


Lexis Nexis Building Maintenance and Strata Management

A Balanced Approach to Effective Operations and Better Management in Strata Developments

A stylized graphic of a building with blue and white facades, featuring a grid of windows. It is positioned behind the main title text.

MIXED-USE DEVELOPMENTS AND DEVELOPMENTS COMPRISING DIFFERENT TYPES OF STRATA LOTS

presented by

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Introduction

- One of the significant changes made under the BMSMA – the introduction of a two-tier management corporations system (i.e. the main and sub MC) and the concept of limited common property
- It allows specific areas of the common property to be designated for the exclusive benefit of different user groups in a mixed-use development

Introduction

- The main MC will manage the common property (CP) used by all users, while the sub MCs will manage their respective limited common property (LCP)
- In fact, one of the main objectives of the Act - to facilitate the management of mixed-use strata developments

“Mixed-use development” defined

- Definition found in reg 2(1) of the Building Maintenance and Strata Management (Strata Units) Regulations 2005
- Defined as “a development comprising of 2 or more different classes of use”
- “Different classes of use” defined in reg 2(2)

Building Maintenance and Strata Management (Strata Units) Regulations 2005

Definitions

2. (2) For the purposes of these Regulations, the different classes of use are as follows:

- (a) **residential use**;
- (b) **office use**;
- (c) **commercial use** other than as an office, but including use as a shop, a restaurant or food establishment, a cinema, a theatre, a nightclub or other entertainment or amusement centre, a child care centre, a clinic, a commercial school, a library or other community facility or a sports or recreation facility;
- (d) **hotel use**, including use as serviced apartments or as a hostel, a nursing home, a dormitory or a boarding house;
- (e) **industrial use**, including use as a warehouse or a showroom.

Limitations

- The two tier MC system - applies only to new developments where the building plan approval is granted on or after the commencement of the BMSMA – i.e. 1 April 2005 [s 76(1)]
- May be used for other developments - only with case-by-case approval by the Minister and the conversion of an existing single MC to a two tier MC is possible only with the Minister's order [s 76(2) to (3)]

Limitations

- Applies only to management of developments consisting of:
 - ✓ Residential lots and non-residential lots [s 77(1)(a)]
 - ✓ Non-residential lots used for significantly different purposes [s 77(1)(b)(i)]
 - ✓ Non-residential lots that is physically detached from other lots [s 77(1)(b)(ii)]

Building Maintenance and Strata Management (Strata Units) Regulations 2005

Limited common property for non-residential lots

18. For the purposes of section 77 (1) (b) (ii) of the Act, a strata title plan comprising non-residential lots may have limited common property and one or more subsidiary management corporations for the purpose of representing the different interests of the subsidiary proprietors of the non-residential lots if —

- (a) the creation of any limited common property to represent the interests of the subsidiary proprietors of lots comprised in a building that is physically detached from the other lots in the strata title plan will not adversely affect the use or enjoyment of the other subsidiary proprietors' lots; and
- (b) the total floor area of all the lots whose subsidiary proprietors constitute each subsidiary management corporation to be formed is at least 5,000 square metres.

Limitations

- Applies only to management of developments consisting of:
 - ✓ Different types of residential lots [s 77(1)(c)]

Building Maintenance and Strata Management (Strata Units) Regulations 2005

Limited common property for types of residential lots

19. For the purposes of section 77 (1) (c) of the Act, any **residential lots** within a strata title plan **shall be regarded to be of a different type from other residential lots** within that same strata title plan **if the lots are comprised within the following buildings** in the strata title plan:

- (a) an apartment block with any lift;**
- (b) an apartment block with no lifts;**
- (c) a townhouse, a semi-detached house, a detached house or a terrace.**

Limited Common Property (or LCP)

- Defined in s 2 to mean “such part of the common property that is designated for the exclusive benefit of the purchasers or SPs of any two or more (but not all) of the proposed lots or lots in the parcel or strata title plan (as the case may be)
- Does not include :
 - ✓ the foundations, columns, beams, supports, walls, roofs of, and any window installed in any external wall of, any building within that parcel

Limited Common Property (or LCP)

- And does not include :
 - ✓ any chute, pipe, wire, cable, duct and other facility for the passage or provision of water, sewage, drainage, gas, oil, electricity, telephone, radio, television, garbage, heating and cooling systems, or other similar services, not comprised in any lot or proposed lot and necessary for the common use of the occupiers of all lots or proposed lots in that parcel

Limited Common Property (or LCP)

- Owner developer and main MC may designate any part of CP as a LCP [s 78]
- Owner developer may do so at the onset on the strata title plan when it is filed with the Chief Surveyor – takes effect only when MC is constituted
- Main MC may do so by passing a comprehensive resolution – takes effect only when resolution is filed with the Chief Surveyor

Interpretation

2(6) For any management corporation or subsidiary management corporation, **a motion is decided by comprehensive resolution if —**

- (a) **the motion is considered at a duly convened general meeting of such corporation of which at least 21 days' notice specifying the motion has been given; and**
- (b) **at the end of a period of 12 weeks after the general meeting in paragraph (a) is convened, on a poll, the total of the share value of the lots for which valid votes are counted for the motion is at least 90% of the aggregate share value of the lots of all the subsidiary proprietors who, at the end of that period, constitute the management corporation or subsidiary management corporation, as the case may be.**

Limited Common Property (or LCP)

- Main and sub MC may remove or amend LCP by accepting and executing documents to alter any boundary between the CP and LCP by the passing of comprehensive resolutions by both main and sub MC [s 78(6)]

Creation, etc., of limited common property

78(6) The **management corporation** constituted for any common property subject to a strata title plan **and any subsidiary management corporation** constituted for limited common property subject to the same strata title plan **may accept and execute such documents to alter any boundary between their common property and limited common property, respectively, if —**

(a) the management corporation, pursuant to a comprehensive resolution under subsection (2) (b), **determines to alter the boundary between its common property and the limited common property; and**

(b) the subsidiary management corporation, pursuant to a comprehensive resolution under subsection (2) (b), **also determines to similarly alter the boundary between its common property and the limited common property.**

Limited Common Property (or LCP)

- Sub MCs may also remove or amend their respective LCPs by accepting and executing such documents to alter or amalgamate any boundary between their respective LCPs by passing comprehensive resolutions of both sub MCs
- However, the alteration or amalgamation of boundaries must not affect the boundaries of the LCP and the CP [s 78(7)]

Creation, etc., of limited common property

78(7) Subject to subsection (8), a subsidiary management corporation constituted for any limited common property subject to a strata title plan and any other subsidiary management corporation constituted for other limited common property subject to the same strata title plan may, without affecting the boundaries of their respective limited common properties with the common property within that strata title plan, accept and execute such documents to amalgamate their respective limited common properties or alter any boundary between their respective limited common properties within the strata title plan if —

continuation from 78(7)

(a) the first-mentioned subsidiary management corporation, pursuant to a comprehensive resolution under subsection (2) (b), determines —

(i) to alter the boundary between its limited common property and the other subsidiary management corporation's limited common property; or

(ii) to amalgamate its limited common property with the other subsidiary management corporation's limited common property and to merge both subsidiary management corporations to constitute a single subsidiary management corporation for the amalgamated limited common property, seized of, holding and possessing all rights and interests and subject to all liabilities and obligations of the amalgamating subsidiary management corporations; and

continuation from 78(7)

(b) **that other subsidiary management corporation, pursuant to a comprehensive resolution** under subsection (2) (b), **also determines similarly —**

(i) **to alter the boundary** between its limited common property and the other subsidiary management corporation's limited common property; or

(ii) **to amalgamate** its limited common property with the other subsidiary management corporation's limited common property **and to merge** both subsidiary management corporations to constitute a single subsidiary management corporation for that amalgamated limited common property, seized of, holding and possessing all rights and interests and subject to all liabilities and obligations of the amalgamating subsidiary management corporations.

Limited Common Property (or LCP)

- The amalgamation of the boundaries of the LCPs must not also contradict the criteria for formation of LCP and sub MC under s 77

Creation, etc., of limited common property

78(8) Nothing in subsection (7) shall authorise any subsidiary management corporation to amalgamate its limited common property in a manner that is contrary to section 77.

Subsidiary Management Corporation (or sub MC)

- Defined to mean the SP for whose benefit the LCP is designated [s 2, BMSMA & s 10A, LTSA]
- It is constituted on the date of registration of the strata title application for that LCP

Interpretation

2. "subsidiary management corporation", in relation to any limited common property comprised in a strata title plan, means the subsidiary management corporation constituted for that limited common property under the Land Titles (Strata) Act (Cap. 158)

Land Titles (Strata) Act

Constitution of management corporation, etc.

10A(2) The subsidiary proprietors from time to time of the lots for whose exclusive benefit any limited common property is designated in a strata title plan, or in a comprehensive resolution filed with the Chief Surveyor under section 78 (2) (b) of the Building Maintenance and Strata Management Act 2004, shall on the date of registration of the strata title application in respect of that strata title plan or such other instrument as required by the Registrar under this Act, constitute the subsidiary management corporation for that limited common property.

Dissolution of a sub MC

- Main and sub MC may resolve by comprehensive resolutions to dissolve a sub MC for a LCP and the cessation of that sub MC's LCP as a LCP
- On dissolution of the sub MC, main MC assumes all liabilities and obligations of the dissolved sub MC
- The LCP becomes a part of CP

Termination of management corporation, etc.

84. —(2) A subsidiary management corporation for a limited common property comprised in a strata title plan may be dissolved and the designation of its limited common property abolished if —

(a) by comprehensive resolution, the management corporation constituted in respect of the same strata title plan resolves that —

(i) the subsidiary management corporation be dissolved;

(ii) the subsidiary management corporation's limited common property ceases to be designated as limited common property but be part of the common property comprised in that strata title plan; and

Continuation from 84(2)

(iii) the management corporation shall hold and possess all rights and interests, and be subject to all liabilities and obligations, of the subsidiary management corporation subsisting immediately before the dissolution; and

(b) by comprehensive resolution, the subsidiary management corporation concerned resolves that —

(i) it be dissolved;

(ii) its limited common property ceases to be designated as limited common property but be part of the common property comprised in that strata title plan; and

(iii) the management corporation shall hold and possess all its rights and interests, and be subject to all its liabilities and obligations, subsisting immediately before the dissolution.

Duties of Owner Developer

- Before the constitution of the MC, the owner developer is to establish one or more maintenance funds at any time on or after issue of TOP but before the collection of maintenance charges from the purchasers [s 16]

Developer to establish maintenance funds

16(1) The owner developer of a development to which this Division applies shall establish one or more maintenance funds in accordance with this section at any time on or after

—
(a) the date the first temporary occupation permit is issued in respect of any lot or proposed lot in the development or, in the case of a staged development, the date the first temporary occupation permit is issued in respect of any lot or proposed lot comprised in the initial stage of the staged development on completion thereof; or

(b) such subsequent date when this Division applies to the development,

whichever is the later, but in every case before the collection of maintenance charges from any purchaser of any lot or proposed lot in the development starts.

Duties of Owner Developer

- There are generally 2 classes of maintenance funds :
 - ✓ General maintenance fund – for payment of expenses of maintenance services for the common property [s 16(2)]
 - ✓ Separate special maintenance fund in respect of each LCP – for payment of expenses of maintenance service for that LCP [s 16(3)]

Developer to establish maintenance funds

16(2) The owner developer of every such development shall establish a general maintenance fund, which shall be used for the following purposes only:

- (a) to pay for the expenses incurred on or after the establishment of the general maintenance fund in providing —
 - (i) cleaning services for the common property;
 - (ii) security services and amenities for the occupiers of the lots or proposed lots in that development; and
 - (iii) such other services necessary for maintaining the common property in a state of good repair;
- (b) to maintain, repair and renew fixtures and fittings (including lifts) in that development, not being fixtures and fittings installed in a lot or proposed lot sold or intended for sale to a purchaser;

continuation from 16(2)

- (c) to maintain, repair and renew sewers, pipes, wires, cables and ducts used or capable of being used in connection with the enjoyment of 2 or more lots or proposed lots in, or the common property of, that development;
- (d) to pay any premium for the insurance of that development against damage by fire and other risks;
- (e) to pay rent and rates, if any;
- (f) to pay any fee for the auditing of the maintenance fund; and
- (g) to pay all charges reasonably incurred for the administration of the maintenance fund and the common property of that development.

Developer to establish maintenance funds

16(3) Where any such development comprises any limited common property, the owner developer shall, in addition, establish a separate special maintenance fund, which shall be used for the following purposes only:

(a) to pay for the expenses incurred on or after the establishment of the special maintenance fund in providing —

- (i) cleaning services for that limited common property;
- (ii) security services and amenities for the occupiers of the lots or proposed lots in that development for whose exclusive benefit that limited common property has been designated under the sale and purchase agreement with the owner developer; and
- (iii) such other services necessary for maintaining that limited common property in a state of good repair;

continuation from 16(3)

(b) to maintain, repair and renew fixtures and fittings (including lifts) in that development comprised within that limited common property, not being fixtures and fittings installed in a lot or proposed lot sold or intended for sale to a purchaser;

(c) to maintain, repair and renew sewers, pipes, wires, cables and ducts used or capable of being used in connection with the enjoyment —

(i) of that limited common property; or

(ii) of 2 or more lots or proposed lots in that development for whose exclusive benefit that limited common property has been designated under the sale and purchase agreement with the owner developer;

continuation from 16(3)

- (d) to pay rent and rates, if any, connected with the limited common property;
- (e) to pay any fee for the auditing of the special maintenance fund; and
- (f) to pay all charges reasonably incurred for the administration of the special maintenance fund and the limited common property of that development.

Rights and Duties of Main MC

- Most of the duties and powers imposed under the LTSA remain generally intact
 - for example, the duty to control, manage and administer the CP and to maintain and keep the CP in a state of good and serviceable repair [ss 29, 30, 31]

Rights and Duties of Main MC

- Apart from preserving the duties and powers imposed under the LTSA, the BMSMA also imposes additional duties and powers on the main MC
- But performance of main MC's duties and powers restricted only to those CP that is not LCP

Duties and powers of management corporation in respect of property

29(3) Notwithstanding subsections (1) and (2) but subject to subsection (4), where a strata title plan comprises common property and any limited common property, the management corporation constituted shall, upon the creation of the limited common property —

- (a) perform the duties and exercise the powers referred to in subsections (1) and (2), respectively, only in respect of common property that is not limited common property; and
- (b) cease to perform those duties and exercise those powers in respect of the limited common property created.

Rights and Duties of Main MC

- But performance of main MC's duties and powers only restricted to those CP that is not LCP
- Main MC may, however, manage and maintain any LCP on terms and conditions to be agreed with the sub MC for that LCP

Duties and powers of management corporation in respect of property

29(4) Notwithstanding any other provision of this Act, a management corporation constituted for common property within a strata title plan may manage and maintain any limited common property within that strata title plan upon such terms and conditions as may be agreed between the subsidiary management corporation for that limited common property and the management corporation.

Rights and Duties of Sub MC

- Sub MC has same powers and duties as main MC with respect to its respective LCP
- However, there are some matters for which the sub MC does not have any power

Subsidiary management corporation and its functions

79(3) The subsidiary management corporation shall have the same powers and duties as the management corporation with respect to any matter that relates solely to the limited common property designated for the exclusive benefit of all subsidiary proprietors comprising the subsidiary management corporation except the powers under section 34 (1) (a), (3) and (5), sections 35, 37, 46 and 86 and Division 6 of this Part, and unless expressly otherwise provided, the provisions of this Part shall apply, with the necessary modifications, to subsidiary management corporations as they apply to management corporations.

Rights and Duties of Sub MC

Thus, sub MC has :

- No power to dispose of or make any additions to the CP under s 34(1)(a) and (3) & (5)
- No power to create any easements or restrictive covenants under s 35
- No power to make any improvements or additions to the strata lots under s 37

Rights and Duties of Sub MC

Thus, sub MC has :

- No obligation to prepare and keep the strata roll under s 46
- No power to take proceedings on behalf of SP in case of structural defects under s 86
- No right or obligation to insure any of the subdivided buildings in the strata title plan under Division 6 of the Act

- But, sub MC may insure against risks not insured by main MC or for amount in excess of amounts insured by main MC

Subsidiary management corporation and its functions

79(6) A subsidiary management corporation may obtain insurance only —

(a) against risks that are not insured by the management corporation; or

(b) for amounts that are in excess of amounts insured by the management corporation.

(7) For the purposes of subsection (6), a subsidiary management corporation shall have the same insurable interest in its limited common property as the management corporation has in property contained within common property.

Rights and Duties of Sub MC

- In addition to its general powers, sub MC also has the power to:
 - ✓ establish and maintain its own maintenance and sinking funds for its LCP
 - ✓ require SPs to pay contributions and levy for expenditure
 - ✓ enforce by-laws relating to its LCP
 - ✓ control, manage and administer its LCP

Subsidiary management corporation and its functions

79(4) Without prejudice to the generality of subsection (3), **the subsidiary management corporation shall —**

(a) establish its own management fund and sinking fund for the common expenses of its limited common property, including expenses related to its limited common property;

(b) require subsidiary proprietors of lots in the subsidiary management corporation to pay contributions and levies for expenditure the subsidiary management corporation authorises;

(c) enforce by-laws relating to its limited common property; and

(d) otherwise have the control, management and administration of its limited common property.

Rights and Duties of Sub MC

- Sub MC may also manage and maintain any CP or other LCP, by agreement with main MC or other sub MC, as the case may be [s 79(8)]

Subsidiary management corporation and its functions

79(8) Notwithstanding any other provisions of this Act, a subsidiary management corporation for any limited common property comprised in a strata title plan may manage and maintain —

(a) any common property within that same strata title plan; or

(b) any other limited common property of another subsidiary management corporation within that strata title plan,

upon such terms and conditions as may be agreed between the subsidiary management corporation and the management corporation or other subsidiary management corporation, as the case may be.

Executive committee of the Sub MC

- Sub MC is to elect an executive committee (EC) of the sub MC [s 80(3)]
- The EC of the sub MC has the same powers and duties with respect to the sub MC as the council of the main MC has with respect to the main MC [s 80(3)]

Executive committee of the Sub MC

- The provisions in Division 3 of the Act, which deals with the council of the main MC will apply, with necessary modifications, to the EC of the sub MC [s 80(5)]
- Thus, the EC of the sub MC is akin to the council of the main MC

Factors weighing in favour of a 2-tier MC system

- Development is of a sufficient size and each part is capable of independent management and control by its own SPs
- Development has different and conflicting uses – eg. low rise townhouses & high rise apartments

Factors weighing in favour of a 2-tier MC system

- Layout and physical boundaries are clearly and easily identifiable – otherwise could lead to lots of disputes
- There is sufficient strata lots in each sub MC to ensure composition of the executive committee of the sub MC
- LCP is located within each sub MC

Ambiguities in the Act

- s 76 provides that the 2-tier MC system may be used for other developments only on case-by-case approval by Minister and conversion of an existing single MC to a 2-tier MC is possible only with Minister's order
- However, there is no guidelines as how the approval or order would be made

Ambiguities in the Act

- By s 77, a 2-tier MC system is possible in the case of non-residential lots if they are used for “significantly different purposes”
 - But, Act does not define what would constitute “significant different purposes” – how significant is significant?
 - Can retail shops selling different goods be considered as use for significantly different purposes?

Ambiguities in the Act

- Also, under s 77, a 2-tier MC system is possible if the non-residential lots are used for “significantly different purposes” OR are “physically detached” from other lots
- Can you have sub MC that are used for significantly different purposes, within lots that are physical detached from others?

Ambiguities in the Act

- Sub MCs may resolve to amalgamate the boundaries of their respective LCPs
- But, there is a proviso under s 78(8) that the amalgamation of the boundaries of the LCPs must not contradict under s 77
 - How is contradiction possible?

Ambiguities in the Act

- By s 84(2), the main and sub MC may resolve to dissolve a sub MC for a LCP and, on dissolution, the main MC assumes all liabilities and obligations of the dissolved sub MC
- But, s 79(5) says that the main MC does have not any liability for contracts made or debts or legal costs incurred by the sub MC
- So, does s 84(2) override s 79(5)?

Ambiguities in the Act

- Main MC manages the CP and sub MC manages its LCP, and both the main and sub MC, being legal entities, have the right to sue and be sued in its own rights whenever there are disputes concerning their respective CP and LCP
- In case of defects not only in CP but also LCP, can main MC bring action against developer, contractor, etc on behalf of the LCP?

Possible problems in implementation

- The delineation and demarcation of the CP and LCP will pose a challenge – needs careful consideration of the design and layout of services, etc
- Possible differing standards of management and maintenance of different MCs – this may adversely affect the overall development

Possible problems in implementation

- Difficulty may arise in getting sufficient SPs to serve as Council and EC
- Possible conflicts may arise from differences in by-laws between the main MC and the various sub MCs
- Difficulty may arise in determining the SPs at the end of the 12 weeks period for the purpose of a comprehensive resolution

Managing risks to :

The owner developer

- Possible mistakes in having to maintain different sets of maintenance funds
- Difficulty in collecting the various maintenance funds

Managing risks to :

The main and sub MC

- The main and sub MCs must fully understand their obligations and responsibilities
- Confusion and conflict in the control, management and administration between the main MC and sub MC may arise

Managing risks to :

The managing agent

- The MA is also greatly exposed to this new concept as he is expected to guide the main and sub MC (and Council and EC)

Pros and Cons of a 2-tier MC system

The Pros

- A 2-tier MC system has the benefit of catering to the varied and often conflicting needs of different user groups in a mixed use development
- The interests of the different user groups can be better represented by the different sub MCs

Pros and Cons of a 2-tier MC system

The Cons

- Possible disputes may arise concerning the boundaries of the CP, common services and LCP, especially if these are not properly delineated, marked or described in the strata plan

Pros and Cons of a 2-tier MC system

The Cons

- The increase in number of MCs may result in increase in the total operation costs of the development
- The amount of contribution to be made by SPs may also increase
- Possible increase in number of litigation, with increased legal costs, given that each MC may sue and be sued in its own right

THE END

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Major Publications (author or co-author):

"The Singapore Court Forms"
"The Singapore Standard Form of Building Contract – An Annotation"
"Construction Defects: Your Rights and Remedies" title of the Sweet & Maxwell's Law for Layman Series
Singapore Civil Procedure 2003 (White Book)
Real Estate Developers' Association of Singapore's (REDAS) Design and Build Standard form contract
Chapter on "Construction Contracts" in Law Relating to Specific Contracts in Singapore (2008)