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ENHANCING STRATA MANAGEMENT IN MALAYSIA—SELECTED ASPECTS STRATA MANAGEMENT ACT 2013

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I. INTRODUCTION

Malaysia recently enacted the Strata Management Act 2013 (Act 757) [*SMA*][1] which repeals the Building and Common Property (Maintenance and Management) Act 2007 (Act 663) [*BCPA*]. Amendments[2] were also made to the Strata Titles Act 1985 (Act 318) [*STA*][3] to facilitate the enhancement of the management of a strata scheme. Prior to the enactment of the *SMA*, both development-related and management matters were dealt with in the *STA*. The *SMA* now deals with strata management matters while the *STA* deals with development-related matters pertaining to all strata schemes, such as strata registration and issuance of titles. This approach was earlier adopted in the New South Wales' Strata Schemes Management Act 1996 (NSW) [*SSMA (NSW)*] and Singapore's Building Maintenance and Strata Management Act[4] in 2005.[5]

This article will assess the changes brought about by the *SMA* and the amendments in the following areas in respect of the period after the management corporation has been constituted: (i) the two-tier management corporation concept; (ii) the dispute resolution mechanism provided by way of the Strata Management Tribunal; (iii) the concept of common property; and (iv) voting by proxies.

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1 Date of publication of the *SMA* in the Malaysian Gazette: 8 February 2013. The *SMA* came into force on 1 June 2015 *vide* PU(B) 231 and PU(B) 237. It seeks to provide, *inter alia*, for the proper maintenance and management of buildings and common property in a strata scheme.

2 See *Strata Titles* (*Amendment*) *Act 2013* (Act A1450) [*STAA*].

3 The *STAA* came into force on 1 June 2015 *vide* PU(B) 238.

4 Cap 30C, 2008 Rev Ed [*BMSMA*].

5 Originally enacted as Act No 47 of 2004, which came into force on 1 April 2005 vide S 191/2005.

II. Two-Tier Management Corporation Scheme

Malaysia is one of a few jurisdictions[6] which has adopted the two-tier management corporation concept in its quest to enhance strata management in the country. Such a two-tier management corporation scheme is now provided in the *STA*[7] with the administrative and management aspects of it dealt with in the *SMA*.[8]

Difficulties can arise when managing a mixed-use strata development under a single-tier management corporation scheme which seeks to address the varied interests involved. There is only a single management fund and sinking fund to resort to in the strata scheme when it comes to implementing changes or improvements to the common property. As is obvious, the interests of the different user groups comprising, say, residential unit owners and commercial unit owners, in a mixed-use scheme do not coincide. As such, consensus is difficult to obtain. For example, the residential unit owners would not be inclined to have moneys in the sinking fund used for improvements to the concourse of the shopping area in the strata scheme which would benefit the retail shop owners more. Similarly, the latter might object to the management fund and sinking fund being used for the repairs and improvements of the swimming pool in the scheme meant for use by the residential unit owners only. To overcome the impasse, the two-tier scheme works better.

In a two-tier scheme, there are two levels of management. At the first tier, there is the main management corporation and at the second tier, the subsidiary management corporations. Each specific user group will comprise a subsidiary management corporation taking care of its own common property, known as limited common property, which is for the exclusive benefit of all the unit owners comprised therein.[9] Each subsidiary management corporation is empowered and required to establish its own maintenance account and sinking fund account for the expenses of its limited common property.[10] In this way, the two-tier scheme will facilitate the administration and management of the interest of the particular user group without affecting the interest of the unit owners comprising another different subsidiary management corporation in the scheme. Thus, in the example above, the subsidiary management corporation comprising the residential unit owners would not have to pay for the improvements to the concourse of the shopping area. In the two-tier scheme, the subsidiary management corporations are legal entities in their own right.[11] The main management corporation will continue to take care of the common property, such as driveways and car parks, used and enjoyed by all the unit owners in the strata scheme.[12]

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6 For some of the other jurisdictions, see *eg* s 7(2A) of the New South Wales' *Strata Schemes* (*Freehold Development*) *Act 1973*, and s 6(3) of the *Strata Schemes* (*Leasehold Development*) *Act 1986* (NSW); British Columbia's *Strata Property Act*, SBC 1998, c 43, ss 190-198; and Singapore's *BMSMA*, ss 76-83.

7 *STA*, s 17A.

8 *SMA*, ss 63-69.

9 *Ibid*, s 63(2).

10 *Ibid*, s 64(3)(a).

11 *STA*, ss 17A(5) and (6).

12 *SMA*, s 64(2).

Given the stringent requirements[13] for the creation of a subsidiary management corporation and its limited common property, not every strata scheme will be suitable or qualify for a two-tier management corporation scheme. Hence, the fact that only a few of such two-tier schemes are created does not mean that such a scheme has failed to work in practice. Stringent requirements are put in place to ensure certainty and to avoid unnecessary disputes.[14]

A two-tier scheme is not without its difficulties as operational problems can arise. There will be a need to find enough volunteers to serve on the council of the main management corporation and that of the subsidiary management corporations. Each entity might adopt different and disparate standards of maintenance. Total operation costs will increase. In addition, where the boundaries pertaining to the common property and limited common property belonging to the main management corporation and the subsidiary management corporations are not properly delineated and demarcated in the relevant plans,[15] disputes can arise between the entities concerned.

However, the benefits of the two-tier scheme far outweigh the potential problems and disadvantages associated with it, especially given the greater flexibility of such a scheme in resolving the competing interests of different user groups in a mixed-use strata scheme.

III. Dispute Resolution Mechanism

Prior to the enactment of the *SMA*, the main dispute resolution mechanism provided for in the *STA* was the Strata Titles Board.[16] The aim was to provide an informal and inexpensive avenue of dispute resolution as an alternative to the commencement of legal proceedings in the courts.[17] With the same objective in mind, this main dispute resolution mechanism has now been taken out of the *STA* and provided for instead in the *SMA* under the latter's strata management framework and renamed the Strata Management Tribunal.[18] The Tribunal may conduct the proceedings in such manner as it considers appropriate, necessary or expedient for the purpose of ascertaining the facts or law in order that it may determine a claim.[19]

The provisions in the *SMA* pertaining to the Strata Management Tribunal are an improvement to that of the then Strata Titles Board in the *STA*. Previously under the *STA*, the Strata Titles Board was only empowered to adjudicate to resolve disputes. Adjudication might not be effective in resolving all disputes.[20] Under the *SMA*, the Tribunal is now empowered to assess whether it is appropriate for it to assist the

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[13] *STA*, s 17A.

[14] See also Alice Christudason, "Legislation affecting common property management in Singapore: Confusion or solution through fragmentation?" (2008) 26 Issue 3 Property Management 207 at 218. As at 26 May 2014, there were 30 over two-tier schemes in existence in Singapore (source: Building and Construction Authority, Singapore).

[15] *STA*, s 17A(2).

[16] *Ibid*, then s 67A(1).

[17] See *Malaysia Parliamentary Debates* (2001) Dewan Rakyat Tenth Parliament at 130-131.

[18] *SMA*, s 102.

[19] *Ibid*, s 114(1).

[20] See Lon Fuller & Kenneth Winston, "The Forms and Limits of Adjudication" (1978) 92 Harvard Law Review at 370-371 and George Pavlich, *Justice Fragmented*: *Mediating Community Disputes under Postmodern Conditions* (London: Routledge, 1996) at 3.

parties to negotiate[21] an agreed settlement in relation to the dispute.[22] As a form of dispute resolution, negotiation is likely to resolve most of the disputes which arise and there will also be savings in terms of time and costs.

As provided in the *SMA*, the Tribunal shall, in respect of every claim within its jurisdiction, assess whether, in all the circumstances, it is appropriate for the Tribunal to assist the parties to negotiate an agreed settlement in relation to the matter.[23] Only where it appears to the Tribunal that it would not be appropriate for it to assist the parties to negotiate an agreed settlement in relation to the matter, or the parties are unable to reach an agreed settlement in relation thereto, will the Tribunal proceed to determine the claim.[24] The way the provisions are structured do not appear to make it mandatory for the Tribunal to first negotiate with the parties on all matters that are in dispute and to bring about an agreement between the parties on those matters. It should not be left to the Tribunal to assess, in the first instance, if the matter is suitable for negotiation. It is not exactly clear what factors the Tribunal will take into consideration in making its assessment. It would be better instead for the *SMA* to provide for negotiation to be mandatory so as to hear the parties out based on their respective positions and only if the parties cannot come to a settlement thereafter that the matter be adjudicated by the Tribunal.

It may also be noted that there is no time frame set for the Tribunal when assisting the parties to negotiate an agreed settlement in relation to the matter. This is to ensure that the parties do not abuse the negotiation process. The Singapore legislation makes it mandatory for the Strata Titles Board to mediate, without delay, all matters that are in dispute.[25] It is given a period of not more than three days (continuous or otherwise) to successfully mediate the matter concerned, failing which it will have to arbitrate the dispute and render a decision and make an order.[26] The maximum period of three days stipulated for mediation is to ensure that parties do not abuse the process and thus facilitate timely settlement of disputes by the Board.

Under the *STA*, the then provision provided for the Strata Titles Board to make a finding or determination within the specified period of six months from the date it is constituted.[27] The duration within which a finding or determination is to be made by the Tribunal under the *SMA* is now left unspecified although it is required to do so without delay and, where practicable, within 60 days from the first day the hearing commences.[28] Cases capable of being determined within 60 days are likely to be rare while the majority of cases will require a longer time period. That there is no specified general time frame to deal with the majority of cases might not encourage the Tribunal to carry out its work expeditiously. In this regard, the better approach is still to specify a reasonable time frame within which a decision is to be rendered by the Tribunal, say, within six months from the date it is constituted, failing which

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[21] The word "negotiation" is used loosely in s 112 of the *SMA* to mean mediation where a neutral third party (*ie* the Strata Management Tribunal) is involved, whereas "negotiation" would strictly speaking involve only the two parties. See also the definition of "mediation" in s 2(1) of the *BMSMA*.

[22] *SMA*, s 112(1).

[23] *Ibid*, s 112(1).

[24] *Ibid*, s 112(4).

[25] *BMSMA*, s 92(1)(a).

[26] *Ibid*, s 92(1)(b).

[27] *STA*, ss 67F(1) and (2). This is also the time frame provided under the *BMSMA*, s 92(9).

[28] *SMA*, s 117(1).

an extension of time may be sought from the Minister concerned. Such an approach will incentivise the Tribunal to act efficiently in rendering its decision without undue delay. It will also provide some certainty in the decision-making process for both the Tribunal and the parties concerned.

Under the *SMA*, the members of the Tribunal consist of a Chairman and a Deputy Chairman to be appointed from among the members of the Judicial and Legal Service, and not less than 20 other members to be appointed from among the persons who are (i) members of or who have held office in the Judicial and Legal Service; or (ii) admitted as advocates and solicitors under the relevant legislation in Malaysia[29] with not less than seven years of standing.[30] This is an improvement under the *SMA* as there was no requirement under the then *STA* provision[31] that the Chairman or Deputy Chairman of the Strata Titles Board be a legally qualified person. As the matters which the Tribunal has jurisdiction[32] to hear and determine will invariably involve some aspects of law, it would be advantageous, if not indispensable, to have members of the Tribunal who possess the necessary legal expertise and knowledge.

The jurisdiction of the Tribunal is to be exercised by any of the following members sitting alone: the Chairman; the Deputy Chairman; or any of the members of the Tribunal as determined by the Chairman.[33] This is unsatisfactory as it would appear from the above that all the members appointed to the Tribunal must be legally qualified.[34] There would be cases where a legally qualified member of the Tribunal may not have the necessary technical expertise or knowledge to decide on the matter at hand. For example, in cases of water leakage involving upper and lower floor units in a strata scheme, it is essential to have the expertise of a surveyor or engineer to assist in determining the source of the leakage. The *SMA* does provide for the Tribunal to appoint one or more experts to report to it on specific issues to be determined by the Tribunal.[35] A better approach would be for non-legal experts to be appointed members of the Tribunal as well and for the Tribunal, in appropriate cases and depending on the matter to be resolved, to comprise more than one member when adjudicating the matter at hand. This will provide the Tribunal with its own pool of experienced non-legal professionals and experts in the relevant fields to call upon and for the Tribunal to get a better sense of the issues involved as there are now inputs from both the legal and non-legal perspectives. As this will enable the matter to be more efficiently dealt with within the Tribunal's own expertise, the need to appoint outside experts to formally assist the Tribunal in coming to a determination of the issues concerned will be minimised.

Even if the provision is construed and taken to mean that some of the other members appointed to the Tribunal may include non-legal experts as well (so long as the number of legally qualified persons appointed are not less than 20 members),

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[29] That is, Peninsular Malaysia's *Legal Profession Act 1976* (Act 166), Sabah's *Advocates Ordinance* (Cap 2) or Sarawak's *Advocates Ordinance* (Cap 110).

[30] *SMA*, s 103(1).

[31] *STA*, s 67A(3).

[32] *SMA,* s 105(1) and Part 1 of the Fourth Schedule.

[33] *Ibid*, s 109(1).

[34] The language employed in ss 103(1)(a), (b)(i) and (b)(ii) of the *SMA* is susceptible to such an interpretation.

[35] *Ibid*, s 116(1)(a).

the position remains unsatisfactory.[36] As a member of the Tribunal sits alone, the same concerns as ventilated above still remain. Whether the member sitting alone is a legal or non-legal expert, he or she will not have the other requisite expertise and perspective essential to a proper understanding and determination of the matter at hand. Of course, such concerns do not arise if the member sitting alone is a legal as well as a non-legal expert in the relevant field; however, such instances are rare. In the result, in appropriate cases, a minimum three-member Tribunal (so as to avoid arriving at a tie decision) should preside at a hearing—a case of 'more heads are better than one'.

At a hearing, no party shall be represented by an advocate and solicitor unless, in the opinion of the Tribunal, the matter in question involves complex issues of law, among others.[37] The then position under the *STA* provided for representation in person, by counsel or a member of the council of the management corporation.[38] The objective under the *SMA* is obvious: adjudication before the Tribunal should not be an expensive affair so that there is greater access to justice. However, in reality, to a layperson any matter which raises a legal issue, however minor, would require legal assistance. He or she may be able to consult a lawyer on the matter concerned but to deprive him or her of legal representation at the hearing before the Tribunal is akin to losing the case even before it gets started. The intricacies of the law to one who is not schooled in the law can be both mind-boggling and humbling. It also begs the question of how complex a legal issue must be before it is considered complex. What more if the applicant and respondent are innately incapable of presenting their arguments before the Tribunal? The then position under the *STA* is preferred. The applicant and respondent should be given a choice as to whether they want to be legally represented at the hearing before the Tribunal.[39] One way to make adjudication proceedings before the Tribunal affordable and less expensive is not to award costs in appropriate cases of self-representation.

IV. Common Property

The concept of 'common property' employed in the *SMA* helps to identify the part of the strata scheme that is the responsibility of the management corporation. Depending on whether the relevant part of the strata scheme is part of the unit or part of the common property, the unit owner or the management corporation is under a duty to effect the necessary repair or maintenance.

Under the *SMA*, common property is defined to mean, in relation to a subdivided building or land, such part thereof as is not comprised in any unit as shown in a certified strata plan and used or capable of being used or enjoyed by occupiers

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[36] To overcome any ambiguity which may arise from a reading of ss 103(1)(b)(i) and (ii) of the *SMA*, it is suggested that the existing provision should be repealed and a new provision enacted to provide for the appointment by the Minister concerned of such number of persons as he may consider necessary to be the other members of the Tribunal. This new provision will cater for the appointment of both legal and non-legal persons with the number of such persons to be appointed to be determined by the Minister concerned.

[37] *SMA*, s 110(2).

[38] *STA*, ss 67S(1) and (2).

[39] This is the position under the *BMSMA*, ss 94(1) and (2).

of two or more units.[40] Such a definition might be problematic as it is not clear if, for example, columns and beams which reside within a unit but which support the entire building are part of common property. Such difficulties can be seen in a Singapore case where substantially the same definition of common property is provided in the *BMSMA*.[41] In *MCST Plan No 367 v Lee Siew Yuen and Another*,[42] the management corporation (appellant) argued that the unit owners (respondents) should make good any defects in the beams in the latter's unit. Specifically, the dispute pertains to defects in the beams above the ceiling of the master bedroom toilet and that of the kitchen in the said unit. In essence, the application was concerned with the issue of whether it was the management corporation or the unit owners who were responsible for the repair and proper maintenance of the beams in question. A determination of this issue must necessarily involve a consideration of whether beams are common property, in which case it is the statutory responsibility of the management corporation to repair and maintain them as provided in ss 29(1)(a) and (b)(i) of the *BMSMA*. On the other hand, if beams are not considered to be common property, then the responsibility would lie on the owners of the unit concerned unless the defects in the beams comprised in the said unit amount to structural defects, in which case it is for the management corporation to rectify under s 30(5) of the *BMSMA* subject to the unit owners not being in breach of their duty imposed under s 63(a) of the same Act.

The High Court correctly took the view that the requirements in the definition of common property in the *BMSMA* are conjunctive and both must be satisfied: namely, to amount to common property, such part of the land and building must firstly not be comprised in any unit in the strata title plan and secondly, must be used or capable of being used or enjoyed by the occupiers of two or more units. On the meaning of 'comprised', the court held that it meant 'included' and not 'situated'. The court was of the view that the respondents, if they could have their way, would not want these beams in their apartment as they occupy space and did not serve any purpose or function for the unit. The beams were part of a supporting infrastructure that held the entire building together. It seemed logical and obvious that the beams were common property as these beams were crucial in ensuring the structural integrity of the building.[43] The second condition in the definition of common property was easily fulfilled as the beams in question served the purpose of supporting the building blocks of the development. They were erected to support the units above. Hence, the purpose was more than mere enjoyment for the other occupiers.[44]

The previous edition of the *Land Titles* (*Strata*) *Act*[45] specifically included beams and supports as common property. The court noted that the present definition of common property omitted to specify a list of structures which were considered to be part of the common property in the previous edition of the *LTSA* so as to incorporate a generic definition of common property to cover both strata and non-strata developments. In addition, Parliament accepted the Singapore Institute of Surveyors

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[40] *SMA*, s 2.
[41] *BMSMA*, s 2(1).
[42] [2014] 4 SLR 445 (HC) [*Lee Siew Yuen*].
[43] *Ibid* at para 29.
[44] *Ibid* at para 30.
[45] Cap 158, 2009 Rev Ed Sing [*LTSA*].

and Valuers' suggestions and decided to simplify the definition of common property without having to list any structure that were generally considered as part of common property. Such a simplification 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.[46] The court, having regard to s 2(1) of the *Building Control Act*,[47] also found that the defects in the beams were structural defects as they affected the support and overall structural stability of the building. As there was no evidence to show that the structural defects were caused by the unit owners but that the defects resulted instead from normal wear and tear, the management corporation was thus duty bound to rectify the structural defects as provided in s 30(5)(a) of the *BMSMA*.

The absence of an equivalent provision to s 30(5)(a) of the *BMSMA* has further compounded the situation under the *SMA*. This would mean that a unit owner will have to undertake repairs for structures situated within his unit where they are determined not to be common property. The provisions in the *SMA*[48] are not clear in their language that, in such a situation, it is the duty of the management corporation to undertake the repairs.

To minimise disputes between the management corporation and unit owners as to who is to maintain such structures as beams and columns in a unit as happened in *Lee Siew Yuen*, there should be clarity in the definition of common property in the *SMA* that it includes such key structural elements as beams and columns of the building. There need not be an exhaustive definition of 'common property' as can be seen in s 3(c) of the previous edition of the *LTSA* which gave specific pointers as to what would constitute 'common property'.[49] In this manner, the important structures of a building will be clearly stated to be common property without providing for an exhaustive definition. As structural defects affect the safety and integrity of the entire

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[46] *Supra* note 43 at para 22.

[47] Cap 29, 1999 Rev Ed Sing. See definition of 'key structural elements' of a building.

[48] See *eg SMA*, ss 59 and 61(2). See also *SMA*, ss 51(2). For the period before the management corporation comes into existence, see *SMA*, ss 9, 11, 21 and 24. In this connection, see by-law 30 in the Third Schedule to the *Strata Management* (*Maintenance and Management*) *Regulations 2015* (PU(A) 107).

[49] *LTSA*, then s 3(c) provided, *inter alia*, as follows:

> "Unless otherwise described specifically as comprised in any lot in a strata title plan and shown as capable of being comprised in such lot, [common property] includes—(i) 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; (ii) car parks, recreational or community facilities, gardens, parking areas, roofs. . . ; (iii) . . . ; (iv) escalators, lifts, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use; (v) water pipes, drainage pipes, sewerage pipes, gas pipes and electrical cables which serve two or more lots. . ."

See also s 2 of the then *BCPA*, where 'common property' was defined to mean:

> "the structural elements of the building, stairs, stairways, fire escape, entrances and exits, corridors, lobbies, fixtures and fittings, lifts, refuse chutes, refuse bins, compounds, drains water tanks, sewers, pipes, wires, cables and ducts that serve more than one parcel, the exterior of all common parts of the building, playing fields and recreational areas, driveways, car parks and parking areas, open spaces, landscape areas, walls and fences, and all other facilities and installations and any part of the land used or capable of being used or enjoyed in common by all the occupiers of the building".

building, it is sound policy to impose the duty on the management corporation which is in a better position to maintain these key structural elements as well as coordinate and carry out the appropriate and necessary repairs that will ultimately benefit all the unit owners concerned, notwithstanding that there may be units which may not suffer from structural defects. Moreover, unit owners have less of a vested interest in maintaining these structures on behalf of other unit owners.

V. Voting by Proxies

In circumstances where a unit owner is not able to attend general meetings in person, the unit owner can, by an instrument in writing, appoint a proxy to represent him or her at the meeting concerned.[50] The proxy can then act and vote on behalf of the unit owner. A proxy need not be a unit owner.[51] However, a proxy cannot exercise a vote in relation to a matter if the person who appoints the proxy is personally exercising a power to vote on the matter.[52]

A vote given by a proxy in accordance with the terms of the instrument is valid notwithstanding the death, unsoundness of mind, or liquidation of the principal, or revocation of the instrument or the authority under which the instrument was executed, if no notice in writing of such death, unsoundness of mind, liquidation or revocation has been received by the management corporation before the commencement of the meeting at which the instrument is used.[53]

In certain jurisdictions, such as Singapore[54] and Hong Kong,[55] there is no limit on the number of proxies that may be given to one person. This can give rise to abuse of the proxy system. For example, management council members may act as proxies for many unit owners such that they can dominate and control the decision-making at the general meeting.[56] There have also been cases where unit owners who were property agents or developers allegedly coerced or harassed other unit owners for proxies in a bid to seize majority voting power, got themselves elected into the management council and ultimately made decisions to their own benefit.[57] In these instances, the will of one or two persons, with the requisite number of proxies to comply with the quorum and majority requirements, will be forced on those unit owners who personally attend the meeting and whose voices and wishes will not be heard.

In South Africa and France, there is a limit placed on the number of proxies a person may receive so as to minimise the abuse of the proxy system. In the former, a person must not act as a proxy for more than two unit owners.[58] In the latter, a person

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[50] *SMA*, Second Schedule at para 18(1).

[51] *Ibid*.

[52] *Ibid*, Second Schedule at para 19(2).

[53] *Ibid*, Second Schedule at para 20.

[54] *BMSMA*, First Schedule at para 19(2)(b).

[55] See *Building Management Ordinance* (Cap 344, as amended), Schedule 11, Illustration 3.

[56] Note that under s 68 of the *BMSMA*, it is illegal for a managing agent to canvass for proxies to install their preferred unit owners as council members in the circumstances specified.

[57] See "Waterfront condominium sails into troubled waters", *The Sunday Times* (8 September 2013); "Use and abuse of proxies: Condo management body replies", *The Straits Times* (3 July 2013); and "'Proxy wars' in condos", *Today* (11 June 2012).

[58] *Sectional Titles Schemes Management Act, 2011*, (S Afr), No 8 of 2011, s 6(5).

may not accept more than three proxies except if the total of the votes assigned to him does not exceed five percent of the aggregate value of the votes in the strata scheme.[59]

Under the *SMA*, a person may act as proxy for only one unit owner at any one general meeting.[60] The position under the *SMA* will likely curb the abuse of the proxy system. Anything short of the position under the *SMA* will merely result in a proportionate increase in the number of proxies recruited by various groups to seize management control.[61] This will lead to more chaos at general meetings when there are too many hands and voices to drum up emotions.

To ensure that a unit owner who is voting by proxy is more directly involved in the decision-making process, the *SMA* should mandate that the proxy forms list down clearly all resolutions to be voted on at a general meeting. So as not to give proxies an unfettered discretion which can be abused, a unit owner should be required to indicate in writing if he or she would like to vote for or against a particular resolution.[62] In this regard, a specific as opposed to a general proxy is to be preferred.[63] This will, at least, ensure that the wishes of the unit owner are complied with.

VI. Conclusion

The *SMA* has clearly brought strata management to a whole new level in Peninsular Malaysia[64] with the introduction of various new ideas and concepts which have been adopted and practised in some other jurisdictions. The amendments to the *STA* have also facilitated this. In light of the discussion above, certain provisions in the *SMA* can be further refined and clarified to provide a clearer and better legal framework for strata schemes governed by it. In addition, changes should be made to the *SMA* where there is a need to review or further improve upon the legislative framework for strata schemes. This will help to ensure that strata schemes are administered and managed more efficiently and professionally, with the right governance structure put in place.

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[59] French Law of 1965, Art 22 at paras 3-4.

[60] *SMA*, Second Schedule at para 18(4).

[61] In Singapore, there is a recommendation to cap the number of proxies one can represent at two percent of the total number of units in a strata scheme or two proxies, whichever is higher (see Recommendation 1(a) in Part (A) of the Public Consultation on the Proposed Amendments to the Building Maintenance and Strata Management Act (dated 25 September 2013) at 9).

[62] See *eg* the New South Wales' *SSMA* (*NSW*), Schedule 2, s 11(2)(a) which provides for the prescribed proxy form to make provision for the giving of instructions on whether the person appointing the proxy intends the proxy to be able to vote on all matters and, if not, the matters on which the proxy will be able to vote.

[63] See also *SMA*, Second Schedule, para 18(1)(a).

[64] Sarawak and Sabah have their respective strata legislations, namely the *Strata Titles Ordinance 1995* (Cap 18) and the *Land* (*Subsidiary Title*) *Enactment 1972* (No 9 of 1972). Both legislations have not kept pace with the changes seen in the *SMA*. The powers of the Federal Government of Malaysia to make laws with respect to land matters in a state, such as those pertaining to strata title, are not exercisable with regard to the states of Sarawak and Sabah: see Malaysia's *Federal Constitution 1957*, Art 95D. This has come about due to historical and political developments.