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IN 2019, I was part of a focus committee tasked with discussing proposed amendments to the Strata Management Act 2013 (SMA 2013). However, these amendments did not proceed to Parliament.

In July 2024, I was appointed as an internal advisory panelist by the Ministry of Housing and Local Government's Jabatan Perumahan Negara (JPN) to review proposed amendments to both the Housing Development (Control and Licensing) Act 1966 (HDA 1966) and the SMA 2023. One significant change to the HDA is the expansion of its scope to include all real property developers in Peninsular Malaysia, regardless of whether they are engaged in housing or non-housing development. At present, the amendments to the existing HDA 1966 are in an advanced stage and the committee is working on drafting the relevant regulations.

Meanwhile, the process of amending the SMA 2013 is still in its early stages. Several small group discussions with various stakeholders were conducted in the last quarter of 2024 and questionnaires were distributed to gather input. Additional small group discussions are planned to continue throughout 2025.

The stakeholders we are engaging with include various groups whose input is crucial in understanding the pain points and underlying issues faced by each respective party. By listening to their concerns, we aim to strike a balance in the course of drafting the amendments. While we hope to address most of these issues, it may not be possible to resolve all of them.

For instance, one major challenge is simplifying the procedures for obtaining consent from the Attorney General's Chambers, enabling the Commissioner of Buildings ("COB") to issue compounds or prosecute wrongdoers more effectively. We strongly believe that enforcement is necessary and the powers of enforcement need to be strengthened to ensure better compliance.



Tightening up SMA 2013

In the spirit of inclusiveness, I believe it is important to share with readers the work being undertaken by the JPN team, of which I am a part. This series of articles will outline the scope of the proposed amendments, the rationale behind them and how we envision these changes fostering a more harmonious community environment.

Areas that require change

Before delving into the amendments themselves, my first task was to identify the areas that require changes. Some of the key issues identified include:

(a) Harmonising various legislations governing the approval of planning permissions, building plans, sales, construction, subdivision and management of stratified properties.

(b) Addressing the fundamental challenges encountered by Joint Management Bodies (JMBs) and Management Corporations (MCs).

(c) Clarifying ambiguities in certain existing provisions to ensure better understanding and implementation.

(d) Providing more detailed guidance and prescriptive rules regarding the conduct of JMB and MC general meetings.

(e) Codifying legal principles established by the courts to enhance consistency in application.

(f) Streamlining processes for the transfer of duties and the handover of information and documents between stakeholders.

(g) Striking a balance between the interests of developers, purchasers, JMBs and MCs to foster a fairer ecosystem.

(h) Tackling persistent issues within the strata management regime to create a more robust and effective framework, such as:

- Rates of charges
- Meeting procedures
- Provisional blocks

- Amendments to the schedule of parcels

The need for change

The need for amendments arises from several factors:

(i) Harmonising the legislation

The SMA 2013 is closely linked to other laws governing the approval of planning permission, building plans, sale of a parcel, construction, subdivision and strata management. SMA 2013 is not a standalone legislation and in the course of amending it, we are required to understand the objective and the boundary of each legislation. We will then propose the amendments so they can be read and applied harmoniously.

(ii) Addressing operational challenges

One significant issue brought to our attention is the difficulty faced by JMBs and MCs in transferring monies from the maintenance and sinking fund accounts, as stipulated in Sections 15 and 55 of the SMA 2013. Many strata schemes I work with frequently fail to complete this transfer within the required 30-day period, primarily due to challenges in opening the necessary bank accounts with financial institutions.

This delay is often compounded by certain banks requiring the Commissioner of Buildings (COB) to issue a letter validating the elected members, in addition to the certificate of establishment.

When newly elected committee members seek to assume their statutory duties from their predecessors, additional challenges arise, including:

- (a) The inability to effect changes in bank signatories promptly.
- (b) Retiring members unwilling to sign cheques for payments related to services rendered.

(c) Instances where certain COBs add an extra layer of verification by issuing a letter of validation, which further delays the process of updating signatories.

(d) Situations where banks refuse to update signatories without receiving verification of the elected members from the COB through an official letter.

(iii) Providing greater clarity

Although I believe that many provisions of the SMA 2013 are well-defined, certain areas would benefit from additional clarity. For instance, we have been informed of ambiguities surrounding voting rights and eligibility for elections when a parcel owner holds multiple parcels. Similarly, there is room for improvement in the rules governing meetings, including general meetings, committee meetings and mechanisms for lodging, admitting and tabling private motions.

One example, which is currently clear but can be made more user-friendly, involves the requirement to convene a general meeting in each calendar year, with an interval of no more than 15 months. To enhance comprehension, an illustration will be added after Paragraph 10(2) of the 2nd Schedule of the SMA 2013. This will provide practical examples:

- If an annual general meeting is convened in January 2024, the next meeting must be held no later than April 2025.

- If an annual general meeting is convened in November 2024, the next meeting must be held no later than December 2025.

- If an annual general meeting is convened in December 2024, the next meeting must be held no later than December 2025.

(iv) Prescriptive guidelines for meetings

Further clarification is necessary on several meeting-related issues. For example, it is impor-

tant to establish whether co-proprietors can hold proxies for other parcel owners, whether a co-proprietor without a proxy form is entitled to vote and whether a corporate parcel representative can serve as the chairperson of a general meeting.

(v) Codifying court principles

There is a need to codify the just and reasonable test as established in the recent Pearl Suria case. This involves determining whether this principle should be applied to assess charges and how it can be further refined to ensure fairness and consistency in its application.

(vi) Simplifying the handover process

Streamlining the handover process is crucial. This includes exploring the feasibility of transferring documents digitally and determining whether certain plans should be certified by specific consultants, thereby reducing procedural bottlenecks.

(vii) Balancing interests

The amendments must carefully balance the interests of all stakeholders, including developers, purchasers, JMBs and MCs. Achieving this equilibrium is critical to fostering a sustainable and harmonious strata ecosystem.

(viii) Tackling core strata issues

The proposed amendments aim to address key issues that currently challenge the strata management system. These include establishing fair rates of charges, streamlining meeting procedures, addressing the management of provisional blocks and updating legends to align with current needs.

This is part one of an eight-part series on SMA 2013 covering:

1. The need for amendments to the Strata Management Act 2013 and Its regulations
2. Guiding principles and procedures for amending the SMA 2013
3. Overview of the proposed amendments
4. Rates of charges and share units
5. Technology adoption
6. Provisional blocks and subsidiary management corporations
7. Meeting procedures
8. Limitations

If you have any specific subject matter you feel strongly about which requires amendment, kindly email to info@cheehoe.com OR izzah@kpkt.gov.my