

<sup>14</sup> Section 53A of the BMSMA

<sup>15</sup> Section 34(2)(b) of the BMSMA

<sup>16</sup> Section 34(4) of the BMSMA

<sup>17</sup> Section 39(1), (2) and (3) of the BMSMA

<sup>18</sup> Section 59 of the BMSMA

- Insuring any property not already required to be insured under the BMSMA<sup>19</sup>; and
- The MCST to represent SPs in legal proceedings<sup>20</sup>.

Previously, it was not clear what type of resolution was required to pass a motion on these matters.

## 2. Insurance to be bought

MCSTs are to purchase “errors and omissions” insurance<sup>21</sup> to cover a person holding the office of chairperson, secretary, treasurer of the MCST or member of the council of the MCST for acts or omissions committed or omitted in good faith in performing the functions of the office.

## 3. Improvements to Common Property

Previously, an MCST had limitations as to what constituted as an improvement or enhancement of common property. For example, removing a facility on common property was considered to fall outside of the powers of the MCST as the ‘removal’ was not an ‘improvement’ of common property.<sup>22</sup> Now, the MCST can, by special resolution, do any or all of the following for the improvement or enhancement of common property<sup>23</sup>:

- (a) Install, remove, place or add any facility on the common property;
- (b) Change the use of the common property; and/or
- (c) Erect, remove, replace or add to a structure on the common property for the improvement or enhancement of common property.

## 4. By-laws

### a. Lodgement of By-laws

The timeline for the lodgement of by-laws with the Commissioner is extended from 30 days to 45 days from the passing of the resolution by the management corporation approving the making/amendment of the by-law<sup>24</sup>. Further, the lodgement must be in a form and manner acceptable to the Commissioner.

### b. Display of By-laws

MCSTs must display the full set of by-laws on the MCST’s notice board.<sup>25</sup> Also, the by-laws should be made available for viewing by the SPs at the management office at

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<sup>19</sup> Section 71(3A) of the BMSMA

<sup>20</sup> Section 85(1A) and (1B) of the BMSMA

<sup>21</sup>Section 71(1)(d) of the BMSMA

<sup>22</sup> *Yap Choo Moi v MCST Plan No 361* [2017] SGSTB 2

<sup>23</sup> Section 29(1)(d) of the BMSMA

<sup>24</sup> Section 32(5) of the BMSMA

<sup>25</sup> Section 32(8)(b)(i) of the BMSMA

no cost.<sup>26</sup> If any SP requests in writing for a copy of the by-laws, it should be supplied to them on payment of a fee that is not more than a prescribed amount.<sup>27</sup>

## 5. Payment into Management Funds

MCSTs are to pay into its management fund the following:

- Proceeds of sale/disposal of any movable property which is part of common property and owned by MCST<sup>28</sup>; and
- Any income received by the management corporation from the rental of the common property<sup>29</sup>.

Previously, only the proceeds of the sale or disposal of movable property of the management corporation were paid into the management funds.

## 6. Installation of Safety Equipment

MCSTs can no longer disallow the installations of safety equipment, which are intended to prevent harm to occupants<sup>30</sup>. Previously, SPs had to ask the MCST for approval of such installations and tensions ran high when SPs wanted to prevent their young children from falling by installing such safety equipment, but the MCSTs would not grant the necessary approval<sup>31</sup>. In light of the amendments, developers and MCSTs are encouraged to provide design guidelines upfront to the SPs.

SPs who install safety equipment also have responsibilities, such as<sup>32</sup>:

- Repairing any damage caused to any part of the common property or limited common property due to the installation of the safety equipment; and
- Ensuring that the safety equipment is installed properly and that it has an appearance in keeping with the appearance of the building.

The definition of 'safety equipment' is as follows<sup>33</sup>:

- (a) Window grille or screen;
- (b) Balustrade, railing or fence;
- (c) Devices which restrict the opening of windows/doors/openings;
- (d) Screen or devices preventing entry of animals/insects;
- (e) Intruder alarm/monitoring system; and

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<sup>26</sup> Section 32(8)(b)(il) of the BMSMA

<sup>27</sup> Section 32(8)(c) of the BMSMA

<sup>28</sup> Section 38(2)(b) of the BMSMA

<sup>29</sup> Section 38(2)(f) of the BMSMA

<sup>30</sup> Section 37A of the BMSMA

<sup>31</sup> For example, *Sujit Singh Gill v MCST Plan No. 3466* [2015] SGSTB 2 and *Zou Xiong v MCST Plan No. 2360* [2016] SGSTB 79

<sup>32</sup> Section 37A(2) of the BMSMA

<sup>33</sup> Section 37A(3) of the BMSMA

- (f) Lock/security mechanism designed to protect occupiers of the lot against intruders to the lot.

**Changes relating to certain definitions:**

1. Common Property

The definition of “common property” was extended to include the following<sup>34</sup>:

- (a) The pipes, wires, cables or ducts which are used, or capable of being used or enjoyed, by occupiers of 2 or more lots, proposed lots or non-strata lots (as the case may be) within that land or building, or are used or capable of being used for the servicing or enjoyment of the common property;
- (b) The cubic space enclosed by a structure enclosing pipes, wires, cables or ducts mentioned above in (a);
- (c) Any structural element of the building; and
- (d) The waterproof membrane attached to an external wall or a roof.

In addition, five examples of common property were added<sup>35</sup>:

- (a) A foundation, load-bearing wall, column or beam, a shear core, strut, ground anchor, slab (not including any layer that is the underlayment or the flooring finishing), truss and common staircase;
- (b) An external wall, or a roof or facade 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;
- (c) A garden, sporting or recreational facility, car park or parking area for other vehicles, none of which are comprised in a lot, proposed lot or non-strata lot;
- (d) A central air-conditioning system and its appurtenances, and a fire sprinkler protection system and its appurtenances; and
- (e) Any chute, pipe, wire, cable, duct or facility for the passage or provision of water, sewage, drainage, gas, oil, electricity, telephone, radio, television, garbage, heating or cooling systems, or any other similar services.

2. Structural Defect

A new definition was added into the BMSMA for “structural defect”<sup>36</sup>, which refers to a defect in a structural element of a building that:

- (a) results in, or is likely to result in, the building or any part of the building being required by or under any law to be closed or prohibited from being used;
- (b) prevents, or is likely to prevent, the continued practical use of the building or any part of the building; or

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<sup>34</sup> Section 2 of the BMSMA

<sup>35</sup> Section 2 of the BMSMA

<sup>36</sup> Section 2 of the BMSMA

- (c) results in, or is likely to result in, a threat of imminent collapse that may reasonably be considered to cause destruction of the building or physical damage to the building or any part of the building.

### 3. Structural Element

A new definition was added into the BMSMA for “structural element”, as the word “structural element” is used in the definition of a “structural defect”. For a building, a structural element means an internal or external load-bearing component of the building that is essential to the stability of the building or part of the building, but does not include any door or window.<sup>37</sup>

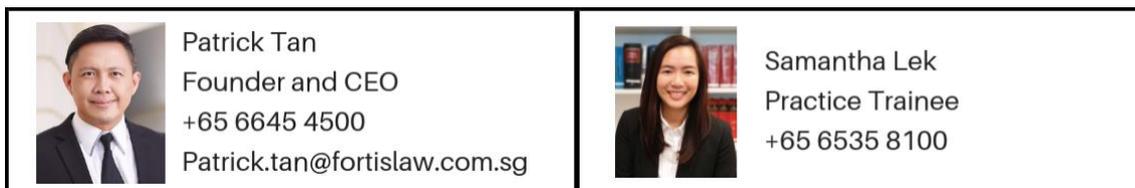
Two examples, which are non-exhaustive, were provided<sup>38</sup>:

- (a) A foundation, load-bearing wall, column or beam, a shear core, strut, ground anchor, slab or truss; and
- (b) A common staircase.

### **Conclusion**

The numerous changes to the BMSMA sought to improve the management of MCST matters, allowing MCSTs to manage their own affairs by granting sufficient flexibility for self-governance and structured guidance from the law. This article is unable to comprehensively cover every single amendment to the BMSMA and serves to provide general information only. If you should require legal advice for issues pertaining to the BMSMA and its application or for any other matters, please do not hesitate to contact us for further assistance. Our team is ready to provide you with the necessary legal advice and legal representation.

Contributed by:



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<sup>37</sup> Section 2 of the BMSMA

<sup>38</sup> Section 2 of the BMSMA