

STRATA MANAGEMENT BILL 2012

ARRANGEMENT OF CLAUSES

PART I

PRELIMINARY

Clause

1. Short title, application and commencement
2. Interpretation
3. Construction of the Act

PART II

ADMINISTRATION OF THE ACT

4. Appointment of Commissioner of Buildings, deputies and other officers

PART III

DEALINGS IN BUILDING OR LAND INTENDED FOR SUBDIVISION INTO PARCELS

5. Application of this Part
6. Schedule of parcels to be filed with the Commissioner before sale of any parcel

PART IV

STRATA MANAGEMENT BEFORE EXISTENCE OF MANAGEMENT CORPORATION

Chapter 1

General

7. Application of this Part
8. Allocated share units

Chapter 2

Management by developer before joint management body is established

9. Duties and powers of developer during developer's management period

Clause

10. Developer to establish maintenance account
11. Developer to establish sinking fund account
12. Purchaser and developer to pay Charges, and contribution to sinking fund
13. Prohibition on collection of moneys before accounts are opened
14. Duties of developer in relation to accounts
15. Handing over by developer to the joint management body
16. Balances not transferred shall vest in joint management body

Chapter 3

Management by joint management body

17. Establishment of a joint management body
18. Duty of developer to convene first annual general meeting of joint management body
19. First annual general meeting of joint management body
20. Duty of joint management body to inform its name to Commissioner
21. Duties and powers of joint management body
22. Joint management committee
23. Joint management body to establish maintenance account
24. Joint management body to establish sinking fund account
25. Parcel owners to pay Charges, and contribution to the sinking fund, to the joint management body
26. Duties of joint management body in relation to accounts
27. Dissolution of joint management body
28. Balances not transferred shall vest in management corporation

Chapter 4

Miscellaneous provisions applicable to this Part

29. Duty of developer in respect of Charges for building or land intended for subdivision into parcels completed before commencement of this Act
30. Register of parcel owners
31. Right of parcel owner or prospective purchaser
32. By-laws for building or land intended for subdivision into parcels
33. The recovery of sum as a debt due to joint management body

Clause

34. Procedure on recovery of sums due
35. Recovery of sums by attachment of movable property
36. Moneys not required for immediate use

Chapter 5

*Transitional and saving provisions due to the repeal
of the Building and Common Property
(Maintenance and Management) Act 2007*

37. References to repealed Act and savings provision
38. Existing body and committee
39. Existing managing agent
40. Existing accounts or funds
41. Incumbent Commissioner of Buildings and other officers
42. Existing notices, orders, *etc.*
43. Pending applications, *etc.*
44. Pending appeals
45. Existing regulations

PART V

STRATA MANAGEMENT AFTER EXISTENCE OF
MANAGEMENT CORPORATION

Chapter 1

General

46. Application of this Part

Chapter 2

*Management by developer before first annual
general meeting of management corporation*

47. Application
48. Duties and powers of developer to maintain and manage
49. Restrictions during preliminary management period
50. Developer to establish maintenance account in the name of management corporation
51. Developer to establish sinking fund account in the name of management corporation
52. Proprietors to pay Charges, and contribution to the sinking fund

Clause

53. Prohibition on collection of moneys for maintenance from proprietors
54. Duties of developer in relation to accounts
55. Handing over of control to management corporation

Chapter 3

*Management after first annual general meeting
of the management corporation*

56. Management committee
57. Duty of developer to convene first annual general meeting
58. First annual general meeting of management corporation
59. Duties and powers of management corporation
60. Maintenance account of the management corporation
61. Sinking fund account of the management corporation
62. Duties of management corporation in relation to accounts

Chapter 4

*Subsidiary management corporation and
limited common property*

63. Administration of the subsidiary management corporation
64. Duties and powers of subsidiary management corporation
65. Expenses of subsidiary management corporation
66. Maintenance account of subsidiary management corporation
67. Sinking fund account of subsidiary management corporation
68. Proprietors to pay Charges, and contribution to the sinking fund, to subsidiary management corporation
69. Judgments against management corporation relating to limited common property

Chapter 5

Miscellaneous provision applicable to this Part

70. By-laws for regulation of subdivided building or land
71. By-laws for limited common property
72. Strata roll
73. Right of proprietor or prospective proprietor

Clause

- 74. Acquisition of additional land, grant and acceptance of easements, *etc.*
- 75. Rating
- 76. Appointment of administrator for management corporation
- 77. The recovery of sum as a debt due to management corporation or subsidiary management corporation
- 78. Procedure for recovery of sums due
- 79. Recovery of sums by attachment of movable property
- 80. Moneys not required for immediate use

Chapter 6

Transitional and saving provisions due to consequential amendments to the Strata Titles Act 1985

- 81. Existing managing agent
- 82. Existing maintenance fund or special account
- 83. Existing notices, orders, *etc.*
- 84. Pending applications, *etc.*
- 85. Existing rules

PART VI

MANAGING AGENT

- 86. Appointment of managing agent by Commissioner
- 87. Independence of managing agent
- 88. Managing agent to lodge bond
- 89. Powers and duties of managing agent
- 90. Developer not to be relieved of his obligations to carry out repairs, *etc.*
- 91. Termination of management agreement

PART VII

DEPOSIT TO RECTIFY DEFECTS

- 92. Developer to pay deposit to rectify defects on common property

PART VIII
INSURANCES

Clause

93. Duty to insure buildings
94. Amount to be insured
95. Insurance where area cannot be separated from main premises of building
96. Insurance where area can be separated from main premises of building
97. Land parcels
98. Other insurances
99. Insurable interest
100. Obligation to rebuild

PART IX
DISPUTES AND STRATA MANAGEMENT TRIBUNAL

Chapter 1

General

101. Interpretation

Chapter 2

Establishment and organisation

102. Establishment of Tribunal
103. Members, terms of office and allowances
104. Secretary, officers and staff

Chapter 3

Jurisdiction of Tribunal

105. Jurisdiction of Tribunal
106. Exclusion of jurisdiction of court
107. Persons entitled to file a claim

Chapter 4

Conduct of proceedings

108. Claim to be in prescribed form
109. Sittings of Tribunal

Clause

- 110. Right to appear at hearings
- 111. Proceedings to be public
- 112. Negotiation for settlement
- 113. Equal treatment of parties
- 114. Determination of rules and procedure
- 115. Hearings
- 116. Appointment of expert by Tribunal

Chapter 5

Awards of Tribunal

- 117. Awards of the Tribunal
- 118. References to a Judge of the High Court on a question of law
- 119. Awards and settlement to be recorded in writing
- 120. Decisions of Tribunal to be final
- 121. Challenging the award on ground of serious irregularity
- 122. Disposal of document, *etc.*

Chapter 6

Miscellaneous provisions applicable to this Part

- 123. Criminal penalty for failure to comply
- 124. Regulations in respect of the Tribunal

PART X

ENFORCEMENT

- 125. Power of investigation
- 126. Search and seizure with warrant
- 127. Search and seizure without warrant
- 128. Access to computerized data
- 129. List of things seized
- 130. Released of things seized
- 131. Power to require attendance of person acquainted with case
- 132. Examination of person acquainted with case
- 133. Obstruction

Clause

- 134. Requirement to provide translation
- 135. Compounding of offences
- 136. Prosecution
- 137. Jurisdiction of the Magistrate's Court
- 138. Joinder of offences
- 139. Protection of informers
- 140. Offences by body corporate
- 141. Continuing offences

PART XI

MISCELLANEOUS

- 142. Evidential provisions
- 143. Representation in proceedings
- 144. Service of notice or order
- 145. Protection against suits and legal proceedings
- 146. Public Authorities Protection Act 1948
- 147. Public servant
- 148. Non-application of other written laws, contracts and deeds
- 149. Contracting out prohibited
- 150. Regulations
- 151. Power to exempt
- 152. Amendment of Schedules
- 153. Repeal

FIRST SCHEDULE

SECOND SCHEDULE

THIRD SCHEDULE

FOURTH SCHEDULE

A BILL

i n t i t u l e d

An Act to provide for the proper maintenance and management of buildings and common property, and for related matters.

[]

WHEREAS it is expedient for the purposes only of ensuring uniformity of law and policy with respect to local government to make laws relating to the maintenance and management of buildings and common property within Peninsular Malaysia and the Federal Territory of Labuan:

NOW, THEREFORE, pursuant to Clause (4) of Article 76 of the Federal Constitution, **IT IS ENACTED** by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title, application and commencement

1. (1) This Act may be cited as the Strata Management Act 2012.

(2) This Act applies only to Peninsular Malaysia and the Federal Territory of Labuan.

(3) This Act shall come into operation in each State on such date as may be appointed by the Minister, after consultation with the State Authority of that State, by notification in the *Gazette*, and the Minister may, after consultation with the State Authority, appoint different dates—

- (a) for the coming into operation of this Act in different local authority areas or parts of local authority areas; and
- (b) for the coming into operation of different provisions of this Act in different local authority areas or parts of local authority areas.

(4) This Act shall come into operation in the Federal Territory of Kuala Lumpur, the Federal Territory of Labuan and the Federal Territory of Putrajaya on a date to be appointed by the Minister responsible for the Federal Territory of Kuala Lumpur, the Federal Territory of Labuan and the Federal Territory of Putrajaya by notification in the *Gazette*.

(5) Notwithstanding subsection (3), the State Authority may, by notification in the *Gazette*, extend any of the provisions of this Act to apply to the whole or any part of any area within the State which is not under any local authority area, and may make such modifications, amendments or variations to the provisions of this Act as may be necessary for the purpose of their application to such area.

(6) Notwithstanding subsection (3), the State Authority may, by notification in the *Gazette*, exempt any part of any local authority area from any or all the provisions of this Act or any regulations made under this Act.

(7) The State Authority may, if in its opinion it would not be contrary to the public interest and the interest of the purchasers to do so, suspend the operation of this Act or any provision of this Act in any local authority area or any part of any local authority area or any other area for such period as it deems fit.

(8) In this Act, references to the State Authority in relation to the Federal Territory of Kuala Lumpur, the Federal Territory of Labuan and the Federal Territory of Putrajaya shall be construed as references to the Minister responsible for the Federal Territory of Kuala Lumpur, the Federal Territory of Labuan and the Federal Territory of Putrajaya.

Interpretation

2. In this Act, unless the context otherwise requires—

“sinking fund account” means an account required to be opened and maintained by a developer, joint management body, management corporation or subsidiary management corporation under section 11, 24, 51, 61 or 67, as the case may be;

“maintenance account” means an account required to be opened and maintained by a developer, joint management body, management corporation or subsidiary management corporation under section 10, 23, 50, 60 or 66, as the case may be;

“repealed Act” means the Building and Common Property (Maintenance and Management) Act 2007 [*Act 663*];

“joint management body” means the body established under section 17;

“building” includes part of a building;

“building or land intended for subdivision into parcels” means—

(a) any building or buildings having two or more storeys in a development area and intended to be subdivided into parcels, and any land on the same lot intended to be subdivided into parcels to be held under a separate strata title; or

(b) any development area having two or more buildings intended to be subdivided into land parcels as defined in the Strata Titles Act 1985 [*Act 318*];

“subdivided building or land” means a building or land as subdivided under the Strata Titles Act 1985;

“bank or financial institution” means a bank or financial institution licensed under the Banking and Financial Institutions Act 1989 [*Act 372*] or the Islamic Banking Act 1983 [*Act 276*], or regulated by the Central Bank under any written law;

“Central Bank” means the Central Bank of Malaysia established under the Central Bank of Malaysia Act 2009 [*Act 701*];

“provisional block” has the meaning assigned to it in section 4 of the Strata Titles Act 1985;

“Charges” means any money collected to be deposited into the maintenance account;

“managing agent” means a person who is appointed by the Commissioner under section 86;

“common property”—

(a) in relation to a building or land intended for subdivision into parcels, means so much of the development area—

(i) as is not comprised in any parcel or proposed parcel; and

(ii) used or capable of being used or enjoyed by occupiers of two or more parcels or proposed parcels; or

(b) in relation to a subdivided building or land, means so much of the lot—

(i) as is not comprised in any parcel, including any accessory parcel, or any provisional block as shown in a certified strata plan; and

(ii) used or capable of being used or enjoyed by occupiers of two or more parcels;

“limited common property” means such part of the common property in a lot—

(a) that is designated in a comprehensive resolution referred to in section 17A of the Strata Titles Act 1985 for the exclusive benefit of the proprietors of two or more, but not all, parcels; and

(b) for which a certificate has been issued by the Director certifying that the subsidiary management corporation has been constituted under the Strata Titles Act 1985;

“management committee”, in relation to a management corporation, means the committee of the management corporation elected under section 56;

“joint management committee”, in relation to a joint management body, means the committee of the joint management body elected under section 22;

“subsidiary management committee”, in relation to a subsidiary management corporation, means the committee of the subsidiary management corporation elected under section 63;

“approved company auditor” has the meaning assigned to it in the Companies Act 1965 [*Act 125*];

“licensed land surveyor” means a surveyor licensed under the Licensed Land Surveyors Act 1958 [*Act 458*];

“development area”—

- (a) in relation to a building or land intended for subdivision into parcels, means any land on which the building or land intended for subdivision into parcels is developed or is in the course of development or intended to be developed; and
- (b) in relation to a subdivided building or land, means any alienated land held as one lot under final title (whether Registry or Land Office title) on which the subdivided building or land is developed;

“local authority area” means any area in a State that has been declared by the State Authority to be a local authority area in accordance with section 3 of the Local Government Act 1976 [*Act 171*];

“Government” means the Federal Government or the State Government;

“special resolution” means a resolution which is passed at a duly convened general meeting of which at least twenty-one days’ notice specifying the proposed resolution has been given, and carried by a majority consisting of not less than three-quarters of the valid votes cast at the general meeting by a show of hands, or if a poll is demanded and taken, by a majority consisting of not less than three-quarters in number of the valid votes cast on such poll;

“comprehensive resolution” means a resolution which—

- (a) is considered at a duly convened general meeting of the management corporation of which at least thirty days’ notice specifying the resolution has been given; and

- (b) at the end of the period of sixty days after the general meeting in paragraph (a) is convened, on a poll, the total of the share units of the parcels for which valid votes are counted for the resolution is at least two-thirds of the aggregate share units of the parcels of all the proprietors who constitute the management corporation at the end of such period;

“unanimous resolution” means a resolution which is passed at a duly convened general meeting of which at least twenty-one days’ notice specifying the proposed resolution has been given, and carried by every valid vote cast at the general meeting by a show of hands, or if a poll is demanded and taken, by every vote cast on such poll;

“exclusive benefit”, in relation to a limited common property, includes but is not limited to the exclusive use or enjoyment of, and right to contributions and earnings in respect of, the limited common property but excludes any proprietary interest;

“Minister” means the Minister charged with the responsibility for local government;

“certified strata plan” has the meaning assigned to it in section 4 of the Strata Titles Act 1985;

“developer” —

- (a) in relation to a development area, means any person or body of persons, by whatever name described, who develops any land for the purpose of residential, commercial or industrial use, or a combination of such uses; and
- (b) in relation to a subdivided building or land, includes the original proprietor of the lot before the subdivision,

and includes the executors, administrators and successors-in-title and permitted assigns of such person or body of persons, and in a case where the person or body of persons is under liquidation, includes such person or body appointed by a court of competent jurisdiction to be the provisional liquidator or liquidator;

“purchaser” means the purchaser of a parcel and includes any person or body who has acquired an interest as a purchaser in the parcel or any person or body for the time being registered as a parcel owner in the register of parcel owners under subsection 30(1);

“proprietor” has the meaning assigned to it in section 4 of the Strata Titles Act 1985;

“original proprietor” has the meaning assigned to it in section 4 of the Strata Titles Act 1985;

“parcel owner” means the purchaser or the developer in respect of those parcels in the development area which have not been sold by the developer;

“Registrar” has the meaning assigned to it in section 4 of the Strata Titles Act 1985;

“Director” has the meaning assigned to it in section 4 of the Strata Titles Act 1985;

“occupier” means the person in actual occupation or control of the parcel or land parcel, but, in the case of premises for lodging purposes, does not include a lodger;

“registered property manager” means a property manager registered under the Valuers, Appraisers and Estate Agents Act 1981 [*Act 242*];

“management corporation” means the management corporation which comes into existence under the Strata Titles Act 1985;

“subsidiary management corporation” means the subsidiary management corporation which is created under the Strata Titles Act 1985;

“Commissioner” means the Commissioner of Buildings appointed under subsection 4(1), and includes any Deputy Commissioner and other officers appointed under subsection 4(1) to exercise the powers or perform the duties imposed on the Commissioner;

“parcel” —

- (a) in relation to a building intended for subdivision, means one of the individual units comprised therein, which (except in the case of an accessory parcel) is to be held under a separate strata title;
- (b) in relation to a land intended for subdivision, means one of the individual units of land parcels which is to be held under a separate strata title;
- (c) in relation to a subdivided building, means one of the individual units comprised therein, which (except in the case of an accessory parcel) is held under a separate strata title; and
- (d) in relation to a subdivided land, means one of the individual units of land parcels which is held under a separate strata title;

“accessory parcel” has the meaning assigned to it in section 4 of the Strata Titles Act 1985;

“land parcel” has the meaning assigned to it in section 4 of the Strata Titles Act 1985;

“local authority” —

- (a) means any local authority established or deemed to have been established under the Local Government Act 1976;
- (b) in relation to the Federal Territory of Putrajaya, means the Perbadanan Putrajaya established under the Perbadanan Putrajaya Act 1995 [*Act 536*];
- (c) in relation to the Federal Territory of Labuan, means the Perbadanan Labuan established under the Perbadanan Labuan Act 2001 [*Act 609*];
- (d) in relation to the Federal Territory of Kuala Lumpur, means the Commissioner of the City of Kuala Lumpur appointed under section 4 of the Federal Capital Act 1960 [*Act 190*]; and
- (e) includes any person or body of persons appointed or authorized under any written law to exercise and perform the powers and functions which are conferred and imposed on a local authority under any written law;

“Tribunal” means the Strata Management Tribunal established under Part IX;

“by-laws” means the by-laws which are in operation in respect of the building or land intended for subdivision into parcels or the subdivided building or land, and the common property as—

- (a) prescribed by the regulations made under section 150 for regulating the control, management, administration, use and enjoyment of the building or land intended for subdivision into parcels or the subdivided building or land, and the common property; or
- (b) provided for in any additional by-laws made under section 32, 70 or 71;

“share units” has the meaning assigned to it in section 4 of the Strata Titles Act 1985;

“aggregate share units” means—

- (a) in relation to a building or land intended for subdivision into parcels, the sum of the allocated share units of the parcels or proposed parcels, including a provisional block, in a development area; or
- (b) in relation to a subdivided building or land, the sum of the share units of the parcels, including a provisional block, as shown in the strata register prepared and maintained by the Registrar under the Strata Titles Act 1985;

“provisional share units” has the meaning assigned to it in section 4 of the Strata Titles Act 1985;

“allocated share units” means the share units assigned to each parcel intended for subdivision by the developer’s licensed land surveyor or in a case where share units have not been so assigned, means the share units assigned under section 8.

Construction of the Act

3. This Act shall be read and construed with the Strata Titles Act 1985 and the subsidiary legislation made under that Act in so far as they are not inconsistent with the provisions of this Act or the regulations made under this Act.

PART II

ADMINISTRATION OF THE ACT

Appointment of Commissioner of Buildings, deputies and other officers

4. (1) The State Authority may, in respect of a local authority area or any other area, appoint an officer to be known as the Commissioner of Buildings and such number of Deputy Commissioners of Buildings and other officers as may be necessary for the purpose of administering and carrying out the provisions of this Act.

(2) The appointment of the Commissioner of Buildings, any Deputy Commissioner and other officer under subsection (1) shall be made by notification in the *Gazette*.

(3) Subject to any general or special direction of the State Authority which is not inconsistent with the provisions of this Act, the Commissioner shall have charge of the administration of this Act and may perform such duties as are imposed and may exercise such powers as are conferred upon him by this Act or any other written law.

(4) Subject to any general or special direction of the Commissioner which is not inconsistent with the provisions of this Act, any powers conferred on and duties to be performed by the Commissioner under this Act or any other written law may be exercised or performed by any Deputy Commissioner or other officer appointed under subsection (1).

(5) The Commissioner may, in relation to any particular matter, delegate in writing all or any of his powers or functions under this Act, except his power of delegation, to any public officer or officer of any local authority.

(6) Any delegation under subsection (5) may be revoked at any time by the Commissioner and shall not prevent the Commissioner from exercising the powers or performing the functions delegated.

PART III

DEALINGS IN BUILDING OR LAND INTENDED FOR
SUBDIVISION INTO PARCELS

Application of this Part

5. (1) This Part shall apply to any sale of a parcel by a developer on or after the commencement of this Act.

(2) For the purpose of this Part, a developer shall be deemed to have sold a parcel or proposed parcel in a development area if by an agreement in writing or by any deed or instrument, conditional or otherwise, the developer has agreed to sell, convey, transfer, assign or otherwise dispose of its interest in the parcel or proposed parcel to another person for valuable consideration or otherwise.

Schedule of parcels to be filed with the Commissioner before sale of any parcel

6. (1) The developer of any building or land intended for subdivision into parcels in a development area shall not sell any parcel or proposed parcel unless—

(a) a schedule of parcels showing the proposed share units of each parcel or proposed parcel and the total share units of all the parcels has been filed with the Commissioner under this Part; and

(b) in the case of any phased development, the schedule of parcels filed with the Commissioner shows the proposed quantum of provisional share units for each provisional block.

(2) In the case of any phased development, the developer shall also not sell any parcel or proposed parcel in any provisional block unless the developer has filed with the Commissioner an amended schedule of parcels showing the proposed allocation of the provisional share units among the new parcels in the provisional block.

(3) A schedule of parcels filed under subsection (1) or an amended schedule of parcels filed under subsection (2) shall—

- (a) comprise a location plan, storey plan and delineation plan as specified in section 10 of the Strata Titles Act 1985;
- (b) show a legend of all parcels, all common properties and all accessory parcels, and in the case of accessory parcels, specify in the legend the parcels they are made appurtenant to;
- (c) contain a certificate by the developer's licensed land surveyor that the buildings or land parcels shown in the schedule of parcels or amended schedule of parcels, as the case may be, are capable of being subdivided under the provisions of the Strata Titles Act 1985;
- (d) contain a certificate by the developer's architect or engineer that the buildings or land parcels to be constructed in accordance with the approved plans and specifications and any amendments to the plans and specifications under the Street, Drainage and Building Act 1974 [*Act 133*] and any by-laws made under that Act, prepared by the developer's architect or engineer, are capable of being subdivided under the provisions of the Strata Titles Act 1985; and
- (e) contain such other details as may be specified by the Commissioner.

(4) The proposed share units of each parcel or proposed parcel as shown in the schedule of parcels filed with the Commissioner under subsection (1), and the proposed allocation of the provisional share units among the parcels in a provisional block as shown in the amended schedule of parcels filed with the Commissioner under subsection (2) shall be deemed to be the allocated share units assigned to each parcel for the purpose of Part IV of this Act, until such time as the share units of each parcel have been approved by the Director pursuant to section 18 of the Strata Titles Act 1985.

(5) A copy of the schedule of parcels or an amended schedule of parcels, as the case may be, filed with the Commissioner under this Part shall be—

- (a) exhibited at all times in a conspicuous position in any office and branch office of the developer and at such place where sale of a parcel is conducted; and
- (b) submitted to the Director in any application for subdivision of building or land under the provisions of the Strata Titles Act 1985.

(6) Any developer who fails to comply with subsection (1), (2) or (5) commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(7) Any person who—

- (a) knowingly makes or produces or causes to be made or produced any false or fraudulent certification that purports to comply with the requirement of paragraph (3)(c) or (d); or
- (b) negligently makes or produces or causes to be made or produced any false certification that purports to comply with the requirement of paragraph (3)(c) or (d),

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding two hundred and fifty thousand ringgit or to both.

PART IV

STRATA MANAGEMENT BEFORE EXISTENCE OF MANAGEMENT CORPORATION

Chapter 1

General

Application of this Part

7. (1) Subject to Part V, this Part shall apply to a development area where before or after the commencement of this Act—

- (a) vacant possession of a parcel in the building or land intended for subdivision into parcels has been delivered by the developer to a purchaser; and

- (b) at the time of delivery of vacant possession of the parcel, the management corporation has not come into existence.

(2) In this Part, “developer’s management period” means the period commencing from the date of delivery of vacant possession of a parcel to a purchaser by the developer until one month after the establishment of the joint management body or such other time as may be extended by the Commissioner.

Allocated share units

8. (1) Where the sale of a parcel by a developer was made before the commencement of this Act and no share units have been assigned to each parcel by the developer’s licensed land surveyors, the share units for each parcel shall be assigned by any person or body who has a duty or is responsible under this Part to maintain and manage any building or land intended for subdivision into parcels and the common property in accordance with the formula set out in the First Schedule, and such assignment shall be deemed to be the allocated share units of each parcel when the assignment is filed with the Commissioner.

(2) The allocated share units assigned to each parcel by the developer’s licensed land surveyors or the share units for each parcel assigned pursuant to subsection (1) shall be deemed to be the allocated share units assigned to each parcel for the purpose of this Part until such time as the share units of each parcel have been approved by the Director pursuant to section 18 of the Strata Titles Act 1985.

Chapter 2

Management by developer before joint management body is established

Duties and powers of developer during developer’s management period

9. (1) Subject to the provisions of this Act, the developer shall, during the developer’s management period, be responsible to maintain and manage properly any building or land intended for subdivision into parcels and the common property.

(2) Without prejudice to the generality of subsection (1), the duties of the developer during the developer's management period shall be as follows:

- (a) to determine and impose the Charges to be deposited into the maintenance account;
- (b) to determine and impose the contribution to the sinking fund to be deposited into the sinking fund account;
- (c) to effect insurance according to this Act;
- (d) to comply with any notice or order given or made by the local authority or any competent public authority requiring the abatement of any nuisance on the common property, or ordering repairs or other work to be done in respect of the common property or other improvements to the common property;
- (e) to prepare and maintain a register of all parcel owners of the buildings or lands intended for subdivision into parcels;
- (f) to ensure that the accounts required to be maintained by the developer under this Act are audited and to provide audited financial statements for information to all purchasers;
- (g) to enforce by-laws; and
- (h) to do such other things as may be expedient or necessary for the proper maintenance and management of the buildings or lands intended for subdivision into parcels and the common property.

(3) The powers of the developer during the developer's management period shall be as follows:

- (a) to collect the Charges from the parcel owners in proportion to the allocated share units of their respective parcels;
- (b) to collect the contribution to the sinking fund from the parcel owners;
- (c) to authorize expenditure for the carrying out of maintenance and management of the buildings or lands intended for subdivision into parcels and the common property;

- (d) to recover from any parcel owner any sum expended by the developer in respect of that parcel in complying with any such notice or order referred to under paragraph (2)(d); and
- (e) to do all things reasonably necessary for the performance of its duties under this Act.

(4) During the developer's management period—

- (a) the developer shall ensure that a separate and distinct area is set aside out of the common property of the development area for the sole purpose of an administration office for the carrying out of duties of the developer under this Act; and
- (b) the developer shall not enter into any contract relating to the maintenance and management of a building or land intended for subdivision into parcels and the common property in the development area for any period after the expiration of the developer's management period.

(5) Any developer who fails to comply with subsection (1), (2) or (4) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Developer to establish maintenance account

10. (1) The developer shall open one maintenance account in respect of each development area with a bank or financial institution—

- (a) if vacant possession of a parcel was delivered before the commencement of this Act, on the date of the commencement of this Act; or
- (b) if vacant possession of a parcel is delivered after the commencement of this Act, at any time before the delivery of vacant possession,

but in any case, before the Charges are collected from the purchaser of any parcel in the development area.

(2) Each maintenance account shall be operated and maintained by the developer until the expiry of the developer's management period.

(3) The developer shall deposit into the maintenance account—

- (a) the Charges received by the developer from the purchasers in the development area; and
- (b) the Charges to be paid by the developer in respect of those parcels in the development area which have not been sold,

and all such moneys shall be deposited into the maintenance account within three working days of receiving the moneys.

(4) Notwithstanding any other written law to the contrary, all moneys in the maintenance account shall—

- (a) not form part of the property of the developer;
- (b) be held in trust for the purchasers; and
- (c) only be used by the developer solely for the purpose of meeting the actual or expected general or regular expenditure necessary in respect of the following matters:
 - (i) maintaining the common property in good condition on a day-to-day basis;
 - (ii) paying for the expenses incurred in providing cleaning services for the common property, security services and amenities for the occupiers of the building;
 - (iii) paying any premiums for the insurance effected under this Act;
 - (iv) complying with any notice or order given or made by the local authority in respect of periodical inspection of any building in the development area in the manner as specified in the Street, Drainage and Building Act 1974;
 - (v) minor painting work on premises of the common property;

- (vi) carrying out inspection of all electrical wiring systems of the common property and replacing or repairing any faulty wiring system, if any;
- (vii) carrying out inspection, maintenance and repair of the main water tanks;
- (viii) paying rent and rates, if any;
- (ix) paying any fee incurred for the auditing of the accounts required to be maintained by the developer under this Act;
- (x) paying all charges reasonably incurred for the administration of the accounts required to be maintained by the developer under this Act as may be determined by the Commissioner;
- (xi) paying the remuneration or fees for the managing agent appointed under Part VI;
- (xii) paying any expenses, costs or expenditure in relation to the procurement of services, including the engagement of consultants, legal fees or costs and other fees and costs, properly incurred or accepted by the developer in the performance of its functions and the exercise of its powers under this Act; or
- (xiii) meeting other expenses of a general or regular nature relating to the maintenance and management of the building or land intended for subdivision into parcels and the common property.

(5) In the event that—

- (a) the developer enters into any composition or arrangement with his creditors or has a receiving order or an adjudication order made against him; or
- (b) the developer, being a company, goes into voluntary or compulsory liquidation,

the moneys in the maintenance account shall vest in the administrator, official receiver, trustee in bankruptcy or liquidator, as the case may be, to be applied for all or any of the purposes for which moneys in the maintenance account are authorized to be applied under this Act.

(6) Any money remaining in the maintenance account, after all payments have been properly made under this Act, shall be held by the administrator, official receiver, trustee in bankruptcy or liquidator, as the case may be, and shall be transferred into a maintenance account in the name of the joint management body.

(7) Any person who fails to comply with subsection (1), (2), (3), (4), (5) or (6) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Developer to establish sinking fund account

11. (1) The developer shall open one sinking fund account in respect of each development area with a bank or financial institution—

- (a) if vacant possession of a parcel was delivered before the commencement of this Act, on the date of the commencement of this Act; or
- (b) if vacant possession of a parcel is delivered after the commencement of this Act, at any time before the delivery of vacant possession,

but in any case, before the contribution to the sinking fund is collected from the purchaser of any parcel in the development area.

(2) Each sinking fund account shall be operated and maintained by the developer until the expiry of the developer's management period.

(3) The developer shall deposit into the sinking fund account—

- (a) the contribution to the sinking fund received by the developer from the purchasers in the development area; and

- (b) the contribution to the sinking fund to be paid by the developer in respect of those parcels in the development area which have not been sold by the developer,

and all such moneys shall be deposited into the sinking fund account within three working days of receiving the moneys.

(4) Notwithstanding any other written law to the contrary, all moneys in the sinking fund account shall—

- (a) not form part of the property of the developer;
- (b) be held in trust for the purchasers; and
- (c) be used by the developer solely for the purpose of meeting the actual or expected capital expenditure necessary in respect of the following matters:
 - (i) the painting or repainting of any part of the common property;
 - (ii) the acquisition of any movable property for use in relation to the common property; or
 - (iii) the renewal or replacement of any fixture or fitting comprised in any common property.

(5) In the event that—

- (a) the developer enters into any composition or arrangement with his creditors or has a receiving order or an adjudication order made against him; or
- (b) the developer, being a company, goes into voluntary or compulsory liquidation,

the moneys in the sinking fund account shall vest in the administrator, official receiver, trustee in bankruptcy or liquidator, as the case may be, to be applied for all or any of the purposes for which moneys in the sinking fund account are authorized to be applied under this Act.

(6) Any money remaining in the sinking fund account, after all payments have been properly made under this Act, shall be held by the administrator, official receiver, trustee in bankruptcy or liquidator, as the case may be, and shall be transferred into a sinking fund account in the name of the joint management body.

(7) Any person who fails to comply with subsection (1), (2), (3), (4), (5) or (6) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Purchaser and developer to pay Charges, and contribution to sinking fund

12. (1) Each purchaser shall pay the Charges, and contribution to the sinking fund, in respect of his parcel to the developer for the maintenance and management of the buildings or lands intended for subdivision into parcels and the common property in a development area.

(2) The developer shall pay the Charges, and contribution to the sinking fund, in respect of those parcels in the development area which have not been sold, being a sum equivalent to the Charges, and contribution to the sinking fund, payable by the purchasers to the developer had the parcels been sold.

(3) The amount of the Charges to be paid under subsections (1) and (2) shall be determined by the developer in proportion to the allocated share units of each parcel.

(4) The amount of contribution to the sinking fund to be paid under subsections (1) and (2) shall be a sum equivalent to ten per cent of the Charges.

(5) The purchaser shall, within fourteen days of receiving a notice from the developer, pay the Charges, and contribution to the sinking fund, to the developer and if any sum remains unpaid by the purchaser in respect of his parcel at the expiry of the period of fourteen days, the developer may recover the sum in the manner set out in section 34.

(6) If any sum remains unpaid by the purchaser in respect of his parcel at the expiry of the period of fourteen days specified in subsection (5), the purchaser shall pay interest at the rate of ten per cent per annum on a daily basis.

(7) Any purchaser who is not satisfied with the sums determined by the developer under subsection (3) or (4) may apply to the Commissioner for a review and the Commissioner may—

- (a) determine the sum to be paid as the Charges, or contribution to the sinking fund; or
- (b) instruct the developer to appoint, at the developer's own cost and expense, a registered property manager to recommend the sum payable as the Charges, or contribution to the sinking fund, and submit a copy of the registered property manager's report to the Commissioner.

(8) Upon receiving the report under paragraph (7)(b), the Commissioner shall determine the sum payable as he thinks just and reasonable, and any sum so determined by the Commissioner shall be deemed to be the sum payable as the Charges, or contribution to the sinking fund.

(9) Any developer who fails to comply with subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding three years or to both and, in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for every day or part thereof during which the offence continues after conviction.

Prohibition on collection of moneys before accounts are opened

13. (1) No person shall at any time collect any Charge or contribution to the sinking fund from any purchaser for the maintenance and management of any building or land intended for subdivision into parcels and the common property unless—

- (a) a maintenance account and a sinking fund account have been opened in respect of the development area; and
- (b) vacant possession of the parcel purchased by the purchaser has been delivered to the purchaser.

(2) Notwithstanding subsection (1), any developer of a development area which has been completed on or before the commencement of this Act and has, immediately before that date, been collecting moneys from the purchasers for the maintenance and

management of any building or land intended for subdivision into parcels and the common property comprised in the development area, may continue to do so until the joint management body is established, provided that all moneys shall be collected and dealt with by the developer in accordance with this Act.

(3) Any person who fails to comply with subsection (1) or (2) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Duties of developer in relation to accounts

14. (1) The developer shall, in respect of the maintenance account and the sinking fund account—

- (a) cause to be prepared such accounts and records of accounts as will sufficiently explain the transactions of the accounts and enable true and fair balance sheet, income and expenditure statement and profit and loss statement to be prepared for the period starting from the commencement of the developer's management period;
- (b) appoint an approved company auditor to carry out the audit of the accounts annually and the accounts shall be—
 - (i) in the case where moneys are to be transferred under paragraph 15(1)(a), audited up to the date of the actual transfer; and
 - (ii) in the case where the accounts are to be presented at the first annual general meeting of the joint management body, audited up to a date not earlier than three months before the meeting;
- (c) file with the Commissioner a certified true copy of the audited accounts together with the auditor's report within fourteen days of the accounts being audited; and
- (d) permit the Commissioner or any person authorized by the Commissioner in writing to act on its behalf full and free access to the accounts and records of accounts and to make copies or extracts of such accounts and records of accounts.

(2) Notwithstanding subsection (1), the Commissioner shall have, at any time, the right to appoint an approved company auditor to investigate the accounts and records of accounts specified in subsection (1), and the developer shall pay all the expenses incurred for that purpose.

(3) The developer shall furnish to the Commissioner or any public authority such returns, reports, accounts and information with respect to its activities and finances as the Commissioner may, from time to time, require or direct.

(4) The returns, reports, accounts and information referred to in subsection (3) shall be in such form as the Commissioner may, from time to time, specify.

(5) Any developer who fails to comply with subsection (1), (2), (3) or (4) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Handing over by developer to the joint management body

15. (1) The developer shall, before the developer's management period expires—

(a) transfer all balances of moneys in the maintenance account and the sinking fund account, after payment of all the expenditure which have been properly charged to the accounts, to the joint management body;

(b) hand over to the joint management body—

(i) the administration office set up by the developer under paragraph 9(4)(a);

(ii) the audited accounts of the maintenance account and the sinking fund account or, if such accounts have not been audited, the unaudited accounts;

(iii) all the assets of the development area;

- (iv) all records relating to and necessary for the maintenance and management of the buildings or lands intended for subdivision into parcels and the common property of the development area; and
- (v) all invoices, receipts and payment vouchers in respect of the maintenance account and sinking fund account.

(2) If only unaudited accounts have been handed over under subparagraph (1)(b)(ii), the developer shall, not more than three months after the expiry of the developer's management period, hand over to the joint management body the audited accounts up to the date of transfer of the balances of moneys referred to in paragraph (1)(a).

(3) Without prejudice to the generality of subparagraph (1)(b)(iv), the developer shall deliver to the joint management body copies of all of the following documents:

- (a) all approved plans for buildings or lands intended for subdivision into parcels relating to the development area;
- (b) any document in the developer's possession that indicates, as far as practicable, the actual location of any pipe, wire, cable, chute, duct or other facility for the passage or provision of systems or services, if the developer has reason to believe that the pipe, wire, cable, chute, duct or other facility is not located as shown on an approved plan or an approved amended plan;
- (c) all contracts entered into by the developer in respect of the maintenance or management of any building or land intended for subdivision into parcels and the common property comprised in the development area;
- (d) a copy of the schedule of parcels or the amended schedule of parcels filed with the Commissioner under subsection 6(1) or (2), if applicable, or a copy of the proposed strata plan filed with the Director under the provisions of the Strata Titles Act 1985, if any;

- (e) the names and addresses of such contractors, subcontractors and persons who supplied labour or materials to the development area during the construction of any building or land intended for subdivision into parcels and the common property comprised in the development area;
- (f) all warranties, manuals, schematic drawings, operating instructions, service guides, manufacturer's documentation and other similar information in respect of the construction, installation, operation, maintenance, repair and servicing of any common property, including any warranty or information provided to the developer by any person referred to in paragraph (e);
- (g) the register of all parcel owners of the buildings or lands intended for subdivision into parcels; and
- (h) the original copy of all insurance policies effected under this Act.

(4) Any developer who fails to comply with subsection (1), (2) or (3) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both and, in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for every day or part thereof during which the offence continues after conviction.

Balances not transferred shall vest in joint management body

16. (1) If any balance of moneys in the maintenance account and in the sinking fund account has not been transferred by the developer under paragraph 15(1)(a), the moneys shall vest in the joint management body on the date of the expiry of the developer's management period.

(2) Any right, power or remedy granted to the developer under this Part in respect of the Charges, contribution to the sinking fund, and any other assets of the maintenance account and the sinking fund account, shall vest in the joint management body on the date of the expiry of the developer's management period, and the joint management body shall have the same right, power or remedy as if it had at all times been a right, power or

remedy of the joint management body, including those rights in respect of any legal proceedings or applications to any authority by the developer pending immediately before the expiry of the developer's management period.

(3) Any judgment or award of any arbitral or other tribunal obtained by a developer in respect of the Charges, contribution to the sinking fund and any other assets of the maintenance account and the sinking fund account, and not fully satisfied before the expiry of the developer's management period shall be enforceable by the joint management body.

Chapter 3

Management by joint management body

Establishment of a joint management body

17. (1) A joint management body shall be established upon the convening of the first annual general meeting of that joint management body—

- (a) if vacant possession was delivered before the commencement of this Act, not later than twelve months from the commencement of this Act; or
- (b) if vacant possession is delivered after the commencement of this Act, not later than twelve months from the date of delivery of vacant possession of a parcel to a purchaser.

(2) The joint management body established by subsection (1) shall be a body corporate having perpetual succession and a common seal.

(3) The joint management body may sue and be sued in its name.

(4) The joint management body shall comprise the developer and the purchasers.

(5) If the management corporation comes into existence before the first annual general meeting of the joint management body specified in subsection (1) is convened—

- (a) the first annual general meeting shall not be required to be convened and no joint management body shall be established for that development area; and
- (b) the provisions in Part V of this Act shall apply to the development area.

Duty of developer to convene first annual general meeting of joint management body

18. (1) It shall be the duty of the developer to convene the first annual general meeting of the joint management body within the period specified in subsection 17(1).

(2) Any developer who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(3) The developer shall give written notice of the first annual general meeting of the joint management body to all purchasers not less than fourteen days before the meeting, and a copy of such written notice shall be displayed at a conspicuous part of the development area.

(4) The developer shall prepare and place before the first annual general meeting of the joint management body for consideration an annual budget that sufficiently sets the expected and estimated expenditure required to properly maintain and manage the buildings or lands intended for subdivision into parcels and the common property which shall be for a period of twelve months starting on the first day of the month following the date of the first annual general meeting.

(5) If the developer fails to convene the first annual general meeting of the joint management body within the period specified in subsection 17(1), the Commissioner may appoint any person to convene the first annual general meeting of the joint management body within such time as may be specified by the Commissioner, and the developer shall pay all the expenses incurred for that purpose.

First annual general meeting of joint management body

19. (1) The agenda for the first annual general meeting of the joint management body shall include the following matters:

- (a) to determine the number of members of the joint management committee and to elect the members of the joint management committee;
- (b) to consider the annual budget prepared by the developer under subsection 18(4);
- (c) subject to subsections 25(2) and (3), to determine the amount to be paid by a parcel owner as the Charges, and contribution to the sinking fund;
- (d) to determine the rate of interest payable by a parcel owner in respect of any late payment of the Charges, or contribution to the sinking fund, by the parcel owner;
- (e) to consider the audited accounts specified in subparagraph 14(1)(b)(ii);
- (f) to confirm the taking over by the joint management body of insurances effected by the developer under this Act;
- (g) to make additional by-laws; and
- (h) to consider any other matter connected with the maintenance and management of the common property of the building or land intended for subdivision into parcels.

(2) If within half an hour after the time appointed for the meeting no purchaser entitled to vote turns up or all the purchasers present, for any reason, refuse to be members of the joint management committee, the developer or the person appointed by the Commissioner to convene the meeting shall, within seven days of the date of the meeting inform the Commissioner of the fact and the Commissioner may—

- (a) appoint a new date for the election of the joint management committee; or
- (b) appoint a managing agent under Part VI to maintain or manage the buildings or lands intended for subdivision into parcels and the common property comprised in the development area.

Duty of joint management body to inform its name to Commissioner

20. (1) The joint management body shall inform and register with the Commissioner the name of the joint management body within thirty days from the date of the first annual general meeting.

(2) The Commissioner may, upon an application by the joint management body, issue a certificate certifying that the joint management body has been duly established under this Act on the day when the first annual general meeting was convened.

(3) The constitution of the joint management body under this Act shall not be affected in the event that the first annual general meeting is subsequently invalidated or the provision of subsection 19(1) is not complied with or a situation under subsection 19(2) occurs.

Duties and powers of joint management body

21. (1) The duties of the joint management body shall be as follows:

- (a) to properly maintain and manage the building or land intended for subdivision into parcels and the common property, and keep it in a state of good and serviceable repair;
- (b) to determine and impose the Charges to be deposited into the maintenance account for the purpose of the proper maintenance and management of the buildings or lands intended for subdivision into parcels and the common property;
- (c) to determine and impose the contribution to the sinking fund to be deposited into the sinking fund account for the purpose of meeting the actual or expected expenditure specified under subsection 24(2);
- (d) to effect insurance according to this Act or to insure against such other risks as the parcel owners may by special resolution direct;

- (e) to comply with any notice or order given or made by the local authority or any competent public authority requiring the abatement of any nuisance on the common property, or ordering repairs or other work to be done in respect of the common property or other improvements to the common property;
- (f) to prepare and maintain a register of all parcel owners of the buildings or lands intended for subdivision into parcels;
- (g) to ensure that the accounts required to be maintained by the joint management body under this Act are audited and to provide audited financial statements for the information to its members;
- (h) to enforce the by-laws; and
- (i) to do such other things as may be expedient or necessary for the proper maintenance and management of the buildings or lands intended for subdivision into parcels and the common property.

(2) The powers of the joint management body shall be as follows:

- (a) to collect the Charges from the parcel owners in proportion to the allocated share units of their respective parcels;
- (b) to collect the contribution to the sinking fund from the parcel owners;
- (c) to authorize expenditure for the carrying out of the maintenance and management of the buildings or lands intended for subdivision into parcels and the common property;
- (d) to recover from any parcel owner any sum expended by the joint management body in respect of that parcel in complying with any such notice or order as referred to in paragraph (1)(e);
- (e) to purchase, hire or otherwise acquire movable property for use by the parcel owners in connection with their enjoyment of the common property;

- (f) to employ or arrange and secure the services of any person or agent to undertake the maintenance and management of the common property of the building or lands intended for subdivision into parcels provided that if such person or agent is an independent third party, he shall be a registered property manager;
- (g) subject to subsection 32(3), to make additional by-laws for the proper maintenance and management of the buildings or lands intended for subdivision into parcels and the common property; and
- (h) to do all things reasonably necessary for the performance of its duties under this Act and for the enforcement of the by-laws.

(3) Notwithstanding any other provisions of this Act, the joint management body shall not enter into any contract relating to the maintenance and management of any building or land intended for subdivision into parcels and the common property in the development area for any period exceeding twelve months.

(4) Where—

- (a) the joint management body incurs any expenditure or performs any repairs, work or act that it is required or authorized by or under this Part or by or under any other written law to perform, irrespective of whether or not the expenditure was incurred or the repairs, work or act were or was performed consequent upon the service of any notice or order on it by any Government or statutory authority; and
- (b) the expenditure or the repairs, work or act referred to in paragraph (a) were or was rendered necessary by reason of any willful or negligent act or omission on the part of, or breach of any provision of its by-laws by, any parcel owner or his tenant, lessee, licensee or invitee,

the amount of the expenditure of any money expended by the joint management body in performing the repairs, work or act shall be recoverable by it from that parcel owner as a debt in an action in any court of competent jurisdiction or before the Tribunal.

(5) The generality of this section shall not be prejudiced by any other provision in this Part conferring a power or imposing a duty on the joint management body.

Joint management committee

22. (1) The joint management body shall elect a joint management committee which shall, subject to any restriction imposed or direction given by the joint management body at a general meeting, perform the joint management body's duties and conduct the joint management body's business on its behalf, and may for that purpose exercise any of the powers of the joint management body.

(2) The provisions of the Second Schedule shall apply to the joint management body and the joint management committee with modifications, including the following:

- (a) a reference to the "management corporation" shall be construed as a reference to the joint management body;
- (b) a reference to the "management committee" shall be construed as a reference to the joint management committee;
- (c) a reference to the "proprietors" shall be construed as a reference to the parcel owners;
- (d) a reference to the "share units" shall be construed as a reference to the allocated share units;
- (e) the constitution of the joint management body and the joint management committee shall include the developer;
- (f) at any general meeting, including the first annual general meeting, and for the purpose of determining the quorum, the developer shall be considered as one person, regardless of the number of parcels in the development area which have not been sold; and
- (g) at any general meeting, including the first annual general meeting, and for the purpose of determining voting rights, the developer, in respect of the parcels in the development area which have not been sold, shall have the same voting rights as that of a purchaser.

Joint management body to establish maintenance account

23. (1) The joint management body shall open and maintain a maintenance account with a bank or financial institution for the purposes specified in subsection (3).

(2) The maintenance account shall be administered and controlled by the joint management body and shall consist of—

- (a) all balances of moneys in the maintenance account transferred by the developer to the joint management body under paragraph 15(1)(a);
- (b) all or any part of the Charges imposed by or payable to the joint management body under this Act;
- (c) all moneys derived from the lease, rent or use of any property which may be lawfully charged by the joint management body;
- (d) all other moneys and property which may in any manner become payable to or vested in the joint management body in respect of any matter incidental to its functions and powers; and
- (e) all other moneys lawfully received by the joint management body, including interest, donation and trust.

(3) The maintenance account referred to in subsection (1) shall be used solely for the purpose of meeting the actual or expected general or regular expenditure necessary in respect of the following matters:

- (a) maintaining the common property in good condition on a day-to-day basis;
- (b) paying for the expenses incurred in providing cleaning services for the common property, security services and amenities for the occupiers of the building;
- (c) paying any premiums for the insurance effected under this Act or any other insurance approved by a special resolution in a general meeting;
- (d) complying with any notice or order given or made by the local authority in respect of periodical inspection of any building in the development area in the manner as specified in the Street, Drainage and Building Act 1974;

- (e) minor painting works on the premises of the common property;
- (f) carrying out inspection of all electrical wiring systems of the common property and replacing or repairing any faulty wiring systems, if any;
- (g) carrying out inspection, maintenance and repair of the main water tanks;
- (h) paying rent and rates, if any;
- (i) paying any fee incurred for the auditing of the accounts required to be maintained by the joint management body under this Act;
- (j) paying all charges reasonably incurred for the administration of the accounts required to be maintained by the joint management body under this Act as may be determined by the Commissioner;
- (k) paying the remuneration or fees for the managing agent appointed under Part VI;
- (l) paying for the allowances and other expenses of the members of the joint management body and members of the joint management committee according to such rates as may be approved by the Commissioner;
- (m) paying any expenses, costs or expenditure in relation to the procurement of services, including the engagement of consultants, legal fees or costs and other fees and costs, properly incurred or accepted by the joint management body in the performance of its functions and the exercise of its power under this Act; or
- (n) meeting other expenses of a general or regular nature relating to the maintenance and management of the building or land intended for subdivision into parcels and the common property.

Joint management body to establish sinking fund account

24. (1) The joint management body shall open and maintain a sinking fund account with a bank or financial institution, into which shall be deposited all balances of moneys in the sinking

fund account transferred by the developer to the joint management body under paragraph 15(1)(a), and all contributions to the sinking fund paid by the parcel owners to the joint management body.

(2) The sinking fund account shall be used solely for the purposes of meeting the actual or expected capital expenditure in respect of the following matters:

- (a) the painting or repainting of any part of the common property;
- (b) the acquisition of any movable property for use in relation to the common property;
- (c) the renewal or replacement of any fixture or fitting comprised in any common property;
- (d) the upgrading and refurbishment of the common property;
or
- (e) any other capital expenditure as the joint management body deems necessary.

Parcel owners to pay Charges, and contribution to the sinking fund, to the joint management body

25. (1) Each purchaser shall pay the Charges, and contribution to the sinking fund, in respect of his parcel to the joint management body for the maintenance and management of the buildings or lands intended for subdivision into parcels and the common property in a development area.

(2) The developer shall pay the Charges, and contribution to the sinking fund, to the joint management body in respect of those parcels in the development area which have not been sold, being a sum equivalent to the Charges, and contribution to the sinking fund, payable by the purchasers to the joint management body had the parcels been sold.

(3) The amount of the Charges to be paid under subsections (1) and (2) shall be determined by the joint management body from time to time in proportion to the allocated share units of each parcel.

(4) The amount of contribution to the sinking fund to be paid under subsections (1) and (2) shall be a sum equivalent to ten per cent of the Charges unless otherwise determined by the joint management body from time to time at a general meeting which shall not be less than ten percent of the Charges.

(5) A parcel owner shall, within fourteen days of receiving a notice from the joint management body, pay the Charges, and contribution to the sinking fund, to the joint management body.

(6) If any sum remains unpaid by the parcel owner in respect of his parcel at the expiry of the period of fourteen days specified in subsection (5)—

- (a) the joint management body may recover the sum in the manner set out in section 34; and
- (b) the parcel owner shall pay interest at the rate to be determined by the joint management body under paragraph 19(1)(d) but such interest shall not exceed ten per cent per annum.

Duties of joint management body in relation to accounts

26. (1) The joint management body shall in respect of the maintenance account and the sinking fund account—

- (a) cause to be prepared such accounts and records of accounts as will sufficiently explain the transactions of the accounts and enable true and fair balance sheet, income and expenditure statement and profit and loss statement to be prepared for the period starting from its first annual general meeting;
- (b) appoint an approved company auditor to carry out the audit of the accounts annually and the accounts shall be—
 - (i) in the case where moneys are to be transferred under paragraph 27(2)(a), audited up to the date of the actual transfer; and
 - (ii) in the case where the accounts are to be presented at the first annual general meeting of the management corporation, audited up to a date not earlier than three months before the meeting;

- (c) file with the Commissioner a certified true copy of the audited accounts together with the auditor's report within fourteen days of the accounts being audited; and
- (d) permit the Commissioner or any person authorized by the Commissioner in writing to act on its behalf full and free access to the accounts and records of accounts and to make copies or extracts of those accounts and records of accounts.

(2) Notwithstanding subsection (1), the Commissioner shall have, at any time, the right to appoint an approved company auditor to investigate the accounts and records of accounts specified in subsection (1), and the joint management body shall pay all the expenses incurred for that purpose.

(3) The joint management body shall furnish to the Commissioner or any public authority such returns, reports, accounts and information with respect to its activities and finances as the Commissioner may, from time to time, require or direct.

(4) The returns, reports, accounts and information referred to in subsection (3) shall be in such form as the Commissioner may, from time to time, specify.

(5) If the joint management body fails to comply with subsection (1), (2), (3) or (4), every member of the joint management committee commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(6) In proceedings against the member of the joint management committee for an offence under subsection (5), it is a defence if the member proves that—

- (a) the offence was committed without his knowledge, consent or connivance; and
- (b) he had taken all reasonable precautions and had exercised due diligence to prevent the commission of the offence.

Dissolution of joint management body

27. (1) The joint management body shall dissolve three months from the date of the first annual general meeting of the management corporation for the development area.

(2) The joint management body shall, not more than one month from the date of the first annual general meeting of the management corporation—

(a) transfer all balances of moneys in the maintenance account and in the sinking fund account, after payment of all the expenditure which have been properly charged to the accounts, to the management corporation;

(b) hand over to the management corporation—

(i) any additional by-laws;

(ii) the audited accounts of the maintenance account and the sinking fund account or, if such accounts have not been audited, the unaudited accounts;

(iii) all the assets and liabilities of the joint management body;

(iv) all the documents delivered by the developer to the joint management body under subsection 15(3); and

(v) all records relating to and necessary for the maintenance and management of the building or land intended for subdivision into parcels and the common property.

(3) If only unaudited accounts have been handed over under subparagraph (2)(b)(ii), the joint management body shall hand over to the management corporation the audited accounts of the joint management body not more than three months from the date of the first annual general meeting of the management corporation.

(4) If the joint management body fails to comply with subsection (2) or (3), every member of the joint management committee commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(5) In proceedings against the member of the joint management committee for an offence under subsection (4), it is a defence if the member proves that—

- (a) the offence was committed without his knowledge, consent or connivance; and
- (b) he had taken all reasonable precautions and had exercised due diligence to prevent the commission of the offence.

Balances not transferred shall vest in management corporation

28. (1) If any balance of moneys in the maintenance account and in the sinking fund account has not been transferred by the joint management body under paragraph 27(2)(a), the moneys shall vest in the management corporation on the date of the expiry of the period specified in subsection 27(2).

(2) Any right, power or remedy granted to, or any liability imposed on, the joint management body under this Part in respect of the development area, including Charges, contribution to the sinking fund, and any other assets of maintenance account and the sinking fund account, shall vest in the management corporation on the date of the expiry of the period specified in subsection 27(2), and the management corporation shall have the same right, power, remedy or liability as if it had at all times been a right, power, remedy or liability of the management corporation, including those rights in respect of any legal proceedings or applications to any authority by or against the joint management body pending immediately before the date of the expiry of the period specified in subsection 27(2).

(3) Any judgment or award of any arbitral or other tribunal obtained by the joint management body in respect of the development area, including the Charges, contribution to the sinking fund and any other assets of the maintenance account and the sinking fund account, and not fully satisfied before the expiry of the period specified in subsection 27(2), shall be enforceable by the management corporation.

Duty of developer in respect of Charges for building or land intended for subdivision into parcels completed before commencement of this Act

29. (1) Any developer of a development area which has been completed before the commencement of this Act, but for which a management corporation has not been established shall, not later than six months following the establishment of the joint management body, submit to the Commissioner an account audited by an approved company auditor of all moneys collected and expended for the purpose of the maintenance and management of the common property and the sinking fund, prior to the establishment of the joint management body.

(2) The Commissioner may, upon request by the developer of a development area, extend the period stated in subsection (1) for another period not exceeding three months.

(3) Any developer who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Register of parcel owners

30. (1) The developer, during the developer's management period, or the joint management body, as the case may be, shall prepare and maintain a register in such form as the Commissioner may require, containing the following particulars in respect of all the parcels in the development area:

- (a) the allocated share units assigned to each parcel;
- (b) the floor area of the parcel referred to in paragraph (a);
- (c) the name and address of every parcel owner and if the parcel owner is not a resident of Malaysia, the address in Malaysia at which notices may be served on the parcel owner; and

(d) the name and address of the solicitor acting for the parcel owner in the sale and purchase of the parcel, if any.

(2) Any developer who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(3) If a joint management body fails to comply with subsection (1), every member of the joint management committee commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(4) In proceedings against the member of the joint management committee for an offence under subsection (3), it is a defence if the member proves that—

(a) the offence was committed without his knowledge, consent or connivance; and

(b) he had taken all reasonable precautions and had exercised due diligence to prevent the commission of the offence.

Right of parcel owner or prospective purchaser

31. Subject to a payment of a fee not exceeding fifty ringgit, on application by or on behalf of a person who is a parcel owner, or by or on behalf of a person who is a prospective purchaser, the developer or the joint management body, as the case may be, shall issue to that person a certificate certifying—

(a) the amount of the Charges, and contribution to the sinking fund, payable by a parcel owner;

(b) the time and manner of payment of the amount of such Charges, and contributions to the sinking fund;

(c) the amount, if any, of arrears of such Charges, and contributions to the sinking fund, in respect of the parcel;

(d) the sum standing to the credit of the maintenance account and the sum in the account that has been committed or reserved for expenses already incurred by the developer or the joint management body, as the case may be;

- (e) the sum standing to the credit of the sinking fund account and the sum in the account that has been committed or reserved for expenses already incurred by the developer or the joint management body, as the case may be; and
- (f) the nature of the repairs and estimated expenditure, if any, where the developer or the joint management body, as the case may be, has incurred any expenditure or is about to perform any repairs, work or act in respect of which a liability is likely to be incurred by the parcel owner of the parcel under any provision of this Act.

By-laws for building or land intended for subdivision into parcels

32. (1) Any by-laws prescribed by the regulations made under section 150 shall have effect in relation to every building or land intended for subdivision into parcels and the common property.

(2) The developer during the developer's management period may make additional by-laws or make amendments to such additional by-laws, not inconsistent with the by-laws prescribed by the regulations made under section 150, with the approval of the Commissioner.

(3) The joint management body may, by a special resolution, make additional by-laws or make amendments to such additional by-laws, not inconsistent with the by-laws prescribed by regulations made under section 150, for regulating the control, management, administration, use and enjoyment of the building or land intended for subdivision into parcels and the common property, including all or any of the following matters:

- (a) safety and security measures;
- (b) details of any common property of which the use is restricted;
- (c) the keeping of pets;
- (d) parking;
- (e) floor coverings;

- (f) refuse control;
- (g) behaviour;
- (h) architectural and landscaping guidelines to be observed by all parcel owners; and
- (i) imposition of fine not exceeding two hundred ringgit against any parcel owner, occupant or invitee who is in breach of any of the by-laws.

(4) The additional by-laws made under subsection (2) or (3) shall bind the developer or the joint management body, as the case may be, and the parcel owners, and any chargee or assignee, lessee, tenant or occupier of a parcel to the same extent as if the additional by-laws—

- (a) had been signed or sealed by the developer or the joint management body, as the case may be, and each parcel owner and each such chargee or assignee, lessee, tenant or occupier, respectively; and
- (b) contain mutual covenants to observe, comply and perform all the provisions of those additional by-laws.

(5) The developer or the joint management body, as the case may be, shall—

- (a) keep a record of the additional by-laws in force from time to time;
- (b) on receipt of an application in writing made by a parcel owner or a person duly authorized to apply on behalf of a parcel owner for a copy of the additional by-laws in force, supply to such parcel owner or person duly authorized by him, at a reasonable cost, a copy of the additional by-laws; and
- (c) on the application of any person who satisfies the developer or the joint management body, as the case may be, that he has a proper interest in so applying, make such additional by-laws available for inspection.

(6) A copy of any additional by-laws made by the developer or the joint management body, as the case may be, and any amendment of any such additional by-laws for the time being in

force, certified as a true copy under the seal of the developer or the joint management body, shall be filed by the developer or the joint management body with the Commissioner—

- (a) in the case where such additional by-laws are made by the developer, within fourteen days from the date of the approval of the Commissioner; and
- (b) in the case where such additional by-laws are made by the joint management body, within fourteen days from the date of the passing of the special resolution by the joint management body approving the additional by-laws.

(7) The developer or the joint management body, as the case may be, or any parcel owner shall be entitled to apply to a court of competent jurisdiction or the Tribunal—

- (a) for an order to enforce the performance of or restrain the breach of, any by-laws by; or
- (b) to recover damages for any loss or injury to any person or property arising out of the breach of any by-laws from,

any person bound to comply with the by-laws.

The recovery of sum as a debt due to joint management body

33. (1) The payment of any amount of money lawfully incurred by the joint management body in the course of the exercise of any of its powers or functions or the carrying out of its duties or obligations shall by virtue of this section be guaranteed by the parcel owners for the time being constituting the joint management body.

(2) Each parcel owner shall be liable under the guarantee referred to in subsection (1) only for such proportion of the money so incurred as the allocated share units of his parcel bear to the aggregate share units.

(3) Where any parcel owner has not discharged or fully discharged his liability for the purpose of subsection (1), the joint management body shall be entitled to recover from the parcel owner in a court of competent jurisdiction or in the Tribunal as a debt due to it.

(4) Where for reasons of insufficiency of funds to meet the sum guaranteed under subsection (1), the joint management body may, at an annual general meeting or at an extraordinary general meeting, determine the amount to be contributed by each parcel owner and decide any other issue or matter relating to the settlement of the said sum.

Procedure on recovery of sums due

34. (1) Where a sum becomes recoverable by the developer from the purchaser in respect of his parcel by virtue of subsection 12(5), or by the joint management body from the parcel owner in respect of his parcel by virtue of subsection 25(6) or 33(3), the developer or the joint management body may serve on the purchaser or the parcel owner, as the case may be, a written notice demanding payment of the sum due within the period as may be specified in the notice which shall not be less than fourteen days from the date of service of the notice.

(2) If any sum remains unpaid by the purchaser or parcel owner at the end of the period specified in the notice under subsection (1), the developer or the joint management body, as the case may be, may file a summons or claim in a court of competent jurisdiction or in the Tribunal for the recovery of the said sum or as an alternative to recovery under this section, resort to recovery under section 35.

(3) Any purchaser or parcel owner who, without reasonable excuse, fails to comply with the notice referred to in subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both, and in the case of a continuing offence, to a further fine not exceeding fifty ringgit for every day or part thereof during which the offence continues after conviction.

Recovery of sums by attachment of movable property

35. (1) The Commissioner may, upon sworn application in writing made by the developer or any member of the joint management committee, issue a warrant of attachment in Form A of the Third

Schedule authorizing the attachment of any movable property belonging to the defaulting parcel owner which may be found in the building or elsewhere in the State.

(2) The warrant of attachment under subsection (1) shall be executed by the developer or a member of the joint management committee or by a person specially employed by the developer or the joint management body to execute such warrant, in the presence of the Commissioner or an officer from the office of the Commissioner.

(3) If the developer or the member of the joint management committee or the person referred to in subsection (2) encounters difficulties in executing the warrant, such developer, member or person may seek the assistance of the Commissioner, and in providing such assistance, the Commissioner may request for the assistance of a police officer not below the rank of Inspector.

(4) A person executing the warrant—

(a) may, in the daytime, effect forcible entry into any house or building or any part of the house or building for the purpose of executing the warrant; and

(b) shall, immediately after attachment, make an inventory of the property attached under the warrant and serve a notice in Form B of the Third Schedule on the person who, at the time of attachment, was or appeared to be in possession of the property.

(5) Any tenant, subtenant, or occupier who, in order to avoid the attachment or sale of the movable property for non-payment of any sum due to the developer or the joint management body by the parcel owner, pays such sum may—

(a) in the absence of any written agreement to the contrary, deduct the amount so paid by him from the rent due or to become due by him to the parcel owner; and

(b) retain possession of the property until such amount so paid by him has been fully reimbursed to him whether by deduction from the rent or otherwise.

(6) The receipt issued by the developer or the joint management body for any amount so paid by any such tenant, subtenant or occupier under subsection (5) shall be deemed a discharge in full for the like amount of rent.

(7) If any person whose property is attached disputes the legality of the attachment, he may, within fourteen days of the date of attachment, apply to the Magistrate's Court having jurisdiction in the place of attachment for an order for the release of the property, and the Magistrate's Court, after making such enquiry as may be necessary, shall grant or refuse to grant the order.

(8) If the sum due is not paid within fourteen days from the date of attachment, the property attached or such portion of the property attached as may be sufficient to realize the sum shall be sold by auction conducted by the developer or the joint management body under the supervision of the Commissioner unless within that period an application is made under subsection (7), in which case, the property shall be held pending the decision of the Magistrate's Court and shall then be dealt with as the Magistrate's Court may order.

(9) If the Magistrate's Court refuses to grant an order for the release of the property, and that decision of the Magistrate's Court is reached within fourteen days from the date of attachment, the property shall not be sold before the expiry of that period.

(10) Notwithstanding subsections (8) and (9), if the property is of a perishable nature, it may be sold at once, and in that case, the proceeds of sale shall be held pending the decision of the Magistrate's Court and shall then be dealt with as the Magistrate's Court may order.

(11) In any other case, the proceeds of sale shall be applied in satisfaction of the sum due together with the costs of the attachment and sale, and any surplus and any property not sold shall be paid or returned to the person who, at the time of attachment, was or appeared to be in possession of the property.

(12) The costs of attachment shall include the expenses of the maintenance of livestock and the custody of movable property.

(13) Where any property is sold by virtue of subsection (10) before the expiry of fourteen days from the date of attachment,

the reference in subsection (7) to “an order for the release of the property” shall be construed as a reference to an order for the release of the proceeds of the sale of the property.

Moneys not required for immediate use

36. All moneys in the accounts required to be opened and maintained under this Part which exceeds five thousand ringgit and which are not required for immediate use, shall be placed or deposited by the developer or the joint management body, as the case may be, into an income-bearing deposit account with a bank or financial institution.

Chapter 5

Transitional and saving provisions due to the repeal of the Building and Common Property (Maintenance and Management) Act 2007

References to repealed Act and savings provision

37. (1) All references to the repealed Act in any written law or document shall, when this Act comes into operation, be construed as references to this Act.

(2) Nothing in this Act shall affect the past operation of, or anything done under the repealed Act before the date of coming into operation of this Act.

Existing body and committee

38. A Joint Management Body established or a Joint Management Committee elected under the repealed Act shall be deemed to have been established or elected under this Act except that after the commencement of this Act the provisions of this Act shall apply to such a Body or Committee.

Existing managing agent

39. Any person who, immediately before the commencement of this Act, is a managing agent appointed by the Commissioner of

Buildings under section 25 of the repealed Act shall continue as such managing agent as if he was appointed under section 86 of this Act.

Existing accounts or funds

40. Every accounts or funds established by the developer or the Joint Management Body under the repealed Act before the commencement of this Act shall continue and be deemed to be established under this Act.

Incumbent Commissioner of Buildings and other officers

41. The person who, immediately before the commencement of this Act, is—

- (a) the Commissioner of Buildings; or
- (b) an officer appointed under subsection 3(1) of the repealed Act,

shall continue to hold such office as if he were appointed under subsection 4(1) of this Act.

Existing notices, orders, etc.

42. (1) Any notice, order, action, direction or other document prepared, issued or made by the Commissioner under the repealed Act shall, in so far as it is not inconsistent with the provisions of this Act, continue and be deemed to have been prepared, issued or made under the corresponding provisions of this Act.

(2) Any decision made by the Commissioner under the repealed Act shall, in so far as it is not inconsistent with the provisions of this Act, continue and be deemed to have been made under the corresponding provisions of this Act.

Pending applications, etc.

43. (1) Any application or other document filed for approval under the repealed Act before the commencement of this Act and was not approved before that date shall, where applicable, be deemed to be an application or a document filed for approval under the corresponding provisions of this Act.

(2) Where anything has been commenced by or on behalf of the Commissioner before the commencement of this Act, such thing may be carried out by or under the authority of the Commissioner under the corresponding provisions of this Act.

Pending appeals

44. Where an appeal has been made to the State Authority under section 41 of the repealed Act and the appeal has not been dealt with or disposed of immediately before the commencement of this Act, the appeal may be dealt with in accordance with that repealed section as if this Act had not been enacted.

Existing regulations

45. Any regulations made under the repealed Act and in force immediately before the commencement of this Act shall, in so far as it is not inconsistent with the provisions of this Act, continue to be in force as if the regulations were made under this Act until they are revoked or repealed by the regulations made under this Act.

PART V

STRATA MANAGEMENT AFTER EXISTENCE OF MANAGEMENT CORPORATION

Chapter 1

General

Application of this Part

46. (1) This Part shall apply to a development area, where before or after the commencement of this Act—

- (a) vacant possession of a parcel in a building or land intended for subdivision into parcels or in a subdivided building or land has been delivered by the developer to a purchaser; and

(b) the management corporation has come into existence under the provisions of the Strata Titles Act 1985.

(2) In this Part, unless the context otherwise requires—

“developer” includes the original proprietor of the lot of land relating to the development area;

“preliminary management period” means the period commencing from the date of delivery of vacant possession of a parcel to a purchaser by the developer until one month after the first annual general meeting of the management corporation;

“initial period”, in relation to a management corporation, means the period commencing on the day on which the management corporation comes into existence and ending on the day on which there are proprietors, excluding the original proprietor of the lot of land or the developer who is registered as the proprietor of a parcel or parcels or a provisional block or blocks, the sum of whose share units is at least one-quarter of the aggregate share units.

Chapter 2

Management by developer before first annual general meeting of management corporation

Application

47. This Chapter shall apply to a development area specified in subsection 46(1) where no joint management body is established under subsection 17(1) for the development area.

Duties and powers of developer to maintain and manage

48. (1) The developer shall, during the preliminary management period and subject to the provisions of this Act, be responsible to maintain and manage properly the subdivided building or land, and the common property.

(2) The developer shall exercise the powers and perform the duties of the management committee of the management corporation from the time the management corporation comes into existence until the expiry of the preliminary management period.

(3) During the preliminary management period, the developer shall ensure that a separate and distinct area is set aside out of the common property of the development area for the sole purpose of an administration office for the carrying out of duties of the developer under this Act.

(4) Any developer who fails to comply with subsection (1) or (3) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Restrictions during preliminary management period

49. (1) Notwithstanding any other provisions of this Act, the developer shall not, during the preliminary management period—

(a) borrow moneys or give securities; or

(b) enter into any contract relating to the maintenance and management of any subdivided building or land and the common property in the development area for any period extending beyond the expiration of the preliminary management period.

(2) Without prejudice to any other remedy available against the developer, if any developer fails to comply with subsection (1), the developer shall be liable for any loss or damage suffered by the management corporation or any proprietor as a result of the contravention, and the management corporation or any proprietor may recover from the developer, as damages for breach of a statutory duty, any loss suffered by it or him in consequence of such contravention.

(3) Any developer who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Developer to establish maintenance account in the name of management corporation

50. (1) The developer shall open and maintain a maintenance account in respect of the development area in the name of the management corporation with a bank or financial institution—

- (a) if vacant possession of a parcel was delivered before the commencement of this Act, on the date of the commencement of this Act;
- (b) if vacant possession of a parcel is delivered after the commencement of this Act and after the management corporation came into existence, at any time before the delivery of vacant possession; or
- (c) if vacant possession of a parcel is delivered after the commencement of this Act and before the management corporation comes into existence and if no joint management body is established under subsection 17(1), within fourteen days from the date the management corporation comes into existence,

but in any case, before the Charges are collected from the proprietors of any parcel in the development area.

(2) The maintenance account shall consist of—

- (a) all Charges paid by the proprietors to the management corporation;
- (b) all or any part of the Charges imposed by or payable to the management corporation under this Act;
- (c) all moneys derived from the sale, disposal, lease or hire of, or any other dealing with any property, mortgages, charges or debentures vested in or acquired by the management corporation;
- (d) all other moneys and property which may in any manner become payable to or vested in the management corporation in respect of any matter incidental to its functions and powers; and
- (e) all other moneys lawfully received by the management corporation, including interest, donation and trust.

(3) The maintenance account shall be used solely for the purpose of meeting the actual or expected general or regular expenditure necessary in respect of the following matters:

- (a) maintaining the common property in good condition on a day-to-day basis;
- (b) paying for the expenses incurred in providing cleaning services for the common property, security services and amenities for the occupiers of the building;
- (c) paying any premiums for the insurance effected under this Act or any other insurance approved by a special resolution in a general meeting;
- (d) complying with any notice or order given or made by the local authority in respect of periodical inspection of any building in the development area in the manner as specified in the Street, Drainage and Building Act 1974;
- (e) minor painting on the premises of the common property;
- (f) carrying out inspection of all electrical wiring systems of the common property and replacing or repairing any faulty wiring system, if any;
- (g) carrying out inspection, maintenance and repair of the main water tanks;
- (h) paying rent and rates, if any;
- (i) paying any fee incurred for the auditing of the accounts required to be maintained by the management corporation under this Act;
- (j) paying all charges reasonably incurred for the administration of the accounts required to be maintained by the management corporation under this Act as may be determined by the Commissioner;
- (k) paying the remuneration or fees for the managing agent appointed under Part VI;
- (l) paying for the allowances and other expenses of the members of the management committee according to such rates as may be approved by the Commissioner;

- (m) paying any expenses, costs or expenditure in relation to the procurement of services, including the engagement of consultants, legal fees or costs and other fees and costs, properly incurred or accepted by the management corporation in the performance of its functions and the exercise of its power under this Act; or
- (n) meeting other expenses of a general or regular nature relating to the maintenance and management of the building or land intended for subdivision into parcels and the common property.

(4) Any developer who fails to comply with subsection (1) or (3) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Developer to establish sinking fund account in the name of management corporation

51. (1) At the same time when the developer is required to open and maintain the maintenance account under subsection 50(1), the developer shall open and maintain a sinking fund account in the name of the management corporation, with a bank or financial institution, into which shall be deposited the contribution to the sinking fund paid by the proprietors.

(2) The sinking fund account shall be used solely for the purposes of meeting the actual or expected capital expenditure necessary in respect of the following matters:

- (a) the painting or repainting any part of the common property which is a building or other structure;
- (b) the acquisition of any movable property for use in relation to the common property;
- (c) the renewal or replacement of any fixtures or fittings comprised in any common property and any movable property vested in the management corporation;
- (d) the upgrading and refurbishment of the common property; and

- (e) any other capital expenditure as the management corporation deems necessary.

(3) Any developer who fails to comply with subsection (1) or (2) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Proprietors to pay Charges, and contribution to the sinking fund

52. (1) Each proprietor shall pay the Charges, and contribution to the sinking fund, to the management corporation for the maintenance and management of the subdivided building or land and the common property in a development area.

(2) During the preliminary management period, the amount of the Charges to be paid under subsection (1) shall be determined by the developer in proportion to the share units assigned to each parcel.

(3) The amount of the contribution to the sinking fund to be paid under subsection (1) shall be a sum equivalent to ten per cent of the Charges.

(4) The proprietor shall, within fourteen days of receiving a notice from developer, pay the Charges, and contribution to the sinking fund, to the management corporation and if any sum remains unpaid by the proprietor at the expiry of the period of fourteen days, the developer may in the name of the management corporation recover the sum in the manner set out in section 78.

(5) If any sum remains unpaid by the proprietor at the expiry of the period of fourteen days specified in subsection (4), the proprietor shall pay interest at the rate of ten per cent per annum on a daily basis.

(6) Any proprietor who is not satisfied with the sums determined by the developer under subsection (2) or (3) may apply to the Commissioner for a review and the Commissioner may—

- (a) determine the sum to be paid as the Charges, or contribution to the sinking fund; or

- (b) instruct the developer to appoint, at the developer's own cost and expense, a registered property manager to recommend the sum payable as Charges, or contribution to the sinking fund, and submit a copy of the registered property manager's report to the Commissioner.

(7) Upon receiving the report under paragraph (6)(b), the Commissioner shall determine the sum payable as he thinks just and reasonable, and any sum so determined by the Commissioner shall be deemed to be the sum payable as the Charges, or contribution to the sinking fund.

(8) For the purposes of this section, "proprietor" includes—

- (a) the person for the time being receiving the rent of the parcel, whether as an agent or a trustee or a receiver, and who would receive the same if the parcel were let to a tenant;
- (b) a purchaser to be duly registered as a proprietor; or
- (c) a developer in respect of those parcels in the development area which have not been sold.

Prohibition on collection of moneys for maintenance from proprietors

53. (1) No person shall at any time collect any Charges, or contribution to the sinking fund, from any proprietor for the maintenance and management of any subdivided building or land and the common property unless—

- (a) a maintenance account and a sinking fund account have been opened in the name of the management corporation; and
- (b) vacant possession of the parcel has been delivered to the proprietor.

(2) Notwithstanding subsection (1), any developer of a development area which has been completed on or before the commencement of this Act and has, immediately before that date, been collecting moneys from the proprietors for the maintenance and management of any subdivided building or land and the

common property comprised in the development area, may continue to do so until the expiry of the preliminary management period, provided that all moneys shall be collected and dealt with by the developer in accordance with this Act.

(3) Any person who fails to comply with subsection (1) or (2) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit.

Duties of developer in relation to accounts

54. (1) During the preliminary management period, the developer shall, in respect of the maintenance account and the sinking fund account—

- (a) cause to be prepared such accounts and records of accounts as will sufficiently explain the transactions of the accounts and enable true and fair balance sheet, income and expenditure statement and profit and loss statement to be prepared for the period starting from the commencement of the preliminary management period;
- (b) appoint an approved company auditor to carry out the audit of the accounts annually and the accounts shall be audited—
 - (i) in the case where control of all balances of moneys in the maintenance account and in the sinking fund account is to be transferred under paragraph 55(1)(a), up to the date of the actual transfer of control; or
 - (ii) in the case where the accounts are to be presented at the first annual general meeting of the management corporation, up to a date not earlier than three months before the meeting;
- (c) file with the Commissioner a certified true copy of the audited accounts together with the auditor's report within fourteen days of the accounts being audited; and
- (d) permit the Commissioner or any person authorized by the Commissioner in writing to act on its behalf full and free access to the accounts and records of accounts

and to make copies or extracts of those accounts and records of accounts.

(2) Notwithstanding subsection (1), the Commissioner shall have, at any time, the right to appoint an approved company auditor to investigate the accounts and records of accounts specified in subsection (1), and the developer shall pay all the expenses incurred for that purpose.

(3) The developer shall furnish to the Commissioner or any public authority such returns, reports, accounts and information with respect to the activities and finances of the respective accounts, as the Commissioner may, from time to time, require or direct.

(4) The returns, reports, accounts and information referred to in subsection (3) shall be in such form as the Commissioner may, from time to time, specify.

(5) Any developer who fails to comply with subsection (1), (2), (3) or (4) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Handing over of control to management corporation

55. (1) The developer shall, not later than the date of the expiry of the preliminary management period—

(a) transfer the control of all balances of moneys in the maintenance account and in the sinking fund account to the management committee of the management corporation; and

(b) hand over to the management committee of the management corporation—

(i) the administration office set up by the developer under subsection 48(3);

(ii) the audited accounts of the maintenance account and the sinking fund account or, if such accounts have not been audited, the unaudited accounts;

- (iii) all the assets of the management corporation; and
- (iv) all records related to and necessary for the maintenance and management of the subdivided building or land and the common property of the development area.

(2) If only unaudited accounts have been handed over under subparagraph (1)(b)(ii), the developer shall hand over to the management committee of the management corporation the audited accounts up to the date of transfer of control of all balances of moneys in the maintenance account and sinking fund account not later than three months after the expiry of the preliminary management period.

(3) Without prejudice to the generality of subparagraph (1)(b)(iv), the developer shall deliver to the management committee of the management corporation copies of all the following documents:

- (a) all approved plans for the subdivided buildings or land relating to the development area;
- (b) any document in the developer's possession that indicates, as far as practicable, the actual location of any pipe, wire, cable, chute, duct or other facility for the passage or provision of systems or services, if the developer has reason to believe that the pipe, wire, cable, chute, duct or other facility is not located as shown on an approved plan or an approved amended plan;
- (c) all contracts entered into by the developer in respect of the maintenance or management of any subdivided building or land and the common property comprised in the development area;
- (d) a copy of the schedule of parcels or the amended schedule of parcels filed with the Commissioner under subsection 6(1) or (2), if applicable, or the certified strata plan filed by the Director of Survey under the provisions of the Strata Titles Act 1985;
- (e) the names and addresses of such contractors, subcontractors and persons who supplied labour or materials to the development area during construction of any subdivided building or land and the common property comprised in the development area; and

(f) all warranties, manuals, schematic drawings, operating instructions, service guides, manufacturer's documentation and other similar information in respect of the construction, installation, operation, maintenance, repair and servicing of any common property, including any warranty or information provided to the developer by any person referred to in paragraph (e).

(4) Any developer who fails to comply with subsection (1), (2) or (3) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both and, in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for every day or part thereof during which the offence continues after conviction.

Chapter 3

Management after first annual general meeting of the management corporation

Management committee

56. (1) Subject to subsection 63(4), the management corporation shall elect a management committee which, subject to any restriction imposed or direction given by the management corporation at a general meeting, shall perform the management corporation's duties and conduct the management corporation's business on its behalf, and may for that purpose exercise any of the management corporation's powers.

(2) The provisions of the Second Schedule shall apply to the management corporation and the management committee.

Duty of developer to convene first annual general meeting

57. (1) It shall be the duty of the developer to convene the first annual general meeting of the management corporation within one month after the expiration of the initial period.

(2) Any developer who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(3) The developer shall give written notice of the first annual general meeting of the management corporation to all proprietors not less than fourteen days before the meeting, and a copy of such written notice shall be displayed at a conspicuous part of the development area.

(4) The developer shall prepare and place before the first annual general meeting of the management corporation for consideration an annual budget that sufficiently sets out the expected and estimated expenditure required to properly maintain and manage the subdivided buildings or lands and the common property which shall be for a period of twelve months starting on the first day of the month following the date of the first annual general meeting.

(5) If the developer fails to convene the first annual general meeting within the period specified in subsection (1), the Commissioner may, on application by a proprietor, appoint a person to convene the first annual general meeting of the management corporation within such time as may be specified by the Commissioner, and the developer shall pay all the expenses incurred for that purpose.

First annual general meeting of management corporation

58. The agenda for the first annual general meeting of the management corporation shall include the following matters:

- (a) to determine the number of members of the management committee and to elect the management committee where there are more than three proprietors;
- (b) to consider the budget prepared by the developer under subsection 57(4);
- (c) to decide whether to confirm or vary any amount determined as the Charges, or contribution to the sinking fund;
- (d) to determine the rate of interest payable by a proprietor in respect of late payment charges;
- (e) to consider the audited accounts of the management corporation specified in subparagraph 55(1)(b)(ii);

- (f) to decide whether to confirm, vary or extend the insurances effected by the developer for the management corporation under this Act;
- (g) to make additional by-laws; and
- (h) to consider any matter connected with the maintenance and management of the common property of the subdivided buildings or lands.

Duties and powers of management corporation

59. (1) The duties of the management corporation shall be as follows:

- (a) to properly maintain and manage the subdivided building or land and the common property and keep it in a state of good and serviceable repair;
- (b) to determine and impose the Charges to be deposited into the maintenance account for the purposes of proper maintenance and management of the subdivided buildings or lands and the common property;
- (c) to determine and impose the contribution to the sinking fund to be deposited into the sinking fund account for the purposes of meeting the actual or expected expenditure specified under subsection 51(2);
- (d) to effect insurance according to this Act or to insure against such other risks as the proprietors may by special resolution direct;
- (e) to comply with any notice or order given or made by the local authority or any competent public authority requiring the abatement of any nuisance on the common property, or ordering repairs or other work to be done in respect of the common property or other improvements to the common property;
- (f) to prepare and maintain a strata roll for the subdivided buildings or lands;
- (g) to ensure that the accounts required to be maintained by the management corporation under this Act are audited and to provide audited financial statements for the information to its members;

- (h) to enforce the by-laws; and
- (i) to do such other things as may be expedient or necessary for the proper maintenance and management of the subdivided buildings or lands and the common property.

(2) The powers of the management corporation shall be as follows:

- (a) to collect the Charges from the proprietors in proportion to the share units or provisional share units of their respective parcels or provisional blocks;
- (b) to collect the contribution to the sinking fund from the proprietors of an amount equivalent to ten percent of the Charges;
- (c) to authorize expenditure for the carrying out of the maintenance and management of the subdivided buildings or lands and the common property;
- (d) to recover from any proprietor any sum expended by the management corporation in respect of that proprietor's parcel in complying with any such notice or order as referred to in paragraph (1)(e);
- (e) to purchase, hire or otherwise acquire movable property for use by the proprietors in connection with their use and enjoyment of the common property;
- (f) to employ or arrange and secure the services of any person or agent to undertake the maintenance and management of the common property of the subdivided building or land provided that if such person or agent is an independent third party then he shall be a registered property manager;
- (g) subject to subsection 70(2), to make additional by-laws for the proper maintenance and management of the subdivided buildings or lands and the common property;
- (h) to borrow moneys required by the management corporation in the exercise of its powers or the performance of its duties;
- (i) to secure the repayment of moneys borrowed by it and the payment of interest thereon by negotiable instrument or by a charge of unpaid Charges to the maintenance

account (whether already imposed or not), or by a charge of any property vested in it or by a combination of any of those means; and

- (j) to do all things reasonably necessary for the performance of its duties under this Act and for the enforcement of the by-laws.

(3) Where the management corporation performs any repairs, work or act that are or is required or authorized by or under this Part or by or under any other written law to perform, whether or not the repairs, work or act were or was performed consequent upon the service on it by any Government or statutory authority of any notice or order, but the repairs, work or act were or was wholly or substantially the liability or the responsibility of the proprietor of a parcel only, or wholly or substantially for the benefit of some of the parcels only, any money expended by the management corporation in performing the repairs, work or act shall—

- (a) in the case where the repairs, work or act were or was wholly or substantially the liability or the responsibility of the proprietor of a parcel only, be recoverable by the management corporation in an action in a court of competent jurisdiction or before the Tribunal as a debt due to it jointly and severally from—
 - (i) the relevant proprietor of the parcel at the time when the repairs, work or act were or was performed; and
 - (ii) the relevant proprietor of the parcel at the time when the action was commenced; or
- (b) in the case where the repairs, work or act were or was wholly or substantially for the benefit of some of the parcels only, or wholly or substantially the liability or the responsibility of the proprietors of some of the parcels only, be recoverable by the management corporation in an action in a court of competent jurisdiction or before the Tribunal as a debt due to it jointly and severally from—
 - (i) the relevant proprietor of each of such parcels at the time when the repairs, work or act were or was performed; and

- (ii) the relevant proprietor of each of such parcels at the time when the action was commenced.

(4) The amount payable by any proprietor and former proprietor under subsection (3) in respect of any parcel shall not be more than the proportion of the debt which the share unit of the parcel then bears to the total share units of all those parcels.

(5) A proprietor of a parcel who is not the proprietor of the parcel at the time when the repairs, work or act referred to in subsection (3) were or was performed shall not be liable to pay the management corporation any amount due under that subsection if he has, at any time on or within twenty-one days before the date he acquired the title or interest in the parcel, made a requisition in writing to the management corporation to inquire about the amount, if any, recoverable by the management corporation under that subsection in respect of the parcel, and the management corporation has—

- (a) certified that no amount is recoverable by the management corporation in respect of the parcel; or
- (b) not given a reply to the requisition at any time within fourteen days of the date of the service of the requisition.

(6) Where—

- (a) the management corporation incurs any expenditure or performs any repairs, work or act that it is required or authorized by or under this Part or by or under any other written law to perform, irrespective of whether or not the expenditure was incurred or the repairs, work or act were or was performed consequent upon the service on it of any notice or order by any Government or statutory authority; and
- (b) the expenditure or the repairs, work or act referred to in paragraph (a) were or was rendered necessary by reason of any willful or negligent act or omission on the part of, or breach of any provision of its by-laws by, any person or his tenant, lessee, licensee or invitee,

the amount of the expenditure of any money expended by the management corporation in performing the repairs, work or act shall be recoverable by it from that person as a debt in an action in any court of competent jurisdiction or before the Tribunal.

(7) The generality of this section shall not be prejudiced by any other provision in this Part conferring a power or imposing a duty on the management corporation.

Maintenance account of the management corporation

60. (1) If the maintenance account in the name of the management corporation had not been earlier established under subsection 50(1), the management corporation shall open and maintain a maintenance account in the name of the management corporation, with a bank or financial institution.

(2) The maintenance account shall consist of all moneys specified in subsection 50(2), and all moneys in the maintenance account shall be used for the purposes specified in subsection 50(3).

(3) Subject to section 52, for the purpose of establishing and maintaining the maintenance account, the management corporation may at a general meeting—

- (a) determine from time to time the amount to be raised for the purposes mentioned in subsection 50(3);
- (b) raise the amounts so determined by imposing Charges on the proprietors in proportion to the share units or provisional share units of their respective parcels or provisional blocks, and the management corporation may determine different rates of Charges to be paid in respect of parcels which are used for significantly different purposes and in respect of the provisional blocks; and
- (c) determine the amount of interest payable by a proprietor in respect of late payments which shall not exceed the rate of ten per cent per annum.

(4) Any Charges imposed under subsection (3) in respect of a parcel shall be due and payable on the passing of a resolution to that effect by the management corporation and in accordance with the terms of that resolution, and may be recovered in the manner set out in section 78 from the proprietor of, or his successor-in-title to, the parcel, or the person for the time being receiving the rent of the parcel, whether as an agent or a trustee or a receiver, and who would receive the same if the parcel were let to a tenant.

(5) Any Charges imposed under subsection (3) in respect of a provisional block shall be due and payable on the passing of a resolution to that effect by the management corporation and in accordance with the terms of that resolution, and may be recovered in the manner set out in section 78 from the proprietor of the provisional block or, where the building to which the provisional block relates has been subdivided, from the proprietors of the parcels in the building, or their successors-in-title, in proportion to the share units of their respective parcels.

(6) For the purposes of subsection (5), “proprietor” includes a purchaser to be duly registered as a proprietor.

Sinking fund account of the management corporation

61. (1) If the sinking fund account in the name of the management corporation had not been earlier established under subsection 51(1), the management corporation shall open and maintain a sinking fund account with a bank or financial institution, into which shall be deposited the contribution to the sinking fund paid by the proprietors.

(2) The contribution to the sinking fund shall be used solely for the purposes specified in subsection 51(2).

(3) Subject to section 52, for the purpose of establishing and maintaining the sinking fund account, the amount to be paid by the proprietors of the parcels or provisional blocks shall be a sum equivalent to ten per cent of the Charges imposed under subsection 60(3), unless otherwise determined from time to time at a general meeting of the management corporation, but such contribution to the sinking fund shall not be less than ten per cent of the Charges.

(4) Any contribution to the sinking fund imposed under subsection (3) in respect of a parcel shall be due and payable on the passing of a resolution to that effect by the management corporation and in accordance with the terms of that resolution, and may be recovered in the manner set out in section 78 from a proprietor of, or his successor-in-title to, the parcel, or the person for the time being receiving the rent of the parcel, whether as an agent or a trustee or a receiver, and who would receive the same if the parcel were let to a tenant.

(5) Any contribution to the sinking fund imposed under subsection (3) in respect of a provisional block shall be due and payable on the passing of a resolution to that effect by the management corporation and in accordance with the terms of that resolution, and may be recovered in the manner set out in section 78 from the proprietor of the provisional block or, where the building to which the provisional block relates has been subdivided, from the proprietors of the parcels in the building, or their successors-in-title, in proportion to the share units of their respective parcels.

(6) For the purposes of subsection (5), “proprietor” includes a purchaser to be duly registered as a proprietor.

Duties of management corporation in relation to accounts

62. (1) The management corporation shall in respect of the maintenance account and the sinking fund account—

- (a) cause to be prepared such accounts and records of accounts as will sufficiently explain the transactions of the accounts and enable true and fair balance sheet, income and expenditure statement and profit and loss statement to be prepared for the period starting from commencement of the preliminary management period;
- (b) appoint an approved company auditor to carry out the audit of the accounts annually;
- (c) file with the Commissioner a certified true copy of the audited accounts together with the auditor’s report within fourteen days of the accounts being audited; and
- (d) permit the Commissioner or any person authorized by the Commissioner in writing to act on its behalf full and free access to the accounts and records of accounts and to make copies or extracts of those accounts and records of accounts.

(2) Notwithstanding subsection (1), the Commissioner shall have the right to appoint an approved company auditor to investigate the accounts and records of accounts specified in subsection (1), and the management corporation shall pay all the expenses incurred for that purpose.

(3) The management corporation shall furnish to the Commissioner or any public authority such returns, reports, accounts and information with respect to its activities and finances, as the Commissioner may, from time to time, require or direct.

(4) The returns, reports, accounts and information referred to in subsection (3) shall be in such form as the Commissioner may, from time to time, specify.

(5) If the management corporation fails to comply with subsection (1), (2), (3) or (4), every member of the management committee commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(6) In proceedings against a member of the management committee for an offence under subsection (5), it is a defence if the member proves that—

- (a) the offence was committed without his knowledge, consent or connivance; and
- (b) he had taken all reasonable precautions and had exercised due diligence to prevent the commission of the offence.

Chapter 4

Subsidiary management corporation and limited common property

Administration of the subsidiary management corporation

63. (1) A subsidiary management corporation shall elect a subsidiary management committee which, subject to any restriction imposed or direction given by the subsidiary management corporation at a general meeting, shall perform the duties and conduct the business of the subsidiary management corporation on its behalf, and may for that purpose exercise any of its powers.

(2) The subsidiary management corporation shall comprise all the proprietors of all parcels comprised in the development area for whose exclusive benefit the limited common property is designated.

(3) The proprietors who constitute a subsidiary management corporation may call and hold meetings and pass resolutions in the same manner as proprietors constituting a management corporation.

(4) At least one member of the subsidiary management committee of a subsidiary management corporation shall be a member of the management committee of the management corporation.

(5) The provisions of the Second Schedule shall apply to the subsidiary management corporation and the subsidiary management committee, with necessary modifications, including—

- (a) a reference to the “management corporation” shall be construed as a reference to the subsidiary management corporation; and
- (b) a reference to the “management committee” shall be construed as a reference to the subsidiary management committee.

Duties and powers of subsidiary management corporation

64. (1) Subject to subsection (2), 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 proprietors comprising the subsidiary management corporation, and unless expressly otherwise provided, the provisions of Chapter 3 shall apply, with the necessary modifications, to subsidiary management corporation as they apply to the management corporation.

(2) After the establishment of the subsidiary management corporation for the limited common property, the management corporation shall retain its powers and duties in matters concerning common property of the development area which is not designated as limited common property.

(3) Without prejudice to the generality of subsection (1), the subsidiary management corporation shall—

- (a) subject to sections 66 and 67, establish its own maintenance account and sinking fund account for the common expenses of its limited common property, including expenses related to its limited common property;

- (b) require proprietors of parcels in the subsidiary management corporation to pay the Charges, and contribution to the sinking fund;
- (c) enforce the by-laws relating to its limited common property; and
- (d) otherwise have the control, management and administration of its limited common property.

(4) A subsidiary management corporation shall not enter into any contract or sue in the name of the management corporation and the management corporation shall have no liability for contracts made or debts or legal costs incurred by the subsidiary management corporation.

(5) 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.

(6) For the purposes of subsection (5), a subsidiary management corporation shall have the same insurable interest in its limited common property as the management corporation has in the common property.

(7) Notwithstanding any other provision of this Act, a subsidiary management corporation for any limited common property comprised in a development area may manage and maintain—

- (a) any common property within that same development area; or
- (b) any other limited common property of another subsidiary management corporation within that development area,

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.

Expenses of subsidiary management corporation

65. The expenses of a subsidiary management corporation that relate solely to its limited common property shall be shared, from time to time, by the proprietors of all parcels entitled under this Chapter to the exclusive benefit of the limited common property, and each parcel's share of contribution shall be calculated as follows:

$$\frac{A}{B} \times C$$

Where—

A is the share unit of a parcel;

B is the aggregate share units of all parcels entitled to the exclusive benefit of the limited common property; and

C is the total contributions determined by the subsidiary management corporation as payable by proprietors of all parcels entitled to the exclusive benefit of the limited common property.

Maintenance account of subsidiary management corporation

66. (1) The subsidiary management corporation shall open and maintain a maintenance account with a bank or financial institution, into which shall be deposited all Charges paid by the proprietors constituting the subsidiary management corporation.

(2) The maintenance account shall consist of the moneys specified in subsection 50(2) and may be used only for the purposes specified in subsection 50(3).

Sinking fund account of subsidiary management corporation

67. (1) The subsidiary management corporation shall open and maintain a sinking fund account with a bank or financial institution, into which shall be deposited all contributions to the sinking fund paid by the proprietors constituting the subsidiary management corporation.

(2) The sinking fund account may be used only for the purposes specified in subsection 51(2).

Proprietors to pay Charges, and contribution to the sinking fund, to subsidiary management corporation

68. (1) Each proprietor constituting the subsidiary management corporation shall pay the Charges, and contribution to the sinking fund, to the subsidiary management corporation for the expenses related to its limited common property.

(2) The amount of Charges to be paid under subsection (1) shall be determined by the subsidiary management corporation from time to time in proportion to the share units of each parcel.

(3) The amount of contribution to the sinking fund to be paid under subsection (1) shall be a sum equivalent to ten per cent of the Charges unless otherwise determined by the subsidiary management corporation from time to time at a general meeting, but such contribution to the sinking fund shall not be less than ten per cent of the Charges.

(4) Any Charge, or contribution to the sinking fund, imposed under subsection (2) or (3) in respect of a parcel shall be due and payable on the passing of a resolution to that effect by the subsidiary management corporation and in accordance with the terms of that resolution, and may be recovered in the manner set out in section 78 from a proprietor of, or his successor-in-title to, the parcel.

Judgments against management corporation relating to limited common property

69. (1) If a judgment against a management corporation relates solely to the parcels whose proprietors constitute a subsidiary management corporation, the judgment shall be against only the proprietors of those parcels.

(2) A parcel's share of a judgment referred to in subsection (1) shall be calculated in accordance with section 65 as if the amount of the judgment were the Charges, or contribution to the sinking fund, and a proprietor's liability shall be limited to that proportionate share of the judgment.

By-laws for regulation of subdivided building or land

70. (1) Any by-laws prescribed by regulations made under section 150 shall have effect in relation to every subdivided building or land and common property.

(2) The management corporation may, by special resolution, make additional by-laws or make amendments to such additional by-laws, not inconsistent with the by-laws prescribed by the regulations made under section 150, for regulating the control, management, administration, use and enjoyment of the subdivided building or land and the common property, including all or any of the following matters:

- (a) safety and security measures;
- (b) details of any common property of which the use is restricted;
- (c) the keeping of pets;
- (d) parking;
- (e) floor coverings;
- (f) refuse control;
- (g) behaviour;
- (h) architectural and landscaping guidelines to be observed by all proprietors; and
- (i) imposition of fine not exceeding two hundred ringgit against any proprietor, occupant or invitee who is in breach of any of the by-laws.

(3) The additional by-laws made under subsection (2) shall bind the management corporation and the proprietors, and any chargee, lessee, tenant or occupier of a parcel to the same extent as if the additional by-laws—

- (a) had been signed or sealed by the management corporation, and each proprietor and each such chargee, lessee, tenant or occupier, respectively; and

(b) contained mutual covenants to observe, comply and perform all the provisions of these additional by-laws.

(4) The management corporation shall—

(a) keep a record of the additional by-laws in force from time to time;

(b) on receipt of an application in writing made by a proprietor or by a person duly authorized to apply on behalf of a proprietor for a copy of the additional by-laws in force, supply to such proprietor or person duly authorized, at a reasonable cost, a copy of the additional by-laws; and

(c) on the application of any person who satisfies the management corporation that he has a proper interest in so applying, make such additional by-laws available for inspection.

(5) No additional by-law shall be capable of operating—

(a) to prohibit or restrict the transfer, lease or charge of, or any other dealing with any parcel of a subdivided building or land; and

(b) to destroy or modify any easement expressly or impliedly created by or under the Strata Titles Act 1985.

(6) A copy of any additional by-laws made by the management corporation under subsection (2) and any amendment of any additional by-laws for the time being in force, certified as a true copy under the seal of the management corporation, shall be filed by the management corporation with the Commissioner within thirty days of the passing of the special resolution by the management corporation approving the additional by-laws.

(7) The management corporation or any proprietor shall be entitled to apply to the Tribunal or a court of competent jurisdiction—

(a) for an order to enforce the performance of, or restrain the breach of, any by-laws by; or

(b) to recover damages for any loss or injury to any persons or properties arising out of the breach of any by-law from,

any persons bound to comply with the by-laws.

By-laws for limited common property

71. (1) The by-laws of the management corporation shall apply to the limited common property managed and maintained by the subsidiary management corporation unless the by-laws have been otherwise expressly amended—

- (a) by the subsidiary management corporation pursuant to a special resolution passed at a general meeting of the subsidiary management corporation; and
- (b) in respect of any matter that relates solely to that limited common property or subsidiary management corporation.

(2) A subsidiary management corporation may, by special resolution, make additional by-laws or make amendments to such additional by-laws, not inconsistent with the by-laws prescribed by regulations made under section 150, relating to the limited common property designated for the exclusive benefit of all the parcels in the subsidiary management corporation.

(3) The additional by-laws made under subsection (2) shall bind the subsidiary management corporation and the proprietors of parcels constituting that subsidiary management corporation, and any chargee, lessee, tenant or occupier of such a parcel to the same extent as if the additional by-laws—

- (a) had been signed or sealed by the subsidiary management corporation, and each such proprietor and each such chargee, lessee, tenant or occupier, respectively; and
- (b) contained mutual covenants to observe, comply and perform all the provisions of these additional by-laws.

(4) A copy of any additional by-laws made by the subsidiary management corporation under subsection (2) and any amendment of any additional by-laws for the time being in force, certified as a true copy under the seal of the subsidiary management corporation, shall be filed by the subsidiary management corporation with the Commissioner within thirty days of the passing of the special resolution by the subsidiary management corporation approving the additional by-laws.

(5) The subsidiary management corporation or any proprietor of parcel constituting that subsidiary management corporation shall be entitled to apply to the Tribunal or a court of competent jurisdiction—

- (a) for an order to enforce the performance of, or restrain the breach of, any additional by-laws by; or
- (b) to recover damages for any loss or injury to any person or property arising out of the breach of any additional by-laws from,

any person bound to comply with the by-laws.

Strata roll

72. (1) The developer, during the preliminary management period, or the management corporation, as the case may be, shall prepare and maintain a strata roll in such form as the Commissioner may require, containing the following particulars in respect of all the parcels in the development area:

- (a) the share units of each parcel;
- (b) the floor area of each parcel;
- (c) the name and address of every proprietor, and if the proprietor is not a resident of Malaysia, the address in Malaysia at which notices may be served on the proprietor; and
- (d) the name and address of the solicitor acting for the proprietor in the sale and purchase of the parcel, if any.

(2) Any developer who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(3) If a management corporation fails to comply with subsection (1), every member of the management committee commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(4) In proceedings against the member of the management committee for an offence under subsection (3), it is a defence if the member proves that—

- (a) the offence was committed without his knowledge, consent or connivance; and
- (b) he had taken all reasonable precautions and had exercised due diligence to prevent the commission of the offence.

Right of proprietor or prospective proprietor

73. Subject to a payment of a fee not exceeding fifty ringgit, on application by or on behalf of a person who is a proprietor, or by or on behalf of a person who is a prospective proprietor, the management corporation or the subsidiary management corporation, as the case may be, shall issue to that person a certificate certifying—

- (a) the amount of Charges, and contribution to the sinking fund, payable by a proprietor to the management corporation or the subsidiary management corporation, as the case may be;
- (b) the time and manner of payment of the amount of such Charges and contribution;
- (c) the amount, if any, of arrears of Charges, and contribution to the sinking fund, in respect of the parcel;
- (d) the sum standing to the credit of the maintenance account and the sum in the account that has been committed or reserved for expenses already incurred by the management corporation or the subsidiary management corporation, as the case may be;
- (e) the sum standing to the credit of the sinking fund account and the sum in the account that has been committed or reserved for expenses already incurred by the management corporation or subsidiary management corporation, as the case may be; and
- (f) the nature of the repairs and estimated expenditure, if any, where the management corporation or subsidiary management corporation, as the case may be, has incurred any expenditure or is about to perform any repairs,

work or act in respect of which a liability is likely to be incurred by the proprietor of the parcel under any provision of this Act.

Acquisition of additional land, grant and acceptance of easements, etc.

74. (1) The management corporation, if authorized by a unanimous resolution, may—

- (a) acquire land outside the lot to be used for the purposes connected with subdivided building or land;
- (b) grant or accept the burden of an easement imposed on the lot for the benefit of some other land; or
- (c) accept the benefit of an easement imposed in favour of the lot on some other land.

(2) The land outside the lot acquired under paragraph (1)(a)—

- (a) shall be treated and dealt with as if it were part of the common property; and
- (b) shall be held on a separate title and shall not be amalgamated with the lot.

(3) Where an instrument is executed by the management corporation in the exercise of its powers under subsection (1)—

- (a) the instrument shall be valid and effective without execution by any proprietor or other person or body having an interest in the land;
- (b) the receipt of the management corporation for any moneys payable to the management corporation under the instrument shall be a good and sufficient discharge which exonerates the person or body paying the moneys from responsibility for the application of the moneys; and
- (c) when the instrument is filed for registration, it shall be endorsed with or accompanied by a certificate under the seal of the management corporation stating that—
 - (i) the resolution directing the transaction to which the instrument relates was duly passed; and

- (ii) the transaction conforms to the terms of the resolution.

(4) A certificate given under paragraph (3)(c) shall, in favour of the Registrar or a party to the transaction other than the management corporation, be conclusive evidence of the facts certified.

Rating

75. (1) The management corporation shall—

- (a) within one month after its establishment, or within such further period as the rating authority may allow, supply the rating authority with two copies of the certified strata plan in respect of the subdivided building or land and with the names and addresses of the members of the management committee of the management corporation; and
- (b) keep the rating authority informed of any changes in the plan, names and addresses supplied under paragraph (a).

(2) Where a rate is imposed on the common property, the management corporation shall be liable to pay the rate.

(3) For the purposes of this section, “the rating authority” means, in relation to a subdivided building or land, any authority authorized by law to impose rates.

Appointment of administrator for management corporation

76. (1) A court of competent jurisdiction on the application of the management corporation, a proprietor or any other person or body having a registered interest in a parcel may appoint an administrator for the management corporation for a fixed or indefinite period and on such terms and conditions as to remuneration or otherwise as the court thinks fit.

(2) The remuneration and expenses of the administrator shall be charged on the maintenance account of the management corporation.

(3) The administrator shall, to the exclusion of the management corporation, have the power and perform the duties of the management corporation, or such of them as the court may direct.

(4) Notwithstanding subsection (3), the management corporation may apply under subsection (6) for the removal or replacement of the administrator.

(5) An administrator when appointed shall forthwith file with the Registrar an office copy of the order of court making his appointment.

(6) The court may, on the application of the management corporation or any person or body entitled to apply under subsection (1), remove or replace the administrator.

(7) Where an order of the court for removal or replacement of an administrator has been granted to any person, such person shall forthwith file with the Registrar an office copy of such order.

(8) On any application made under this section, the court may make such order for the payment of costs as it thinks fit.

The recovery of sum as a debt due to management corporation or subsidiary management corporation

77. (1) The payment of any amount lawfully incurred by the management corporation or the subsidiary management corporation in the course of the exercise of any of its powers or functions or carrying out of its duties or obligations shall by virtue of this section be guaranteed by the proprietors for the time being constituting the management corporation or the subsidiary management corporation.

(2) Each proprietor shall be liable under such guarantee referred to in subsection (1) only for such proportion of the money so incurred as the share units of his parcel or the provisional share units of his provisional block bear to the aggregate share units.

(3) Where any proprietor has not discharged or fully discharged his liability for the purpose of subsection (1), the management corporation or the subsidiary management corporation shall be entitled to recover from the proprietor in a court of competent jurisdiction or in the Tribunal as a debt due to it.

(4) Where for reasons of insufficiency of fund to meet the sum guaranteed under subsection (1), the management corporation or the subsidiary management corporation may at an annual general meeting or at an extraordinary general meeting determine the amount to be contributed by each proprietor and decide any other issue or matter relating to the settlement of the said sum.

Procedure for recovery of sums due

78. (1) Where a sum becomes recoverable by the management corporation by virtue of subsection 52(4), 60(4), 60(5), 61(4), 61(5) or 77(3), or by the subsidiary management corporation by virtue of subsection 68(4), from a proprietor under this Act, the management corporation or the subsidiary management corporation, as the case may be, may serve on the proprietor a written notice demanding payment of the sum due within the period as may be specified in the notice which shall not be less than two weeks from the date of service of the notice.

(2) If any sum remains unpaid by the proprietor at the end of the period specified in the notice under subsection (1), the management corporation or the subsidiary management corporation, as the case may be, may file a summons or claim in a court of competent jurisdiction or before the Tribunal for the recovery of the said sum or, as an alternative to recovery under this section, resort to recovery under section 79.

(3) Any proprietor who, without reasonable excuse, fails to comply with the written notice under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both, and in the case of a continuing offence, to a further fine not exceeding fifty ringgit for every day or part thereof during which the offence continues after conviction.

Recovery of sums by attachment of movable property

79. (1) The Commissioner may, upon sworn application in writing made by any member of the management committee of the management corporation or subsidiary management committee of the subsidiary management corporation, issue a warrant of attachment in Form A of the Third Schedule authorizing the attachment of any movable property belonging to the defaulting proprietor which may be found in the building or elsewhere in the State.

(2) The warrant of attachment under subsection (1) shall be executed by a member of the management committee of the management corporation or subsidiary management committee of the subsidiary management corporation or by a person specially employed by the management committee or subsidiary management committee to execute such warrants, in the presence of the Commissioner or an officer from the office of the Commissioner.

(3) If the member of the management committee of the management corporation or subsidiary management committee of the subsidiary management corporation or the person referred to in subsection (2) encounters difficulties in executing the warrant, he may seek the assistance of the Commissioner, and in providing such assistance, the Commissioner may request for the assistance of a police officer not below the rank of Inspector.

(4) A person executing the warrant of attachment—

(a) may, in the daytime, effect forcible entry into any house or building or any part of the house or building for the purpose of executing the warrant; and

(b) shall, immediately after attachment, make an inventory of the property attached under the warrant and serve a notice in Form B of the Third Schedule on the person who, at the time of attachment, was or appeared to be in possession of the property.

(5) Any tenant, subtenant, or occupier who, in order to avoid the attachment or sale of the movable property for non-payment of any sum due to the management corporation or the subsidiary management corporation by the proprietor, pays such sum may thereafter, in the absence of any written agreement to the contrary,

deduct the amount so paid by him from the rent due or to become due by him to the proprietor, and may retain possession of the property until such amount has been fully reimbursed to him whether by deduction from the rent or otherwise.

(6) The receipt issued by the management corporation or the subsidiary management corporation for any amount so paid by any such tenant, subtenant or occupier under subsection (5) shall be deemed a discharge in full for the like amount of rent.

(7) If any person whose property is attached disputes the legality of the attachment, he may, within fourteen days of the date of attachment, apply to the Magistrate's Court having jurisdiction in the place of attachment for an order for the release of the property, and the Magistrate's Court, after making such enquiry as may be necessary, shall grant or refuse to grant the order.

(8) If the sum due is not paid within fourteen days from the date of attachment, the property attached or such portion of the property attached as may be sufficient to realize the sum shall be sold by auction conducted by the management corporation under the supervision of the Commissioner, unless within that period an application is made under subsection (7), in which case the property shall be held pending the decision of the Magistrate's Court and shall then be dealt with as the Magistrate's Court may order.

(9) If the Magistrate's Court refuses to grant an order for the release of the property, and that decision of the Magistrate's Court is reached within fourteen days from the date of attachment, the property shall not be sold before the expiry of that period.

(10) Notwithstanding subsections (8) and (9), if the property is of a perishable nature, it may be sold at once, and in that case, the proceeds of sale shall be held pending the decision of the Magistrate's Court and shall then be dealt with as the Magistrate's Court may order.

(11) In any other case, the proceeds of sale shall be applied in satisfaction of the sum due together with the costs of the attachment and sale, and any surplus and any property not sold shall be paid or returned to the person who, at the time of attachment, was or appeared to be in possession of the property.

(12) The costs of attachment shall include the expenses of the maintenance of livestock and the custody of movable property.

(13) In this section, unless the context otherwise requires, “proprietor”, in relation to the recovery of a sum recoverable by virtue of subsection (6) or (8) from a proprietor, includes any successor-in-title to the proprietor.

(14) Where any property is sold by virtue of subsection (10) before the expiry of fourteen days from the date of attachment, the reference in subsection (7) to an “order for the release of the property” shall be construed as a reference to an order for the release of the proceeds of the sale of the property.

Moneys not required for immediate use

80. All moneys in the accounts required to be opened and maintained under this Part which exceeds five thousand ringgit and which are not required for immediate use, shall be placed or deposited by the management corporation or the subsidiary management corporation, as the case may be, into an income-bearing deposit account with a bank or financial institution.

Chapter 6

Transitional and saving provisions due to consequential amendments to the Strata Titles Act 1985

Existing managing agent

81. Any person who, immediately before the commencement of this Act, was a managing agent appointed by the Commissioner of Buildings under section 50 of the Strata Titles Act 1985, shall continue as such managing agent as if he was appointed under Part VI of this Act.

Existing maintenance fund or special account

82. Every account or fund established by the management corporation under the Strata Titles Act 1985 before the commencement of this Act shall continue and be deemed to have been established under this Act.

Existing notices, orders, etc.

83. (1) Any notice, order or other document prepared, issued or made by the Commissioner under the Strata Titles Act 1985 shall, in so far as it is not inconsistent with the provisions of this Act, continue and be deemed to have been prepared, issued or made under the corresponding provisions of this Act.

(2) Any decision made by the Commissioner under the Strata Titles Act 1985 shall, in so far as it is not inconsistent with the provisions of this Act, continue and be deemed to have been made under the corresponding provisions of this Act.

Pending applications, etc.

84. (1) Any application or other document filed for approval under the Strata Titles Act 1985 before the commencement of this Act and was not approved before that date shall, where applicable, be deemed to be an application or a document filed for approval under the corresponding provisions of this Act.

(2) Where anything has been commenced by or on behalf of the Commissioner before the commencement of this Act, such thing may be carried out by or under the authority of the Commissioner under the corresponding provisions of this Act.

Existing rules

85. Any rules made under the Strata Titles Act 1985 and in force immediately before the commencement of this Act shall, in so far as they are not inconsistent with the provisions of this Act, continue in force as if the rules were made under this Act until they are revoked or repealed by regulations made under this Act.

PART VI

MANAGING AGENT

Appointment of managing agent by Commissioner

86. (1) Where—

(a) a situation under paragraph 19(2)(b) occurs; or

- (b) after due inquiry has been carried out by the Commissioner or a person appointed by him based on a complaint made to the Commissioner by a purchaser or a proprietor or any other person or body having an interest in a parcel, registered or otherwise, the Commissioner is satisfied that the maintenance and management of a building or land intended for subdivision into parcels or any subdivided building or land and common property is not carried out satisfactorily by the developer, joint management body, management corporation or subsidiary management corporation, as the case may be,

the Commissioner may appoint, by written notification, one or more persons to act as managing agent to maintain and manage the building or land intended for subdivision into parcels or any subdivided building or land and the common property for a period to be specified by the Commissioner.

(2) A managing agent appointed under this Part shall enter into a management agreement with the developer, joint management body, management corporation or subsidiary management corporation, as the case may be, to carry out the duties and powers of the developer, joint management body, management corporation or subsidiary management corporation, respectively as provided for under this Act.

(3) The managing agent shall be entitled to be paid such remuneration or fees as may be agreed upon between the managing agent and the developer, joint management body, management corporation or subsidiary management corporation, as the case may be, with the concurrence of the Commissioner, and such remuneration or fees shall be charged to the maintenance account.

Independence of managing agent

87. (1) A person shall not be appointed as a managing agent if—

- (a) he is not a registered property manager; or
- (b) he has a professional or pecuniary interest in any building or land intended for subdivision into parcels or any subdivided building or subdivided land.

(2) A person is regarded as having a professional or pecuniary interest in any building or land intended for subdivision into parcels or any subdivided building or land if—

- (a) he has been responsible for the design or construction of the building;
- (b) he or any of his nominees, officers or employees has any material interest in the building or land intended for subdivision into parcels or any part of the building or land;
- (c) he is a partner or is in the employment of a person who has any material interest in the building or land intended for subdivision into parcels or any part of the building or land; or
- (d) he or his family holds any interest in the building or land intended for subdivision into parcels or any part of the building or land whether directly as a trustee or otherwise.

Managing agent to lodge bond

88. A person shall not act as managing agent unless he has lodged with the Commissioner a bond in the form approved by the Commissioner and for the specified amount given by a bank, finance company or insurer and which binds the bank, finance company or insurer to make good any loss caused by the managing agent as a result of his failure to account for monies received or held by him.

Powers and duties of managing agent

89. (1) Where a managing agent has been appointed under subsection 86(1), the managing agent shall have control over the moneys in the maintenance account and the sinking fund account.

(2) Subject to the general directions of the Commissioner, the managing agent appointed shall perform the duties and exercise the powers with regard to the maintenance and management of the building as if he was acting as the developer, joint management body, management corporation or subsidiary management corporation, as the case may be.

(3) It shall be the duty of the managing agent to pay all moneys received by him in his capacity as managing agent into the accounts specified in subsection (1) of that development area within three working days of receiving the moneys.

(4) As soon as practicable after his appointment, but in any case not more than one month after his appointment, a managing agent shall prepare and submit to the Commissioner a statement showing as at the date of his appointment—

- (a) the moneys standing to the credit of the maintenance account or the sinking fund account;
- (b) the amounts due and owing by the parcel owners or proprietors which are due to be deposited to the maintenance account or the sinking fund account;
- (c) any income derived from the common property or the proposed limited common property of the development area, which is due to be deposited to the maintenance account or the sinking fund account; and
- (d) any sum incurred for the maintenance and management of any building or land, which is authorized to be paid out of the maintenance account or the sinking fund account, and which remains unpaid.

(5) Any managing agent who fails to comply with subsection (3) or (4) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both, and in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for every day or part thereof during which the offence continues after conviction.

Developer not to be relieved of his obligations to carry out repairs, etc.

90. The appointment of a managing agent shall not relieve the developer of his obligation—

- (a) towards the purchasers in his development area to carry out repairs to the common property or to make good any defect, shrinkage or other faults in the common property during the defects liability period; and

- (b) to carry out repairs and varied and additional works to ensure that the development is constructed in accordance with the specifications and plan approved by the competent authority.

Termination of management agreement

91. (1) Upon the termination of a management agreement entered into under subsection 86(2), the managing agent shall—

- (a) not more than one month from such termination, prepare and submit to the Commissioner the unaudited accounts of the maintenance account or the sinking fund account, and hand over to the Commissioner a complete list of the assets and liabilities of such maintenance account or sinking fund account and all records related to and necessary for the maintenance and management of the building or land; and
- (b) not later than three months from such termination, submit to the Commissioner the audited accounts of the maintenance account or the sinking fund account.

(2) Any managing agent who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(3) In the event of the termination of the management agreement, the Commissioner may appoint another managing agent to maintain and manage the building or land for a period to be specified by the Commissioner.

PART VII

DEPOSIT TO RECTIFY DEFECTS

Developer to pay deposit to rectify defects on common property

92. (1) The developer of a building shall deposit in cash or bank guarantee with the Commissioner such sum as may be determined by the Commissioner for the purpose of carrying out any work to rectify any defects in the common property of the development area after the completion of the common property.

(2) The deposit referred to in subsection (1) shall be paid to the Commissioner upon the handing over of vacant possession.

(3) The Commissioner may use the deposit for the purpose of carrying out any work which is necessary to rectify any defects in the common property of the development area.

(4) Where the Commissioner has determined that the deposit is insufficient for rectifying the defects to the common property, the Commissioner may direct the developer to deposit within fourteen days such further sums as the Commissioner may determine.

(5) Any unexpended deposit shall be refunded to the developer on the expiry of the defect liability period for the development area.

(6) Any developer who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit and to a further fine not exceeding fifty ringgit for every day or part thereof during which the offence continues after conviction.

PART VIII

INSURANCES

Duty to insure buildings

93. (1) Any person or body who has a duty or is responsible under this Act to maintain and manage any building shall insure such building under a damage policy with a licensed insurer in accordance with this Part.

(2) A damage policy means a contract of insurance providing, in the event of the building being destroyed or damaged by fire, lightning, explosion, bursting or overflowing of water tanks or pipes, windstorms and any other occurrence specified in the policy, for—

- (a) the rebuilding of the building or its replacement by a similar building in the event of its destruction so that every part of the rebuilt building or the replacement building is in a condition not worse or not less extensive than that part or its condition when that part was new;

- (b) the repair of damage to, or the restoration of the damaged portion of the building in the event of its being damaged but not destroyed, so that the repaired or restored portion is in a condition not worse or not less extensive than that portion or its condition when that portion was new;
- (c) the payment of expenses incurred in the removal of debris; and
- (d) the remuneration of architects and other persons whose services are necessary as an incident to the rebuilding, replacement, repair or restoration.

(3) A damage policy may provide that, instead of the work and the payments being carried out or made on the occurrence of any of the events specified in subsection (2), the liability of the insurer is, on the occurrence of any such event, limited to an amount specified in the policy that is not less than the valuation of the building as determined in section 94.

Amount to be insured

94. (1) Any building shall be insured for at least the reinstatement value of the building indicated by the last valuation obtained for the building.

(2) For the purpose of determining the reinstatement value of the building that is required to be insured under this Part, a reinstatement valuation of the building shall be obtained from a registered valuer at least once every five years.

(3) The cost of such valuation shall be paid out from the maintenance account.

Insurance where area cannot be separated from main premises of building

95. (1) Where any limited common property is maintained and managed by a subsidiary management corporation, and the areas maintained and managed by the subsidiary management corporation

cannot be separated from the main premises of the building maintained or managed by the management corporation—

- (a) the management corporation shall insure the building under a damage policy; and
- (b) the premiums paid for such insurance shall be apportioned between the subsidiary management corporation and the management corporation in accordance with the share units of the proprietors constituting the subsidiary management corporation against the aggregate share units of the proprietors constituting the management corporation.

(2) For the purpose of this section, “cannot be separated from the main premises of the building” means that the area maintained and managed by the subsidiary management corporation does not exist as an independent structure, and any damage to the structure or its facilities will materially affect the existence or usability of all other structures within its vicinity.

Insurance where area can be separated from main premises of building

96. (1) Where any limited common property is maintained and managed by a subsidiary management corporation, and the area maintained and managed by the subsidiary management corporation can be separated from the main premises of the building maintained or managed by the management corporation—

- (a) the management corporation shall insure the part of the building excluding the area managed by the subsidiary management corporation; and
- (b) the subsidiary management corporation shall insure the part of the building excluding the area managed by the management corporation.

(2) For the purpose of this section, “can be separated from the main premises of the building” means that the area maintained and managed by the subsidiary management corporation exists as an independent structure, and any damage to the structure or

its facilities will not materially affect the existence or usability of all other structures within its vicinity.

Land parcels

97. The insurance required to be effected under this Part does not apply to land parcels, and each parcel owner or proprietor shall be responsible to insure his building on the land parcel.

Other insurances

98. The joint management body, management corporation or subsidiary management corporation may, apart from the insurance referred to in subsection 93(1), insure against such other risks as the parcel owners or proprietors may, by a special resolution, direct.

Insurable interest

99. The joint management body, management corporation or subsidiary management corporation shall be deemed—

- (a) for the purposes of effecting any insurance under subsection 93(1), to have an insurable interest in the building equal to the amount to be insured under subsection 94(1); and
- (b) for the purposes of effecting any insurance under section 98, to have an insurable interest in the subject matter of the insurance.

Obligation to rebuild

100. Subject to any order or resolution made under Part VIII of the Strata Titles Act 1985, all payments of money from an insurer in respect of destruction of or damage to a building shall be immediately applied in rebuilding, replacing, repairing or restoring the building.

PART IX

DISPUTES AND STRATA MANAGEMENT TRIBUNAL

Chapter 1

General

Interpretation

101. (1) In this Part, unless the context otherwise requires—

“award” means a decision of the Tribunal on the substance of the dispute and includes any order on costs or interest but does not include any interlocutory order;

“court” means any court of competent jurisdiction in Malaysia;

“interlocutory order” means an order that—

(a) is made pursuant to a claim to the Tribunal in the course of any proceeding of the Tribunal; and

(b) is incidental to the principal object of that proceeding,

and includes any direction about the conduct of that proceeding, but does not include any partial or interim order making a final determination in respect of that proceeding;

“party” means a claimant or respondent and includes any person joined as a third party;

“claimant” means a person who commences a proceeding before the Tribunal to have a matter dealt with by the Tribunal;

“respondent” means a person against whom a proceeding is commenced by the claimant;

“Secretary” means the Secretary to the Strata Management Tribunal appointed under paragraph 104(1)(a);

“claim” means a proceeding before the Tribunal between a claimant and a respondent.

(2) For the purposes of this Part, where a provision of this Part refers to a claim, it may also apply to a counterclaim, and where it refers to a defence, it may also apply to a defence to that counterclaim.

Establishment of Tribunal

102. There is established a tribunal to be known as the Strata Management Tribunal.

Members, terms of office and allowances

103. (1) The Tribunal shall consist of the following members who shall be appointed by the Minister:

- (a) a Chairman and a Deputy Chairman to be appointed from among the members of the Judicial and Legal Service; and
- (b) not less than twenty other members to be appointed from among—
 - (i) the persons who are members of or who have held office in the Judicial and Legal Service; or
 - (ii) the person who are admitted as advocates and solicitors under the Legal Profession Act 1976 [Act 166], the Advocates Ordinance of Sabah [Sabah Cap. 2] or the Advocates Ordinance of Sarawak [Sarawak Cap. 110], and who has not less than seven years' standing.

(2) Where the Chairman is for any reason unable to perform his functions or during any period of vacancy in the office of the Chairman, the Deputy Chairman shall perform the functions of the Chairman.

(3) The member referred to in paragraph (1)(b) shall hold office for a term not exceeding three years and shall be eligible for reappointment upon the expiry of his term of office.

(4) A member of the Tribunal appointed under paragraph (1)(b) may at any time resign his office by giving three months' written notice to the Minister.

(5) The Minister may at any time revoke the appointment of a member of the Tribunal referred to in paragraph (1)(b) and fill any vacancy in its membership.

(6) The Chairman and the Deputy Chairman shall be paid such fixed allowances and other allowances as the Minister may determine.

(7) The members of the Tribunal appointed under paragraph (1)(b) shall be paid a daily sitting allowance during the sitting of the Tribunal and such lodging, travelling and subsistence allowances as the Minister may determine.

Secretary, officers and staff

104. (1) The Minister shall appoint—

(a) a Secretary to the Strata Management Tribunal; and

(b) such other officers and staff of the Tribunal as may be necessary to carry out the functions of the Tribunal.

(2) Subject to the directions of the Chairman, the Secretary may, in connection with any application to the Tribunal, make interlocutory orders.

Chapter 3

Jurisdiction of Tribunal

Jurisdiction of Tribunal

105. (1) The Tribunal shall have the jurisdiction to hear and determine any claims specified in Part 1 of the Fourth Schedule and where the total amount in respect of which an award of the Tribunal is sought does not exceed two hundred and fifty thousand ringgit or such other amount as may be prescribed to substitute the total amount.

(2) For the avoidance of doubt, the Limitation Act 1953 [Act 254] shall not apply to the proceedings of the Tribunal.

(3) The jurisdiction of the Tribunal shall not extend to any claim in which the title to any land, or any estate or interest in land, or any franchise, is in question.

Exclusion of jurisdiction of court

106. (1) Where a claim is filed with the Tribunal and the claim is within the Tribunal's jurisdiction, the issues in dispute in that claim, whether as shown in the initial claim or as emerging in the course of the hearing, shall not be the subject of proceedings between the same parties in any court unless—

- (a) the proceedings before the court were commenced before the claim was filed with the Tribunal; or
- (b) the claim before the Tribunal is withdrawn, abandoned or struck out.

(2) Where paragraph (1)(a) applies, the issues in dispute in the claim to which those proceedings relate, whether as shown in the initial claim or emerging in the course of the hearing, shall not be the subject of proceedings between the same parties before the Tribunal unless the claim before the court is withdrawn, abandoned or struck out.

(3) For the purpose of this section, a claim shall be deemed to have been made with the Tribunal when section 108 has been complied with.

Persons entitled to file a claim

107. No person other than the following persons shall be entitled to file a claim to the Tribunal:

- (a) a developer;
- (b) a purchaser;
- (c) a proprietor, including an original proprietor;
- (d) a joint management body;
- (e) a management corporation;
- (f) a subsidiary management corporation;
- (g) a managing agent; and
- (h) any other interested person, with the leave of the Tribunal.

Claim to be in prescribed form

108. A claim shall be made in the prescribed form together with the prescribed fee and in accordance with any regulations made under this Part.

Sittings of Tribunal

109. (1) The jurisdiction of the Tribunal shall be exercised by any of the following members sitting alone:

- (a) the Chairman;
- (b) the Deputy Chairman; or
- (c) any of the members of the Tribunal determined by the Chairman.

(2) The Tribunal may sit in one or more sittings on such day and at such time and place as the Chairman may determine.

(3) If the member presiding over any proceedings in respect of a claim dies or becomes incapacitated, or is for any other reason unable to complete or dispose of the proceedings, the claim shall be heard afresh by another member of the Tribunal, unless the parties agree that the claim be continued by another member of the Tribunal.

(4) Where the term of appointment of any member of the Tribunal appointed under paragraph 103(1)(b) expires during the pendency of any proceedings in respect of a claim, the term of his appointment shall be deemed to have been extended until the final disposal of the claim.

Right to appear at hearings

110. (1) At the hearing of a claim, every party shall be entitled to attend and be heard.

(2) No party shall be represented by an advocate and solicitor at a hearing unless, in the opinion of the Tribunal, the matter in question involves complex issues of law and one party will suffer severe financial hardship if he is not represented by an advocate and solicitor.

(3) If one party is allowed to be represented by an advocate and solicitor under subsection (2), the other party shall also be so entitled.

(4) Subject to subsection (2) and (3)—

(a) a corporation or unincorporated body of persons may be represented by a full-time paid employee of the corporation or body; and

(b) a minor or any other person under a disability may be represented by his next friend or guardian *ad litem*.

(5) Where a party is represented as permitted under subsection (4), the Tribunal may impose such conditions as it considers necessary to ensure that the other party to the proceedings is not substantially disadvantaged.

Proceedings to be public

111. All proceedings before the Tribunal shall be open to the public.

Negotiation for settlement

112. (1) 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.

(2) Without limiting the generality of subsection (1), in making an assessment, the Tribunal shall have regard to any factors that, in the opinion of the Tribunal, are likely to impair the ability of either or both of the parties to negotiate an agreed settlement.

(3) Where the parties reach an agreed settlement, the Tribunal shall approve and record the settlement, and the settlement shall then take effect as if it were an award of the Tribunal.

(4) Where—

(a) 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

(b) the parties are unable to reach an agreed settlement in relation to the matter,

the Tribunal shall proceed to determine the claim.

Equal treatment of parties

113. The Tribunal shall act fairly and impartially as between the parties, giving each party a reasonable opportunity of presenting his case and dealing with that of his opponent.

Determination of rules and procedure

114. (1) 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.

(2) The powers conferred upon the Tribunal under subsection (1) shall include the following:

(a) to determine when and where any part of the proceedings is to be held;

(b) to determine the language or languages to be used in the proceedings and whether translations of any relevant documents are to be supplied;

(c) to make interlocutory orders;

(d) to determine the relevancy, admissibility and weight of any evidence without being bound by the rules of evidence under the Evidence Act 1950 [*Act 56*];

(e) to draw on its own knowledge and expertise;

- (f) to order the provision of further particulars in a statement of claim or statement of defence;
- (g) to order the giving of security for costs;
- (h) to make an on-site inspection of the building or land which form the subject matter of the claim;
- (i) to order samples to be taken from, or any observation to be made of or experiment conducted upon, any parcel or common property or limited common property which is or forms part of the subject matter of the claim;
- (j) to order the discovery and production of documents or materials within the possession or power of a party;
- (k) to order the preservation and interim custody of any evidence for the purposes of the proceedings;
- (l) to order the interrogatories to be answered;
- (m) to order that any evidence to be given on oath or affirmation; and
- (n) to summon the parties to the proceedings or any other person to attend before it to give evidence or to produce any document, records or other thing in his possession or otherwise to assist the Tribunal in its deliberations.

(3) A summons issued under paragraph (2)(n) shall be served and enforced as if it were a summons issued by a court.

Hearings

115. (1) The Tribunal may decide whether to hold oral hearings for the presentation of evidence or oral arguments, or whether the proceedings shall be conducted on the basis of documents and other materials.

(2) The parties shall be given reasonable prior notice of any hearing and of any meeting of the Tribunal for the purposes of inspection of document or property.

(3) All statements, documents or other information supplied to the Tribunal by one party shall be communicated to the other party.

(4) Any expert report or evidentiary document on which the Tribunal may rely on in making its decision shall be communicated to the parties.

Appointment of expert by Tribunal

116. (1) The Tribunal may—

- (a) appoint one or more experts to report to it on specific issues to be determined by the Tribunal; and
- (b) require a party to give the expert any relevant information or to produce or to provide access to any relevant document or property for the expert's inspection.

(2) If the party so requests or if the Tribunal considers it necessary, the expert shall, after delivery of a written or oral report, participate in a hearing where the parties have the opportunity to put questions to the expert and to present other expert witnesses in order to testify on the points at issue.

Chapter 5

Awards of Tribunal

Awards of the Tribunal

117. (1) The Tribunal shall make its award without delay and, where practicable, within sixty days from the first day the hearing before the Tribunal commences.

(2) The Tribunal shall in all proceedings give its reason for its award in the proceedings.

(3) In making an award under subsection (1), the Tribunal may make one or more of the orders specified in Part 2 of the Fourth Schedule, and may include in the award such stipulations and conditions as it thinks fit and just.

(4) In making an order under subsection (3), the Tribunal shall have regard to—

- (a) the relevant provisions of this Act; or

- (b) the interest of all parcel owners or proprietors in the use and enjoyment of their parcels or the common property or limited common property.

(5) The Tribunal may, at any time, rectify or correct clerical mistake in any award or errors arising in the award from any accidental slip or omission.

References to a Judge of the High Court on a question of law

118. (1) Before the Tribunal makes an award under section 117, it may, in its discretion, refer to a Judge of the High Court a question of law—

- (a) which arose in the course of the proceedings;
- (b) which, in the opinion of the Tribunal, is of sufficient importance to merit such reference; or
- (c) the determination of which by the Tribunal raises, in the opinion of the Tribunal, sufficient doubt to merit such reference.

(2) If the Tribunal refers to any question of law under subsection (1) for the decision of a Judge of the High Court, it shall make its award in conformity with such decision.

(3) For the purposes of this section, a Federal Counsel authorized by the Attorney General may appear on behalf of the Tribunal in any proceedings before a Judge of the High Court.

Awards and settlement to be recorded in writing

119. The Tribunal shall make or cause to be made a written record of the terms of—

- (a) every agreed settlement reached by the parties under subsection 112(3); and
- (b) every award made by it under section 117.

Decisions of Tribunal to be final

120. (1) An award made under subsection 112(3) or section 117 shall—

- (a) subject to section 121, be final and binding on all parties to the proceedings; and
- (b) be deemed to be an order of a court and be enforced accordingly by any party to the proceedings.

(2) For the purpose of paragraph (1)(b), in the case where the award made by the Tribunal has not been complied with, the Secretary shall send a copy of the award made by the Tribunal to the court having jurisdiction in the place to which the award relates or in the place where the award was made, and the court shall cause the copy of the award to be recorded.

Challenging the award on ground of serious irregularity

121. (1) A party to the proceedings of the Tribunal may, upon notice to the other party and to the Tribunal, apply to the High Court challenging an award in the proceedings on the ground of serious irregularity affecting the awards.

(2) If there is shown to be serious irregularity affecting the award, the High Court may—

- (a) remit the award to the Tribunal, in whole or in part, for reconsideration; or
- (b) set the award aside in whole or in part.

(3) For the purpose of this section, “serious irregularity” means an irregularity of one or more of the following kinds which the court considers has caused substantial injustice to the applicant:

- (a) failure by the Tribunal to comply with section 113;
- (b) failure of the Tribunal to deal with all the relevant issues that were put to it; or
- (c) uncertainty or ambiguity as to the effect of the award.

Disposal of document, etc.

122. (1) The Tribunal may, at the conclusion of the proceedings before it, order that any document, record, material or other property produced during the proceedings be delivered to the rightful owner or be disposed of in such manner as it thinks fit.

(2) Where no person has taken delivery of the document, record, material or other property referred in subsection (1) after a period of six months, the ownership in the document, record, material or other property shall be deemed to have passed to and become vested in the Government.

Chapter 6

*Miscellaneous provisions applicable to this Part***Criminal penalty for failure to comply**

123. Any person who fails to comply with an award made by the Tribunal commits an offence and shall, on conviction, be liable to fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both, and in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for every day or part thereof during which the offence continues after conviction.

Regulations in respect of the Tribunal

124. (1) The Minister may, after consultation with the National Council for Local Government, make such regulations as may be necessary or expedient in respect of the Tribunal.

(2) Without prejudice to the generality of subsection (1), regulations may be made for—

- (a) prescribing the duties and powers of members, the Secretary, and officers and staff of the Tribunal;
- (b) prescribing the limit of the total amount in respect of which an award of the Tribunal can be sought;
- (c) prescribing the procedure of the Tribunal;

- (d) prescribing the forms to be used in proceedings under this Part;
- (e) prescribing and imposing fees and providing for the manner for collecting and disbursing such fees;
- (f) prescribing the costs or interest applicable to proceedings in the Tribunal; and
- (g) prescribing any other matters for the better carrying out of the provisions of this Part.

PART X

ENFORCEMENT

Power of investigation

125. (1) The Commissioner may investigate the commission of any offence under this Act.

(2) The Commissioner may authorize in writing any officer of the local authority or public officer to exercise the powers of enforcement under this Act.

(3) Whenever an authorized officer exercises any of its powers of enforcement under this Act, he shall on demand produce to the person against whom the power is being exercised the authority issued to him under subsection (2).

(4) In any case relating to the commission of an offence under this Act, the Commissioner or an authorized officer carrying out an investigation may exercise all or any of the powers of a police officer of whatever rank in relation to police investigation in seizable cases as provided under the Criminal Procedure Code [Act 593], and such powers shall be in addition to the powers provided under this Part and not in derogation thereof.

Search and seizure with warrant

126. (1) If it appears to a Magistrate, upon written information on oath from the Commissioner or authorized officer and after such inquiry as he considers necessary, that there is reasonable cause to believe that an offence under this Act or its subsidiary

legislation is being or has been committed on any premises, so that any evidence or thing which is necessary to the conduct of an investigation into an offence may be found in any premises, the Magistrate may issue a warrant authorizing the Commissioner or any authorized officer named in the warrant to enter the premises at any reasonable time by day or by night, with or without assistance, and if need be by force and there to search for and seize any such evidence or thing, provided that nothing shall authorize any court other than the High Court to grant a warrant to search for a postal article, telegram or other document in the custody of the postal or telegraph authorities.

(2) Without affecting the generality of subsection (1), the warrant issued by the Magistrate may authorize the Commissioner or authorized officer to—

- (a) search for, seize and detain any book, register, document or other record;
- (b) inspect, make copies of, or take extracts from, any book, register, document or other record so seized and detained;
- (c) take possession of, and remove from the premises, any book, register, document or other record so seized and detained; or
- (d) make such inquiry as may be necessary to ascertain whether the provisions of this Act have been complied with.

(3) The Commissioner or authorized officer conducting a search under subsection (1) may, for the purpose of investigating into the offence, search any person who is in or on the premises.

(4) The Commissioner or authorized officer making a search of a person under subsection (3) or section 127 may seize, or take possession of, and place in safe custody all things other than the necessary clothing, found upon the person, and any other things, for which there is reason to believe were the instruments or other evidence of the offence, and they may be detained until the discharge or acquittal of the person.

(5) No person shall be searched except by another person of the same gender, and such search shall be conducted with strict regard to decency.

(6) If, by the reason of its nature, size or amount, it is not practicable to remove any book, register, document or other record seized under this section, the seizing officer shall by any means seal such book, register, document or other record in the premises or container in which it is found.

(7) A person who, without lawful authority, breaks, tampers with or damages the seal referred to in subsection (6) or removes any book, register, document or other record under seal or attempts to do so commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Search and seizure without warrant

127. If the Commissioner or an authorized officer is satisfied upon information received that he has reasonable cause to believe that by reason of delay in obtaining a search warrant under section 126 the investigation would be adversely affected or evidence of the commission of an offence is likely to be tampered with, removed, damaged or destroyed, the Commissioner or authorized officer may enter the premises and exercise in, upon and in respect of the premises all the powers referred to in section 126 in as full and ample a manner as if he were authorized to do so by a warrant issued under that section.

Access to computerized data

128. (1) The Commissioner or authorized officer conducting a search under section 126 or 127 shall be given access to computerized data whether stored in a computer or otherwise.

(2) For the purposes of this section, “access”—

(a) includes being provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable comprehension of computerized data; and

(b) has the meaning assigned to it in subsections 2(2) and (5) of the Computer Crimes Act 1997 [*Act 563*].

List of things seized

129. (1) Except as provided in subsection (2), where any book, register, document or other record is seized under this Part, the seizing officer shall as soon as practicable prepare a list of the things seized and of the places in which they are respectively found and deliver a copy of the list signed by him to the occupier of the premises which has been searched, or to his agent or servant, at the premises.

(2) Where the premises are unoccupied, the seizing officer shall whenever possible post a list of the things seized conspicuously on the premises.

Release of things seized

130. (1) If any book, register, document or other record has been seized under this Act, the Commissioner or authorized officer who effected the seizure, may at any time after that release the book, register, document or other record to the person as he determines to be lawfully entitled to the book, register, document or other record if he is satisfied that the book, register, document or other record is not otherwise required for the purpose of any proceedings under this Act or its subsidiary legislation, or for the purpose of any prosecution under any other written law, and in such event neither the officer effecting the seizure, nor the Government, the Commissioner or any person acting on behalf of the Government or the Commissioner shall be liable to any proceedings by any person if the seizure and the release of the book, register, document or other record had been effected in good faith.

(2) A record in writing shall be made by the Commissioner or authorized officer effecting the release of any book, register, document or other record under subsection (1) specifying in detail the circumstances of and the reason for the release and he shall send a copy of the record to the Public Prosecutor and to the Inspector-General of Police within seven days of the release.

Power to require attendance of person acquainted with case

131. (1) The Commissioner or authorized officer making an investigation under this Act or its subsidiary legislation may by

order in writing require the attendance before himself of any person who appears to the Commissioner or authorized officer to be acquainted with the facts and circumstances of the case, and such person shall attend as so required.

(2) If any person refuses to attend as so required, the Commissioner or authorized officer may report such refusal to a Magistrate who shall issue a summons to secure the attendance of such person as may be required by the order made under subsection (1).

Examination of person acquainted with case

132. (1) The Commissioner or authorized officer making an investigation under this Act or its subsidiary legislation may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) The person examined under subsection (1) shall be legally bound to answer all questions relating to such case put to him by the Commissioner or authorized officer, but such person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(3) A person making a statement under this section shall be legally bound to state the truth, whether or not such statement is made wholly or partly in answer to the questions.

(4) The Commissioner or authorized officer examining a person under subsection (1) shall first inform the person of the provisions of subsections (2) and (3).

(5) A statement made by any person under this section shall, wherever possible, be reduced into writing and signed by the person making it or affixed with his thumbprint, as the case may be—

- (a) after it has been read to him in the language in which he made it; and
- (b) after he has been given an opportunity to make any correction he may wish.

Obstruction

133. A person who—

- (a) refuses the Commissioner or any authorized officer access to any premises which the Commissioner or authorized officer is entitled to have under this Act or in the execution of any duty imposed or power conferred by this Act;
- (b) assaults, obstructs, hinders or delays the Commissioner or any authorized officer in effecting any entry which the Commissioner or authorized officer is entitled to effect under this Act or in the execution of any duty imposed or power conferred by this Act; or
- (c) refuses to give the Commissioner or any authorized officer any information relating to an offence or suspected offence under this Act or its subsidiary legislation or any other information which may reasonably be required of him and which he has in his knowledge or power to give,

commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Requirement to provide translation

134. (1) Where the Commissioner or an authorized officer finds, seizes, detains, or takes possession of any book, register, document or other record in the exercise of any power under this Act, and such book, register, document or other record or any part of it is in a language other than the national language or the English language, or in any sign or code, the Commissioner or authorized officer may orally or in writing require the person who had the possession, custody or control of such book, register, document or other record to furnish to the Commissioner or authorized officer a translation in the national language of such book, register, document or other record within such period as, in the opinion of the Commissioner or authorized officer, would be reasonable having regard to the length of the book, register, document or other record, or other circumstances relating to it.

(2) No person shall knowingly furnish a translation under subsection (1) which is not an accurate, faithful and true translation, or knowingly make a translation under that subsection which is not accurate, faithful and true.

(3) Any person who fails to comply with subsection (2) commits an offence and shall on conviction, be liable, to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Compounding of offences

135. (1) The Minister may, by regulations, prescribe any offence under this Act or its subsidiary legislation to be a compoundable offence.

(2) The Commissioner may, with the consent in writing of the Public Prosecutor, compound any offence committed by any person under this Act or its subsidiary legislation and prescribed to be a compoundable offence by making a written offer to the person suspected to have committed the offence to compound the offence upon payment to the Commissioner an amount of money not exceeding fifty per centum of the maximum fine for that offence within such time as may be specified in the written offer.

(3) An offer under subsection (2) may be made at any time after the offence has been committed but before any prosecution for it has been instituted, and if the amount specified in the offer is not paid within the time specified in the offer, or such extended time as the Commissioner may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(4) Where an offence has been compounded under subsection (2), no prosecution shall be instituted in respect of the offence against the person to whom the offer to compound was made, and any book, register, document or other record seized under this Act or its subsidiary legislation in connection with the offence may be released by the Commissioner, subject to such terms and conditions as it thinks fit to impose in accordance with the conditions of the compound.

(5) All sums of money received by the Commissioner under this section shall be deposited into the State Consolidated Fund or the Federal Consolidated Fund, as the case may be.

Prosecution

136. No prosecution shall be instituted for any offence under this Act or subsidiary legislation made under this Act except by or with the consent in writing of the Public Prosecutor.

Jurisdiction of the Magistrate's Court

137. Notwithstanding the provisions of any written law to the contrary, a court of Magistrate of the First Class shall have jurisdiction to try summarily any offence under this Act or any of its subsidiary legislation and to award a full punishment for any such offence.

Joinder of offences

138. Notwithstanding anything contained in section 164 of the Criminal Procedure Code, where a person is accused of more than one offence under this Act or any of its subsidiary legislation, he may be charged with and tried at one trial for any number of such offences committed within the space of any length of time.

Protection of informers

139. (1) Except as provided in subsections (2) and (3), no witness in any civil or criminal proceedings under this Act shall be obliged or permitted to disclose the name or address of any informer or the substance and nature of the information received from him or state any matter which might lead to his discovery.

(2) If any book, register, document or other record which is in evidence or is liable to inspection in any civil or criminal proceedings whatsoever contains any entry in which any informer

is named or described or which might lead to his discovery, the court shall cause all such entries to be concealed from view or to be obliterated in so far as may be necessary to protect the informer from discovery.

(3) If in a trial for any offence under this Act the court, after full inquiry into the case, is of the opinion that the informer willfully made in his complaint a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceedings the court is of the opinion that justice cannot be fully done between the parties to the proceeding without the discovery of the informer, it shall be lawful for the court to require the production of the original complaint, if in writing, and permit an inquiry and require full disclosure concerning the informer.

Offences by body corporate

140. If a body corporate commits an offence under this Act or its subsidiary legislation, a person who at the time of the commission of the offence was a director, a member of the management committee, a member of the subsidiary management committee, a member of the joint management committee, chief executive officer, manager, secretary or other similar officer of the body corporate or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate or was assisting in such management—

- (a) may be charged severally or jointly in the same proceedings with the body corporate; and
- (b) if the body corporate is found guilty of the offence, shall be deemed to be guilty of that offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves —
 - (i) that the offence was committed without his knowledge, consent or connivance; and
 - (ii) that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

Continuing offences

141. Where provision is made by or under this Act for the imposition of a daily penalty in respect of a continuing offence—

- (a) the court by which a person is convicted of the original offence may fix a reasonable period from the date of conviction for the person to comply with any direction given by the court; and
- (b) where the court has fixed such period, the daily penalty is not recoverable in respect of any day before the period expires.

PART XI

MISCELLANEOUS

Evidential provisions

142. In any proceedings in a court or of the Tribunal under this Act with respect to any alleged defect in a parcel or in any common property or limited common property situated immediately, whether wholly or partly, above another parcel or any common property or limited common property, it shall be presumed, in the absence of proof to the contrary, that the defect is within that first-mentioned parcel or common property or limited common property, as the case may be, if there is any evidence of dampness, moisture or water penetration—

- (a) on the ceiling that forms part of the interior of the parcel, common property or limited common property, as the case may be, immediately below the first-mentioned parcel, common property or limited common property; or
- (b) on any furnishing material, including plaster, panel or gypsum board attached, glued, laid or applied to the ceiling that forms part of the interior of the parcel, common property or limited common property, as the case may be, immediately below the first-mentioned parcel, common property or limited common property.

Representation in proceedings

143. (1) Notwithstanding any other written law—

- (a) in any proceedings by or against the joint management body, management corporation or subsidiary management corporation; or
- (b) in any other proceedings in which the joint management body, management corporation or subsidiary management corporation is required or permitted by the court to be represented, or to be heard, or is otherwise entitled to be represented or to be heard,

any person authorized by the joint management body, management corporation or subsidiary management corporation for that purpose may, on behalf of the joint management body, management corporation or subsidiary management corporation, institute such proceedings or appear in such proceedings and may make all appearances and applications and do all acts in respect of the proceedings on behalf of the joint management body, management corporation or subsidiary management corporation.

(2) Where all or some of the parcel owners or proprietors of the parcels in a development area—

- (a) are jointly entitled to take proceedings for or with respect to the common property in that development area against any person or are liable to have such proceedings taken against them jointly; or
- (b) are jointly entitled to take proceedings for or with respect to any limited common property in that development area against any person or are liable to have such proceedings taken against them jointly,

the proceedings may be taken—

- (A) in the case of paragraph (2)(a), by or against the joint management body or management corporation; or
- (B) in the case of paragraph (2)(b), the subsidiary management corporation constituted for that limited common property,

as if the joint management body, management corporation or subsidiary management corporation, as the case may be, were the parcel owners or the proprietors of the parcels concerned.

(3) Any judgment or order given or made in favour of or against the joint management body, management corporation or subsidiary management corporation, as the case may be, in any proceedings referred to in subsection (2) shall have effect as if it were a judgment or an order given or made in favour of or against the parcel owners or the proprietors, as the case may be.

(4) Where a parcel owner or proprietor is liable to make a contribution to another parcel owner or proprietor, as the case may be, in respect of a judgment debt arising under a judgment referred to in subsection (3), the amount of that contribution shall bear to the judgment debt—

- (a) in the case of a judgment or an order for or against a joint management body or management corporation, the same proportion as the allocated share units or share units of the parcel of the first-mentioned parcel owner or proprietor bears to the aggregate share units; or
- (b) in the case of a judgment or an order for or against a subsidiary management corporation, the same proportion as calculated in accordance with section 65.

Service of notice or order

144. Any notice or order required to be served on any person under this Act may be served and shall be deemed to have been served on that person by serving a copy of such notice or order—

- (a) personally;
- (b) by registered post addressed to the last-known address of business, parcel or residence of the person to be served; or
- (c) by attaching the notice or order at a prominent part of the last-known address of business, parcel or residence of the person to be served.

Protection against suits and legal proceedings

145. No action, suit, prosecution or other proceedings shall lie or be brought, instituted or maintained in any court against—

- (a) the Commissioner, the Deputy Commissioner or other officers appointed under subsection 4(1);
- (b) any authorized officer referred to in subsection 125(2);
- (c) Tribunal, a member of the Tribunal, the Secretary and an officer or staff of the Tribunal; or
- (d) any person authorized to act for or on behalf of the Tribunal,

in respect of any act, neglect or default done or committed by him or it, in good faith or any omission by him or it in good faith, in such capacity.

Public Authorities Protection Act 1948

146. The Public Authorities Protection Act 1948 [*Act 198*] shall apply to any action, suit, prosecution or proceedings against the Commissioner, any Deputy Commissioner or other officer appointed under subsection 4(1), or any authorized officer referred to in subsection 125(2) in respect of any act, neglect or default done or committed by him in good faith or any omission omitted by him in good faith, in such capacity.

Public servant

147. The Commissioner, any Deputy Commissioner or other officer appointed under subsection 4(1), or any authorized officer referred to in subsection 125(1) while discharging his duty or performing his functions or exercising his powers under this Act in such capacity shall be deemed to be public servants within the meaning of the Penal Code [*Act 574*].

Non-application of other written laws, contracts and deeds

148. On the coming into operation of this Act, in a local authority area or part of a local authority area or in any other area, the provisions of any written law, contracts and deeds relating to the

maintenance and management of buildings and common property in as far as they are contrary to the provisions of this Act shall cease to have effect within the local authority area or that other area.

Contracting out prohibited

149. (1) The provisions of this Act shall have effect notwithstanding any stipulation to the contrary in any agreement, contract or arrangement entered into after the commencement of this Act.

(2) No agreement, contract or arrangement, whether oral or wholly or partly in writing, entered into after the commencement of this Act shall operate to annul, vary or exclude any of the provisions of this Act.

Regulations

150. (1) The Minister may, after consultation with the National Council for Local Government, make such regulations as may be expedient or necessary for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made for all or any of the following purposes:

- (a) prescribing any matter which is required under this Act to be prescribed;
- (b) providing for proper standards of maintenance and management in respect of buildings, common property or limited common property;
- (c) providing for the payment of deposit by any person erecting or constructing a building to ensure its proper maintenance and management and for the forfeiture of the deposit;
- (d) prescribing that any act or omission in failing to comply with any of the regulations shall be an offence and provide the penalties for the offence either by way of fine or imprisonment or both provided that any fine so provided shall not exceed fifty thousand ringgit and a term of imprisonment so provided shall not exceed three years;

- (e) prescribing offences which may be compounded and the forms to be used in and the method and the procedure for compounding such offences; or
- (f) providing generally for the performance of the functions, the exercise of the powers and the discharge of the duties of the developer, joint management body, management corporation or subsidiary management corporation under the provisions of this Act.

Power to exempt

151. (1) The Minister may, after consultation with the National Council for Local Government, by order published in the *Gazette*, exempt any person or building or land, or any class of persons or type of buildings or lands, from all or any of the provisions of this Act, subject to such terms and conditions as may be specified in the order.

(2) Any person who fails to comply with any term and condition under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Amendment of Schedules

152. (1) The Minister may from time to time, after consultation with the National Council for Local Government, by order published in the *Gazette*, amend any of the Schedules.

(2) The Minister may, in any order made under subsection (1), make such incidental, consequential or supplementary provision as may be necessary or expedient.

Repeal

153. The Building and Common Property (Maintenance and Management) Act 2007 [Act 663] is repealed.

FIRST SCHEDULE

[Section 8]

FORMULA FOR THE COMPUTATION OF THE ALLOCATED SHARE UNITS
OF PARCELS IN RELATION TO BUILDING OR LAND INTENDED FOR
SUBDIVISION INTO PARCELS

Interpretation**1.** In the application of this Schedule—

- (a) “area of parcel” or “area of accessory parcel” means the area of the respective parcel, including a land parcel, as specified in the sale and purchase agreement between the developer and the purchaser;
- (b) if any of the area referred to in subparagraph (a) is not specified in the sale and purchase agreement between the developer and the purchaser, that area shall be determined in accordance with the approved building plan relating to that parcel or by such other means as are fair and equitable;
- (c) for the avoidance of doubt, the “area of parcel” for a land parcel shall be the area of the land comprised in the land parcel; and
- (d) “whole floor parcel” means a parcel that is made up of either a whole floor or a block of contiguous whole floors that is part of a building and comprises within itself significantly large circulation area or vertical transportation core (lifts or escalators).

Formula for the computation of allocated share units**2.** (1) The allocated share units of a parcel shall be calculated as follows:

Allocated
share units = (area of parcel x WF_1 x WF_2) + (area of accessory parcel x WF_3)
of a parcel

(2) In the above formula—

- (a) areas are expressed in square metres;
- (b) WF_1 is the weightage factor for the type of parcel as specified in Table 1;
- (c) WF_2 is the weightage factor for whole floor parcel as specified in Table 2;
- (d) WF_3 is the weightage factor for accessory parcel as specified in Table 3;
- (e) if there is more than one accessory parcel, the component formula for the accessory parcel (area of accessory parcel x WF_3) shall be applied to each accessory parcel and then shall be added to the formula; and

- (f) share units shall be expressed as a whole number and any fraction or decimal shall be rounded to the nearest whole number.
 (For example: 108.4 = 108; 108.5 = 109; 108.7 = 109)

Weightage factor (WF_i) for types of parcel

3. Table 1 shows the weightage factors (WF_i) for the types of parcels, reflecting the frequency of usage and general maintenance of the common property which is as follows:

TABLE 1

No.	Type of parcel	Without air-conditioning to common areas of corridors, lobbies and foyers		With air-conditioning to common areas of corridors, lobbies and foyers	
		WF_i having benefit of common lift/escalator facility	WF_i having no benefit of common lift/escalator facility	WF_i having benefit of common lift/escalator facility	WF_i having no benefit of common lift/escalator facility
1.	Apartment/Small Office Home Office (SOHO)	1.00	0.85	1.30	1.15
2.	Office/Institution (College) complex	1.00	0.85	1.30	1.15
3.	Retail complex	2.00	1.70	3.20	2.90
4.	Hotel/Medical centre complex	2.20	1.90	2.80	2.45
5.	Industrial complex	1.00	0.85	1.45	1.30
6.	Car park (whole floor parcel)	0.75	0.65	0.85	0.75
7.	Shop-houses, shop-apartments & shop-offices—				
	(a) Upper floor parcel	1.00	0.85	1.30	1.15
	(b) Ground floor parcel	0.85	0.85	1.15	1.15
8.	Land parcels	Not applicable	Not applicable	Not applicable	Not applicable

Weightage factor (WF_2) for whole floor parcel

4. (1) Table 2 shows the weightage factors (WF_2) for the whole floor parcel which are as follows:

TABLE 2

<i>No.</i>	<i>Parcel</i>	WF_2	<i>Basis</i>
1.	Whole floor parcel excluding area of vertical transportation core (lifts or escalators)	0.85	<p>(a) To reflect an equivalent net lettable area after taking into account its large circulation area only.</p> <p>(b) In a retail complex, its circulation area is much larger but is offset by the letting of such parts to retail kiosks.</p>
2.	Whole floor parcel including area of vertical transportation core (lifts or escalators)	0.80	<p>(a) To reflect an equivalent net lettable area after taking into account its large circulation area and vertical transportation core (lifts or escalators).</p> <p>(b) In a retail complex, its circulation area is much larger but is offset by the letting of such parts to retail kiosks.</p>
3.	Not whole floor parcel	1	Not applicable

(2) The examples of whole floor parcels are, but not limited to, the following:

- (a) a whole floor or a block of contiguous whole floors in an apartment complex;
- (b) a whole floor or a block of contiguous whole floors in an office complex;
- (c) a whole floor or a block of contiguous whole floors in a retail complex; and
- (d) a whole floor or a block of contiguous whole floors of car parks in a complex.

(3) In order to be equitable to other parcels which form the majority and comprise only net lettable areas, a whole floor parcel must be adjusted to its equivalent net lettable area by taking into account its large circulation area or vertical transportation core (lifts or escalators) in the whole floor parcel.

(4) Table 2 shall not apply to simple types of shop-houses, shop-apartments, shop-offices and duplexes (each parcel is located on two floors).

Weightage factor (WF_3) for accessory parcel

5. (1) Table 3 shows the weightage factors (WF_3) for an accessory parcel which are as follows:

TABLE 3

<i>No.</i>	<i>Accessory parcel</i>	WF_3	<i>Basis</i>
1.	Outside building	0.25	To reflect a non-habitable open or enclosed area outside the building.
2.	Within building	0.5	To reflect a non-habitable open or enclosed area within the building.

(2) An accessory parcel is an open or enclosed part of the development area that has been made appurtenant to a parcel and cannot be disposed of independently of the parcel.

(3) The examples of accessory parcels are, but not limited to, car bays, garden areas, roof areas and store rooms located away from the parcels.

(4) In order to be equitable before incorporating into the allocated share units of a parcel, the area of an accessory parcel must be adjusted to reflect that it is non-habitable and generally of lower construction cost.

(5) For the purpose of ascertaining the weightage factor in accessory parcels, the following interpretations shall apply:

- (a) “outside building”, in relation to an accessory parcel, means that the accessory parcel is located on a part of the development area which is outside a building and is neither part nor deemed to be part of a building; and
- (b) “within building”, in relation to an accessory parcel, means that the accessory parcel is located on a part of the development area which is within a building and forms part or deemed to form part of the building.

SECOND SCHEDULE

PROVISIONS FOR MANAGEMENT CORPORATION

[Subsection 22(2), 56(2) or 63(5)]

Interpretation

1. In the application of this Schedule to any management corporation—

“general meeting” means a general meeting of the management corporation and includes the first annual general meeting.

Constitution of management committee

2. (1) Subject to the provisions of this paragraph and to any regulations or by-laws made under this Act, every management corporation shall have a management committee which shall consist of such number of persons as the management corporation may determine in a general meeting, but in any case not less than three and not more than fourteen natural persons (inclusive of any member of the subsidiary management committee of a subsidiary management corporation in subsection 63(4)).

(2) Notwithstanding subparagraph (1), where a management corporation has not more than three proprietors, the management committee of the management corporation shall consist of all the proprietors who are natural persons or in the case of a proprietor which is a company, society, statutory body or any other body, its nominee.

(3) Where a management corporation has only one proprietor, the sole proprietor may make any decision that a duly convened management committee may make under this Act, and any such decision shall be deemed to be a decision of the management committee of the management corporation.

(4) All the members of the management committee shall be elected at each annual general meeting of the management corporation.

(5) There shall be a chairman, secretary and treasurer, all of whom shall be natural persons, to be elected by the management committee from among its members immediately after the conclusion of the general meeting but no chairman, secretary or treasurer shall hold office for more than two consecutive years.

(6) All the members of the management committee of a management corporation shall retire from office at the conclusion of the next annual general meeting. A retiring member of the management committee shall be eligible for re-election but no member of the management committee shall hold office for more than three consecutive terms.

(7) A person shall not be eligible for election as a member of the management committee of a management corporation unless he is an individual of at least twenty-one years of age and who—

- (a) is a proprietor or a co-proprietor of a parcel;
- (b) is nominated for election by a proprietor of a parcel which is a company, society, statutory body or any other body; or
- (c) is not a proprietor of a parcel but is a member of the immediate family of a proprietor who owns two or more parcels and is nominated for election by that proprietor.

(8) For the avoidance of doubt, a proxy appointed by a proprietor shall not be eligible for election.

(9) Notwithstanding subparagraph (7), an individual referred to in that subparagraph shall not be eligible for election as a member of the management committee of a management corporation if, on the seventh day before the date of election—

- (a) where he is a proprietor or co-proprietor of a parcel, all or any part of the Charges, or contribution to the sinking fund, in respect of that parcel are in arrears;
- (b) where he is nominated for election by a proprietor of a parcel which is a company, society, statutory body or any other body, all or any part of the Charges, or contribution to the sinking fund, in respect of that parcel are in arrears; or
- (c) where he is a member of the immediate family of a proprietor who owns two or more parcels and is nominated for election by that proprietor, all or any part of the Charges, or contribution to the sinking fund, in respect of any parcel are in arrears.

(10) Notwithstanding subparagraph (7) and without prejudice to subparagraph (9), the following persons shall also not be eligible for election as a member of the management committee:

- (a) an individual who is a co-proprietor of a parcel with another one or more co-proprietors, if any other co-proprietor of that parcel is also a candidate at that election; and
- (b) an individual who is nominated for election by a proprietor who owns two or more parcels if —
 - (i) that proprietor together with any of his nominees—
 - (A) nominated at the same election; or
 - (B) elected to the management committee at the same or other election; or

(ii) that proprietor's nominees,

exceeds the threshold number for that proprietor determined in accordance with subparagraph (11).

(11) For the purposes of determining the eligibility of any individual who is nominated for election as a member of the management committee under subsubparagraph (10)(b), the threshold number for that proprietor shall be—

- (a) the number of management committee members that is proportional to that proprietor's share units, ignoring any fraction; or
- (b) forty-nine percent of the number of management committee members determined under subparagraph (1), ignoring any fraction,

whichever number is lower.

(12) For the purposes of subparagraph (11), the word "proprietor" shall include the original proprietor who owns two or more parcels but the original proprietor's number of parcels shall exclude any parcel that has been sold to any person who has yet to be duly registered as a proprietor.

(13) An absent proprietor shall not be nominated for election as a member of the management committee unless he has appointed a proxy and has given his written consent to be nominated and elected as a member of the management committee.

Vacation of office of member of management committee

3. (1) A person who is the chairman, secretary or treasurer or a member of a management committee shall vacate or shall be deemed to have vacated his office as such member—

- (a) if he resigns;
- (b) if he dies;
- (c) if he becomes a bankrupt;
- (d) if he is no longer a proprietor;
- (e) if he has been convicted on a charge in respect of—
 - (i) an offence involving fraud, dishonesty or moral turpitude;
 - (ii) an offence under any law relating to corruption;
 - (iii) an offence under this Act; or
 - (iv) any other offence punishable with imprisonment (in itself only or in addition to or in lieu of a fine) for more than two years;
- (f) if his conduct, whether in connection with his duties as a member of the management committee or otherwise, has been such as to bring discredit on the management committee;
- (g) if he is of unsound mind or otherwise incapable of discharging his duties;

- (h) in the case of the chairman, if he absents himself from three consecutive scheduled meetings of the management committee without the leave of the management committee;
- (i) in the case of a member of the management committee other than the chairman, if he absents himself from three consecutive meetings of the management committee without the leave in writing of the chairman;
- (j) in the case where the proprietor of the parcel is a company, society, statutory body or any other body, as the case may be, if he by resolution removed as the representative of the company, society, statutory body or any other body;
- (k) if he is in default of payment of the Charges, or contribution to the sinking fund, (including interest) for a continuous period of three months; or
- (l) in the case of a member of the management committee, if he commits a serious breach of the by-laws and has failed to remedy the breach, if the breach is capable of being remedied within fourteen days of the date of receipt of notice from the management committee.

(2) Within fourteen days of the occurrence of any of the events in subparagraph (1) except for the event under subsubparagraph (1)(k), the company, society, statutory body or any other body may appoint another representative to replace the member of the management committee and to hold the office vacated.

(3) Except where the management committee consists of all the proprietors, the management corporation may, at any time, by resolution at an extraordinary general meeting remove any member of the management committee from office and subject to subparagraph 2(8) appoint another proprietor in his place to hold office until the next annual general meeting.

(4) A member of the management committee may resign his office at any time in writing under his hand addressed to the management corporation.

(5) Where a vacancy in the membership of the management committee occurs otherwise than by operation of subparagraph (1) or (3), the remaining members may, subject to subparagraph 2(8), appoint another proprietor to be a member until the next annual general meeting.

Quorum for management committee meetings

4. Except where there is only one proprietor, a quorum at meetings of the management committee shall be—

- (a) two, where there are not more than four members;
- (b) three, where there are five or six members;
- (c) four, where there are seven or eight members;
- (d) five, where there are nine or ten members;

- (e) six, where there eleven or twelve members; and
- (f) seven, where there are thirteen or fourteen members.

Meetings and proceedings of the management committee

5. (1) The management committee shall meet at such times and places and at such intervals as the chairman may decide, but the chairman shall not allow more than two months to lapse between meetings.

(2) The chairman shall call for a meeting if requested to do so by the Commissioner or by at least two members of the management committee, failing which the Commissioner may appoint any member of the management committee to convene the meeting.

(3) Notice of every meeting shall be given to all members of the management committee not less than seven days before the date appointed for the meeting and such notice shall be displayed on the notice board of the management corporation.

(4) Every meeting of the management committee shall be presided over by the chairman of the management committee, and in the absence of the chairman, the members of the management committee who are present may elect one of them to chair such meeting.

(5) Questions arising at meetings shall be decided by a simple majority vote, and if on any question to be determined by the management committee there is equality of votes, the chairman shall have a casting vote.

(6) Subject to subparagraph (4), the management committee may regulate its own procedure at meetings.

Power to employ agents and servants

6. The management committee may employ, for and on behalf of the management corporation, such agents and servants as it thinks fit on a yearly basis, in connection with or to facilitate the exercise of the powers and the performance of the duties of the management corporation, provided that if such agent is an independent third party, he shall be a registered property manager.

Keeping of records and accounts of management corporation

7. (1) The management committee shall keep minutes of all its proceedings and minutes of general meetings.

(2) The management committee shall—

- (a) cause a copy of the minutes of a meeting of the management committee, which is signed by the chairman of the meeting or the secretary, to

be displayed on the notice board within twenty-one days after the meeting; and

- (b) cause a copy of a minute of any resolution of the management committee, or of the management corporation passed in accordance with this Act to be displayed on the notice board within twenty-one days after it is passed.

(3) A copy of any minutes referred to in subparagraph (2) shall be kept displayed on the notice board until it is replaced by a copy of the minutes of the subsequent meeting.

(4) The Commissioner may require the management committee to give each proprietor a copy of the minutes referred to in subparagraph (2)(a) or (b) within the period specified in that subparagraph.

(5) The minutes of the meeting signed by the chairman of the meeting or the secretary shall be admissible in any legal proceedings as *prima facie* evidence of the facts stated in them without further proof.

(6) The management committee shall—

- (a) cause to be prepared such accounts and records of accounts as will sufficiently explain the transactions of the accounts and enable true and fair balance sheet, income and expenditure statement and profit and loss statement to be prepared; and
- (b) on the application of a proprietor or chargee of a parcel or a proprietor of a provisional block (or any person authorized in writing by him), make the books of accounts available for inspection during office hours of the management corporation, at a fee not exceeding fifty ringgit for each inspection.

(7) The management committee shall prepare for each annual general meeting, proper accounts relating to all moneys of the management corporation and the management corporation's income and expenditure.

(8) The management committee shall, within twenty-eight days of a general meeting, file with the Commissioner certified true copies of—

- (a) the audited accounts of the management corporation together with the auditor's report which has been presented to the general meeting;
- (b) the resolutions passed at the general meeting; and
- (c) the minutes of the general meeting.

(9) The management committee shall within twenty-eight days of a general meeting extend copies of the minutes of the meeting to all proprietors or display the minutes of the meeting on the notice board of the management corporation.

(10) The accounts of the management corporation shall be audited annually by an approved company auditor appointed by the management committee.

(11) The management committee shall permit the Commissioner at all reasonable times, full and free access to accounting and other records of the management corporation, and permit the Commissioner to make copies or make extracts from any such accounting or other records.

Acts of management committee valid notwithstanding vacancy, etc.

8. Any act or proceeding of a management committee done in good faith shall, notwithstanding that at the time when the act or proceeding was done, taken or commenced there was—

- (a) a vacancy in the office of a member of the management committee; or
- (b) any defect in the appointment, or any disqualification of any such member,

be as valid as if the vacancy, defect or disqualification did not exist and the management committee were fully and properly constituted.

Resolutions of the management committee in writing

9. A resolution is taken to have been passed at a meeting of a management committee if the resolution in writing is signed by every member of the management committee indicating agreement with the resolution, and in the absence of such agreement by every member of the management committee, a meeting has to be held.

Annual general meeting

10. (1) The management corporation shall hold an annual general meeting for the consideration of accounts, election of the management committee and the transaction of such other matters as may arise.

(2) The first annual general meeting shall be held within one month after the expiry of the initial period and the subsequent annual general meetings shall be held once in each year, provided that not more than fifteen months shall lapse between the date of one annual general meeting and the next.

(3) The holding of any annual general meeting out of time in breach of this paragraph shall not affect the validity of the annual general meeting.

Extraordinary general meetings

11. (1) A general meeting of the management corporation other than the annual general meeting shall be known as the extraordinary general meeting.

(2) The management committee—

- (a) shall convene an extraordinary general meeting upon a requisition in writing made by the proprietors who are together entitled to at least one-quarter of the aggregate share units;

- (b) shall convene an extraordinary general meeting upon receiving a direction in writing from the Commissioner for the transaction of such business as the Commissioner may direct; and
- (c) may convene an extraordinary general meeting on such other occasion as it thinks fit.

(3) The requisition shall state the objects of the meeting and shall be signed by the requisitionist and deposited at the registered office of the management corporation, and may consist of several documents in like form each signed by one or more requisitionists.

(4) The extraordinary general meeting shall be held as soon as practicable but in any case not later than six weeks after—

- (a) the requisition has been deposited at the registered office of the management corporation; or
- (b) receiving a direction in writing from the Commissioner under subsubparagraph (2)(b).

(5) If—

- (a) the Commissioner is satisfied that the management committee has not been properly constituted; or
- (b) the management committee fails to convene the extraordinary general meeting within the time period stipulated in subparagraph (4),

the Commissioner may authorize in writing any person to convene an extraordinary general meeting for such purposes as may be approved by the Commissioner.

(6) In the case of a meeting convened pursuant to subsubparagraph (5)(b), all costs incurred by the person in convening the meeting shall first be paid by the management corporation to that person and such costs shall be recoverable as a debt due from all the members of the management committee personally to the management corporation.

Notice of general meeting

12. (1) At least fourteen days' notice of any general meeting shall be given to every proprietor.

(2) Every notice for a general meeting shall include but not be limited to the following:

- (a) the place, date and time for the meeting;
- (b) each proposed resolution to be considered at the meeting; and
- (c) a notification to each proprietor of his voting rights and that he may vote in person or by proxy at the meeting.

(3) In the case of an annual general meeting, the notice in subparagraph (2) shall also—

- (a) be accompanied by a copy of the minutes of the last annual general meeting;
- (b) be accompanied by a copy of the audited accounts together with the auditor's report on the accounts of the management corporation; and
- (c) specify any other matters to be considered at the meeting.

(4) No motion shall be submitted at a general meeting unless—

- (a) notice of the motion has been given in accordance with this paragraph; or
- (b) the motion is a motion to amend a motion of which notice has been so given.

Requisition for motions to be included on agenda for general meeting

13. (1) Any proprietor may, by notice in writing deposited at the registered office of the management corporation not less than seven days before the time for holding the meeting, require inclusion of a motion as set out in such notice in the agenda of the next general meeting of the management corporation.

(2) Upon receipt of the notice under subparagraph (1), the management committee shall include the motion in the agenda of next general meeting, and the notice of the motion shall be displayed on the notice board of the management corporation.

List of names of persons entitled to vote

14. The management committee of the management corporation shall put up a list of the names of the persons who are entitled to vote at a general meeting on the notice board at least forty-eight hours before the general meeting.

Quorum at general meeting

15. (1) One half of the proprietors entitled to vote present, either in person or by proxy, shall constitute a quorum at a general meeting.

(2) If within half an hour after the time appointed for a general meeting, a quorum is not present, those proprietors entitled to vote who are present shall constitute a quorum.

Chairman of general meeting

16. Every general meeting shall be presided over by a chairman who shall be elected by those proprietors present who are entitled to vote from among the proprietors, and the chairman shall preside over such meeting until its conclusion.

Manner of deciding matters at general meeting

17. (1) Any matter that requires a decision at a general meeting shall be decided on a show of hands unless a poll is demanded by a proprietor or his proxy.

(2) Unless a poll is demanded, a declaration by the chairman that a resolution has been carried on a show of hands shall be conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against the resolution.

(3) A proxy shall be entitled to vote on a show of hands or by poll.

(4) The proprietor or his proxy demanding the poll may withdraw such demand.

(5) Where a poll is taken, it shall be taken in such manner as the chairman thinks fit, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

(6) In the case of an equality of votes, whether on a show of hands or a poll, the chairman shall be entitled to a casting vote.

Proxy

18. (1) An instrument appointing a proxy, who need not be a proprietor, shall be in writing—

(a) under the hand of the proprietor making the appointment or his attorney, and may be either general or for a particular meeting; or

(b) if the proprietor appointing the proxy is a company, society, statutory body or any other body, either under seal or under the hand of an officer or its attorney duly authorized.

(2) An instrument appointing a proxy if made under the hand of an attorney shall be accompanied with a copy of the power of attorney.

(3) The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

(4) A person may act as proxy for only one proprietor at any one general meeting.

(5) The instrument appointing proxy shall be deposited at the registered address of the management corporation not less than forty-eight hours before the time for holding the meeting or any adjournment of the meeting at which the person named in the instrument proposes to vote, failing which the proxy shall not be entitled to attend or vote.

Powers of proxies

19. (1) Subject to subparagraph (2), a person duly appointed as a proxy if entitled to vote otherwise as a proxy, may also vote in his own right.

(2) For the avoidance of any doubt, a proxy cannot exercise a vote in relation to a matter if the person who appoints the proxy is exercising personally a power to vote on the matter.

Authority not to be revoked by death of principal, etc.

20. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or 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 at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used.

Voting rights of proprietor

21. (1) Each proprietor who is not a co-proprietor shall have one vote in respect of each parcel on a show of hands, and on a poll, shall have such number of votes as that corresponding with the number of share units or provisional share units attached to his parcel or provisional block.

(2) A proprietor shall not be entitled to vote if, on the seventh day before the date of the meeting, all or any part of the Charges, or contribution to the sinking fund, or any other money due and payable to the management corporation in respect of his parcel are in arrears.

Voting rights of co-proprietors

22. (1) Co-proprietors may vote by means of a jointly appointed proxy, appointing anyone of them or any other person.

(2) In the absence of a proxy, co-proprietors shall not be entitled to vote on a show of hands, except where unanimous resolution is required, provided that any one co-proprietor may demand a poll.

(3) On a poll, each co-proprietor shall be entitled to such number of the votes attaching to his parcel or provisional block as is proportionate to his interest in the parcel or provisional block.

Proprietor’s representative

23. A proprietor who is not a natural person may be represented in any meeting as follows:

- (a) if the proprietor is a company, by its representative duly authorized under its seal or the hand of its director, or by any duly authorized attorney or by its appointed proxy;
- (b) if the proprietor is a company where a receiver or a receiver and manager is appointed, by the receiver or the receiver and manager or a person duly authorized by the receiver or the receiver and manager or by its appointed proxy;
- (c) if the proprietor is a company which is under liquidation, by the liquidator or any person duly authorized by the liquidator or by its appointed proxy;
- (d) if the proprietor is a society, by any one of its office bearers or any person duly authorized by the society or by its appointed proxy; or
- (e) if the proprietor is a statutory body or any other body, by one of its members or such other duly authorized person or by its appointed proxy.

Common seal

24. (1) The common seal of the management corporation shall not be used except on the authority of the management committee previously given and in the presence of at least two members of the management committee, who shall sign the instrument to which the seal is affixed.

(2) Notwithstanding subparagraph (1), where there is only one member of the management corporation, his presence and signature shall be sufficient.

THIRD SCHEDULE

FORM A

[Subsection 35(1) and 79(1)]

WARRANT OF ATTACHMENT

No.:

To

of

Whereas is the *parcel owner/proprietor of parcel no. *in the building no./of provisional block no. on

(Description of land)

registered in the name of *...../the management corporation
by the name of :

And whereas by a written notice under subsection *34(1)/78(1) of the Strata Management Act 2012 served on him on the day of 20..... the said was demanded to pay to the *developer/joint management body/management corporation/subsidiary management corporation by the day of 20..... the sum of the particulars of which are given below:

And whereas further *the said sum/the sum of still remain unpaid:

This is to authorize you under subsection *35(1)/79(1) of the Strata Management Act 2012, in the presence of the Commissioner to attach any movable property belonging to the said sufficient to realise the sum due as aforesaid and by way of costs, which may be found in the said building or elsewhere in the State, and to hold the property or deal with it subject to and in accordance with the provisions of the said section *35/79.

This warrant must be returned to me on or before the day of 20..... with an endorsement certifying the date when and the manner in which it was executed or the reason for not executing it.

Dated this day of 20.....

.....
Commissioner of Buildings

District

PARTICULARS OF SUM DUE

* Delete whichever is inapplicable.

FORM B
[Paragraph 35(4)(b) and 79(4)(b)]
NOTICE AND INVENTORY

No.:

To
of

Take notice that I have this day attached the property specified in the inventory below for the sum of, details of which are given below, which is owed to the *developer/joint management body/management corporation/subsidiary management corporation by the name of

by..... the *parcel owner/proprietor of parcel no.
*in the building no./of provisional block no.
on.....
.....

(Description of land)

registered in the name of *...../the management corporation by the
name of

Take notice further that unless the amount due is paid within fourteen days from the date of
this notice, the property will be sold.

Dated this day of20.....

.....
Commissioner of Buildings

District

INVENTORY

Number of	Description of Property
Articles	

PARTICULARS OF SUM DUE

* Delete whichever is inapplicable.

FOURTH SCHEDULE

PART 1

JURISDICTION OF THE TRIBUNAL

[Subsection 105(1)]

1. A dispute or complaint concerning an exercise or the performance of, or the failure to exercise or perform, a function, duty or power conferred or imposed by this Act or the by-laws, except for those specifically provided for in this Part.
2. Subject to subsection 16N(2) of the Housing Development (Control and Licensing) Act 1966 [*Act 118*], a dispute on costs or repairs in respect of a defect in a parcel, building or land intended for subdivision into parcels, or subdivided building or land, and its common property or limited common property.
3. A claim for the recovery of Charges, or contribution to the sinking fund, or any amount which is declared by the provisions of this Act as a debt.
4. A claim for an order to convene a general meeting.
5. A claim for an order to invalidate proceedings of meeting where any provision of the Act has been contravened.
6. A claim for an order to nullify a resolution where voting rights has been denied or where due notice has not been given.
7. A claim for an order to nullify a resolution passed at a general meeting.
8. A claim for an order to revoke amendment of by-laws having regard to the interests of all the parcel owners or proprietors.
9. A claim for an order to vary the rate of interest fixed by the joint management body, management corporation or subsidiary management corporation for late payment of Charges, or contribution to the sinking fund.
10. A claim for an order to vary the amount of insurance to be provided.
11. A claim for an order to pursue an insurance claim.
12. A claim for compelling a developer, joint management body, management corporation or subsidiary management corporation to supply information or documents.
13. A claim for an order to give consent to effect alterations to any common property or limited common property.
14. A claim for an order to affirm, vary or revoke the Commissioner's decision.

PART 2

ORDERS OF THE TRIBUNAL

[Subsection 117(3)]

1. The Tribunal may order a party to the proceedings to pay a sum of money to another party.
2. The Tribunal may order the price or other consideration paid by a party to be refunded to that party.
3. The Tribunal may order the payment of compensation or damages for any loss or damage suffered by a party.
4. The Tribunal may order the rectification, setting aside or variation of a contract or additional by-laws, wholly or in part.
5. The Tribunal may order costs to or against any party to be paid.
6. The Tribunal may order interest to be paid on any sum or monetary award at a rate not exceeding eight per centum per annum.
7. The Tribunal may dismiss a claim which it considers to be frivolous or vexatious.
8. The Tribunal may make any order of which it has the jurisdiction to make under Part 1 of this Schedule or any other order as it deems just and expedient.
9. The Tribunal may make such ancillary or consequential orders or relief as may be necessary to give effect to any order made by the Tribunal.

EXPLANATORY STATEMENT

The Strata Management Bill 2012 (“the proposed Act”) seeks to provide for the proper maintenance and management of buildings and common property, and for related matters.

PART I

2. Part I deals with preliminary matters.
3. *Clause 1* contains the short title of the proposed Act and provisions on the commencement of the proposed Act. The proposed Act applies to Peninsular Malaysia and the Federal Territory of Labuan.

4. *Clause 2* contains the definitions of certain words and expressions used in the proposed Act.
5. *Clause 3* seeks to provide for the construction of the proposed Act.

PART II

6. Part II deals with the administration of the proposed Act.
7. *Clause 4* seeks to provides for the appointment of the Commissioner, Deputy Commissioners and other officers by the State Authority.

PART III

8. Part III contains the provisions relating to dealings in buildings or lands intended for subdivision into parcels and the common property.
9. *Clause 5* states that Part III shall apply to any sale of a parcel by a developer on or after the commencement of the proposed Act.
10. *Clause 6* seeks to require the developer of a development area to file a schedule of parcels with the Commissioner showing the proposed share units of each parcel and the total share units of all the parcels before it can sell any parcel.

PART IV

11. Part IV deals with the maintenance and management of buildings and common property before the establishment of a management corporation.
12. *Clause 7* seeks to provide that subject to Part V, Part IV shall apply to a development area, where before or after the commencement of the proposed Act, vacant possession of a parcel in a building or land intended for subdivision into parcels has been delivered by the developer to a purchaser and the management corporation has not come into existence.
13. *Clause 8* seeks to provide that where the sale of a parcel by a developer was made before the commencement of the proposed Act and no share units have been assigned to each parcel by the developer's licensed land surveyors, the share units for each parcel shall be assigned by any person or body who has a duty under this Part to maintain and manage any building or land intended for subdivision into parcels and common property in accordance with the formula set out in the First Schedule.
14. *Clause 9* sets out the duties and powers of the developer to maintain and manage properly any building or land intended for subdivision into parcels and common property during the developer's management period.
15. *Clause 10* seeks to require the developer to open one maintenance account for each development area and each maintenance account shall be operated and maintained by the developer until the expiry of the developer's management period.

16. *Clause 11* seeks to require the developer to open one sinking fund account for each development area and each sinking fund account shall be operated and maintained by the developer until the expiry of the developer's management period.

17. *Clause 12* seeks to provide that each purchaser shall pay the Charges, and contribution to the sinking fund, to the developer in respect of his parcel, and the developer shall pay the same in respect of those parcels in the development area which have not been sold.

18. *Clause 13* seeks to prohibit the collection of the Charges, or contribution to the sinking fund, by the developer from the purchaser unless a maintenance account and a sinking fund account in respect of the development area have been opened and vacant possession of the parcel has been delivered to the purchaser.

19. *Clause 14* sets out the duties of the developer in relation to the maintenance account and the sinking fund account.

20. *Clause 15* seeks to require the developer to transfer all moneys in the maintenance account and sinking fund account, and to hand over to the joint management body the administration office and all records related to and necessary for the maintenance and management of buildings or lands intended for subdivision into parcels and the common property of the development area.

21. *Clause 16* seeks to provide that the moneys in the maintenance account and sinking fund account shall be vested in the joint management body if not transferred by the developer to the joint management body.

22. *Clause 17* seeks to provide for the establishment of a joint management body upon the convening of the first annual general meeting of the joint management body. *Subclause 17(5)* seeks to provide that if the management corporation comes into existence before the first annual general meeting of the joint management body is convened, the first annual general meeting shall not be required to be convened and no joint management body shall be established for that development area, and the provisions in Part V of the proposed Act shall apply to the development area.

23. *Clauses 18 and 19* seek to provide for the duty of developer to convene the first annual general meeting of the joint management body and the agenda for the meeting.

24. *Clause 20* seeks to impose the duty on a joint management body to inform and register with the Commissioner the name of the joint management body within thirty days of the first annual general meeting.

25. *Clause 21* sets out the duties and powers of a joint management body.

26. *Subclause 22(1)* seeks to impose a duty on the joint management body to elect a joint management committee to perform the joint management body's duties and conduct the joint management body's business on its behalf. *Subclause 22(2)* seeks to provide for the application of the Second Schedule to the joint management body and joint management committee.

27. *Subclause 23(1)* seeks to require a joint management body to open and maintain a maintenance account in respect of the development area which shall be used for the purposes as specified in *subclause 23(3)*.
28. *Subclause 24(1)* seeks to require a joint management body to open and maintain a sinking fund account in respect of the development area which shall be used for the purposes as specified in *subclause 24(2)*.
29. *Clause 25* seeks to provide that each purchaser shall pay the Charges, and contribution to the sinking fund, in respect of his parcel to the joint management body, and the developer shall pay the same in respect of those parcels in the development area which have not been sold.
30. *Clause 26* sets out the duties of the joint management body in relation to the maintenance account and the sinking fund account.
31. *Clause 27* deals with the dissolution of a joint management body, and the duties of the joint management body to transfer all balances of moneys in the maintenance account and sinking fund account, and to hand over to the management corporation, among others, all records related to and necessary for the maintenance and management of buildings and common property.
32. *Clause 28* seeks to provide that the moneys in the maintenance account and sinking fund account shall vest in the management corporation if not transferred by the joint management body to the management corporation under paragraph 26(2)(a).
33. *Clause 29* seeks to provide for the duty of a developer which development area has been completed before the commencement of the proposed Act and for which a management corporation has not been established to submit to the Commissioner an audited account of all moneys collected and expended for the purposes of maintenance and management of the common property and the sinking fund prior to the establishment of the joint management body.
34. *Clause 30* seeks to impose a duty on a developer during the developer's management period or the joint management body, as the case may be, to prepare and maintain a register of parcel owners in such forms as the Commissioner may require.
35. *Clause 31* seeks to impose a duty on the developer or the joint management body to issue a certificate to the parcel owner or prospective purchaser certifying certain information on the Charges, and contribution to the sinking fund.
36. *Clause 32* deals with the by-laws prescribed by the regulations made under *clause 150* and the additional by-laws made by the developer or the joint management body in relation to a building or land intended for subdivision into parcels and the common property.
37. *Clause 33* seeks to provide for the recovery of any sum lawfully incurred by the joint management body from the parcel owners.
38. *Clause 34* deals with the procedure on recovery of sums due which become recoverable by the developer from the purchaser, or by the joint management body from the parcel owner, as the case may be.

39. *Clause 35* seeks to provide for the recovery of sums by attachment of movable property upon a sworn application in writing made by the developer or any member of the joint management committee to the Commissioner, as the case may be.
40. *Clause 36* deals with the moneys in the accounts required to be opened and maintained under Part IV that are not required for immediate use.
41. *Clauses 37 to 45* seek to provide for the transitional and savings provisions due to the repeal of the Building and Common Property (Maintenance and Management) Act 2007.

PART V

42. Part V deals with the maintenance and management of buildings and common property after the existence of a management corporation.
43. *Clause 46* provides that Part V shall apply to a development area, where before or after the commencement of the proposed Act, vacant possession of a parcel in a building or land intended for subdivision into parcels or in a subdivided building or land has been delivered by the developer to a purchaser and the management corporation has come into existence.
44. *Clause 47* provides that Chapter 2 shall apply to a development area specified in *subclause 46(1)* where no joint management body is established for the development area.
45. *Clause 48* deals with the duties of the developer to maintain and manage properly the subdivided building or land and the common property during the preliminary management period.
46. *Clause 49* sets out the restrictions to be imposed on the developer during the preliminary management period to safeguard the interests of proprietors.
47. *Clause 50* seeks to require the developer to open and maintain a maintenance account in respect of the development area in the name of the management corporation which shall consist of, among others, all Charges paid by the proprietors to the management corporation. *Subclause 50(3)* sets out the purposes for which the maintenance account shall be used.
48. *Clause 51* seeks to require the developer to open and maintain a sinking fund account in the name of the management corporation, into which shall be deposited the contribution to the sinking fund paid by the proprietors to the management corporation. *Subclause 51(2)* sets out the purposes for which the sinking fund account shall be used.
49. *Clause 52* seeks to provide that each proprietor shall pay the Charges, and contribution to the sinking fund, to the management corporation for the maintenance and management of the subdivided building or land and the common property in a development area.

50. *Clause 53* seeks to prohibit the collection of Charges, or contribution to the sinking fund, from any proprietor unless a maintenance account and a sinking fund account have been opened in the name of the management corporation and vacant possession of the parcel has been delivered to the proprietor.

51. *Clause 54* sets out the duties of the developer during the preliminary management period in relation to the maintenance account and the sinking fund account.

52. *Clause 55* seeks to require the developer to transfer the control of all moneys in the maintenance account and the sinking fund account and to hand over to the management committee of the management corporation, among others, the administration office and all records related to and necessary for the maintenance and management of subdivided buildings or land and common property of development area.

53. *Clause 56* seeks to provide for the election of the management committee by the management corporation which shall perform the management corporation's duties and conduct the management corporation's business on its behalf.

54. *Clauses 57 and 58* seek to provide for the duty of developer to convene the first annual general meeting of the management corporation and the agenda for the meeting.

55. *Clause 59* sets out the duties and powers of the management corporation.

56. *Clause 60* seeks to require the management corporation to open and maintain a maintenance account in its name if the maintenance account had not been earlier established under *subclause 50(1)*.

57. *Clause 61* seeks to require the management corporation to open and maintain a sinking fund account in its name if the sinking fund account had not been earlier established under *subclause 51(1)*.

58. *Clause 62* sets out the duties of the management corporation in relation to the maintenance account and the sinking fund account.

59. *Clause 63* seeks to impose a duty on the subsidiary management corporation to elect a subsidiary management committee to perform the subsidiary management corporation's duties and conduct the subsidiary management corporation's business on its behalf. *Subclause 63(5)* provides for the application of the Second Schedule to the subsidiary management corporation and subsidiary management committee.

60. *Clause 64* sets out the duties and powers of a subsidiary management corporation.

61. *Clause 65* deals with the expenses of a subsidiary management corporation that relate solely to its limited common property which has to be shared by the proprietors of all parcels according to the formula set out in that *clause*.

62. *Clause 66* seeks to require the subsidiary management corporation to open and maintain a maintenance account, into which shall be deposited all Charges paid by the proprietors constituting the subsidiary management corporation.
63. *Clause 67* seeks to require the subsidiary management corporation to open and maintain a sinking fund account, into which shall be deposited all contribution to the sinking fund paid by the proprietors constituting the subsidiary management corporation.
64. *Clause 68* seeks to provide that each proprietor constituting the subsidiary management corporation shall pay the Charges, and contribution to the sinking fund, to the subsidiary management corporation for the expenses related to its limited common property.
65. *Clause 69* deals with judgment against a management corporation in relation to its limited common property.
66. *Clause 70* deals with the by-laws of subdivided buildings or lands prescribed by regulations made under *clause 150* and powers of the management corporation to make additional by-laws.
67. *Clause 71* seeks to provide that the by-laws of the management corporation shall apply to the subsidiary management corporation and the subsidiary management corporation may make an additional by-laws for the limited common property.
68. *Clause 72* seeks to impose a duty on the developer during the preliminary management period or the management corporation, as the case may be, to prepare and maintain a strata roll in respect of all parcels in the development area.
69. *Clause 73* seeks to impose a duty on the management corporation or subsidiary management corporation to issue a certificate to the proprietor or prospective proprietor certifying certain information on the Charges, and contribution to the sinking fund.
70. *Clause 74* seeks to empower the management corporation if authorized by a unanimous resolution to acquire additional land, grant or accept the burden of easement, or accept the benefit of an easement.
71. *Clause 75* deals with the duties of the management corporation towards the rating authorities.
72. *Clause 76* seeks to provide for the appointment of an administrator for the management corporation by a court of competent of jurisdiction.
73. *Clause 77* seeks to provide for the recovery of any sum lawfully incurred by the management corporation or subsidiary management corporation from the proprietors.
74. *Clause 78* deals with the procedure for recovery of sums due which become recoverable by the management corporation or the subsidiary management corporation from the proprietors.

75. *Clause 79* seeks to provide for the recovery of sums by attachment of movable property upon a sworn application in writing made by any member of the management committee of a management corporation or any member of the subsidiary management committee of a subsidiary management corporation, as the case may be, to the Commissioner.

76. *Clause 80* deals with the moneys in the accounts required to be opened and maintained under Part V that are not required for immediate use.

77. *Clauses 81 to 85* seek to provide for the transitional and saving provisions due to consequential amendments made to the Strata Titles Act 1985.

PART VI

78. Part VI contains the provisions relating to the managing agent.

79. *Clause 86* seeks to provide for the appointment of a managing agent by the Commissioner to maintain and manage the building or land intended for subdivision into parcels or the subdivided building or land and the common property.

80. *Clause 87* deals with the independence of a managing agent.

81. *Clause 88* seeks to require a managing agent to lodge a bond with the Commissioner.

82. *Clause 89* seeks to provide for the powers and duties of a managing agent.

83. *Clause 90* seeks to provide that the obligation of the developer to carry out repairs is not relieved even though a managing agent is appointed.

84. *Clause 91* seeks to provide for the termination of a management agreement.

PART VII

85. Part VII deals with deposits to rectify defects.

86. *Clause 92* seeks to require the developer to pay deposit to rectify defects in the common property of the development area after the completion of the common property.

PART VIII

87. Part VIII contains the provisions on insurances.

88. *Clause 93* seeks to require any person or body who is responsible under the proposed Act to maintain and manage any building to insure such building under a damage policy with a licensed insurer.

89. *Clause 94* seeks to require any building to be insured for at least the reinstatement value of the building.

90. *Clause 95* seeks to provide for the duties of the management corporation and the subsidiary management corporation to insure a building where the limited common property cannot be separated from the main premises of the building.

91. *Clause 96* seeks to provide for the duties of the management corporation and subsidiary management corporation to insure a building where the limited common property can be separated from the main premises of the building.

92. *Clause 97* seeks to provide that the insurance required to be effected under Part VIII does not apply to land parcels, and each parcel owner or proprietor shall be responsible to insure his building on the land parcel.

93. *Clause 98* seeks to provide that the joint management body, management corporation or subsidiary management corporation may insure against such other risks as the parcel owners or proprietors may, by a special resolution, direct.

94. *Clause 99* deals with the insurable interest of the joint management body, management corporation or subsidiary management corporation.

95. *Clause 100* seeks to provide that all payments of money from an insurer in respect of destruction of or damage to a building shall be applied in rebuilding, replacing, repairing or restoring the building.

PART IX

96. Part IX deals with the establishment of the Strata Management Tribunal.

97. *Clause 101* contains the definitions of certain words and expressions used in this Part.

98. *Clause 102* seeks to provide for the establishment of the Tribunal.

99. *Clause 103* contains the provisions relating to the members of the Tribunal, terms of office and allowances of the members.

100. *Clause 104* deals with the appointment of a Secretary, officers and staff of the Tribunal.

101. *Clause 105* deals with the jurisdiction of the Tribunal.

102. *Clause 106* seeks to provide for the exclusion of jurisdiction of the court.

103. *Clause 107* seeks to provide for the persons entitled to file a claim in the Tribunal.

104. *Clause 108* seeks to provide that a claim shall be made in the prescribed form together with the prescribed fee.
105. *Clause 109* seeks to provide for the sittings of the Tribunal.
106. *Clause 110* deals with the rights of parties to the proceedings to appear at hearings.
107. *Clause 111* seeks to provide that all proceedings before the Tribunal shall be open to the public.
108. *Clause 112* deals with the negotiation for settlement between the parties in relation to a claim.
109. *Clause 113* seeks to require the Tribunal to act fairly and impartially as between the parties.
110. *Clause 114* seeks to empower the Tribunal to conduct proceedings in such manner as it considers appropriate.
111. *Clause 115* deals with the powers of the Tribunal to determine the mode of conducting hearings.
112. *Clause 116* seeks to allow the Tribunal to appoint experts to report to it on specific issues to be determined by the Tribunal.
113. *Clause 117* seeks to require the Tribunal to make its awards without delay and where practicable, within sixty days from the first day of the hearing before the Tribunal commences. *Subclause 117(3)* provides that the Tribunal may make one or more orders specified in Part 2 of the Fourth Schedule.
114. *Clause 118* seeks to allow the Tribunal to refer a question of law to a Judge of the High Court.
115. *Clause 119* seeks to require every award and settlement of the Tribunal to be recorded in writing.
116. *Clause 120* seeks to provide that an award made by the Tribunal shall be final and binding on all parties to the proceedings and be deemed to be an order of a court and be enforced accordingly by any party to the proceedings.
117. *Clause 121* seeks to provide that an award of the Tribunal may be challenged on the ground of serious irregularity.
118. *Clause 122* deals with the disposal of any document, record, material or other property produced during the proceedings.
119. *Clause 123* seeks to make it an offence for any person to fail to comply with an award made by the Tribunal.
120. *Clause 124* seeks to empower the Minister, after consultation with the National Council for Local Government, to make regulations as may be necessary or expedient in respect of the Tribunal.

PART X

121. Part X contains the enforcement provision.

122. *Clause 125* seeks to empower the Commissioner to investigate any offence under the proposed Act and to authorize any officer of the local authority or public officer to exercise the power of enforcement under the proposed Act.

123. *Clauses 126* and *127* deal with provisions relating to the power of search and seizure with warrant and search and seizure without warrant, respectively.

124. *Clause 128* deals with access to computerized data.

125. *Clause 129* seeks to impose a duty on an authorized officer to prepare a list of any book, register, document or other records seized under the proposed Act.

126. *Clause 130* seeks to provide for the release of any book, register, document or other records seized under the proposed Act.

127. *Clause 131* seeks to enable the Commissioner or an authorized officer making an investigation under the proposed Act or its subsidiary legislation to order the attendance of any person acquainted with the facts and circumstances of the case.

128. *Clause 132* seeks to empower the Commissioner or an authorized officer investigating a case under the proposed Act or its subsidiary legislation to examine orally any person supposed to be acquainted with the facts and circumstances of the case.

129. *Clause 133* seeks to make it an offence to obstruct the Commissioner or an authorized officer conducting a search by refusing access to the premises, assaulting, obstructing, hindering or delaying the Commissioner or the authorized officer in the performance of his functions under the proposed Act, or refusing to produce any information relating to the offence under the proposed Act.

130. *Clause 134* deals with the requirement to provide translation for the book, register, document or other records seized under the proposed Act to the Commissioner or authorized officer.

131. *Clause 135* seeks to provide for the compounding of offences under the proposed Act.

132. *Clause 136* seeks to provide that the prosecution of an offence shall not be instituted except by or with the written consent of the Public Prosecutor.

133. *Clause 137* seeks to provide for the jurisdiction of the Magistrate's Court to try summarily any offence under the proposed Act.

134. *Clause 138* deals with joinder of offences.

135. *Clause 139* seeks to provide for the protection of informers in any civil or criminal proceedings under the proposed Act.

136. *Clause 140* deals with the provisions relating to offences committed under the proposed Act by a body corporate.

137. *Clause 141* seeks to provide for the continuing offences.

PART XI

138. Part XI contains miscellaneous provisions.

139. *Clause 142* deals with evidential provisions in relation to any proceeding in a court or the Tribunal with respect to any defect in a parcel, common property or limited common property under the proposed Act.

140. *Clause 143* seeks to provide for the representation in any proceedings of the joint management body, management corporation or subsidiary management corporation.

141. *Clause 144* sets out the manner of service of notice or order on any person under the proposed Act.

142. *Clause 145* seeks to provide for the protection from actions, suit, prosecution or other proceeding under the proposed Act if the acts were done in good faith.

143. *Clause 146* seeks to provide for the application of the Public Authorities Protection Act 1948 to any action, suit, proceeding or prosecution against the Commissioner and other officers.

144. *Clause 147* states that the Commissioner, any Deputy Commissioner or other officer appointed under *subclause 4(1)*, or any authorized officer referred to in *subclause 125(1)* shall be deemed to be public servants within the meaning of the Penal Code.

145. *Clause 148* deals with the non-application of other written laws, contracts and deeds relating to the maintenance and management of buildings and common property in a local authority area upon the coming into operation of the proposed Act.

146. *Clause 149* seeks to prohibit contracting out of the provisions of the proposed Act.

147. *Clause 150* seeks to empower the Minister, after consultation with the National Council for Local Government, to make regulations.

148. *Clause 151* seeks to empower the Minister, after consultation with the National Council for the Local Government, to exempt any person or building or lands or classes of persons or types of buildings or lands, from all or any of the provisions of the proposed Act.

149. *Clause 152* seeks to empower the Minister, after consultation with the National Council for Local Government, to amend any of the Schedules.

150. *Clause 153* seeks to provide for the repeal of the Building and Common Property (Maintenance and Management) Act 2007.

FINANCIAL IMPLICATIONS

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

[PN(U²)2810]