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IN last week's article on Feb 1, 2025, JPN and I (we) outlined the parameters and explained why a change to the Strata Management Act 2013 (SMA 2013) and the subsequent Acts is necessary.

Providing greater clarity

While we aim to uphold the wisdom of the previous drafting team, the rights to vote and eligibility for election must be clearly defined. Multiple parcel owners should be allowed to vote and stand for election based only on parcels with no arrears.

However, we may remove the eligibility of immediate family members to take office on behalf of multiple parcel owners, as verifying their relationship with the parcel owner is not feasible.

Additionally, we will facilitate the appointment of another proprietor to fill any vacancy by the remaining members—preferably the candidate with the next highest vote—by removing the phrase 'occurs otherwise than' under paragraph 3(5) of the Second Schedule of the SMA 2013.

Chairman of proceedings

We would like to clarify that any proprietor, whether a sole proprietor, co-proprietor, corporate proprietor or proprietor operating under a society or statutory body, is eligible to chair an Annual General Meeting (AGM).

It should be made clear that the casting vote is an additional vote to the deliberative vote. A casting vote may only be used in the event of a tie and does not mean that the chairman has two votes at all times.

The current regulations make it clear that not all contracts are prohibited from having a tenure longer than 12 months. A simplistic reading of the current regulations, with a broad-brush approach, is not only inaccurate but also confusing. We will provide a pathway for contracts that can extend beyond 12 months.

Prescriptive illustrations for meeting procedures

We will illustrate to clarify the existing regime, reminding that an Annual General Meeting (AGM) must be held every calendar year, with a maximum interval of 15 months between meetings. Additionally, we will likely move the penal provision from Regulation 34 of the SMR 2015 into the main body of the Act and impose penalties on each Joint Management Committee member and/or Management Committee member who fails to adhere to the timeline.

We are exploring options to prevent a corporate proprietor from appointing a proxy to attend a general meeting. This change is intended to eliminate confusion when a proxy is a director of the corporate parcel but is disqualified from election under Paragraph 2(8) of the Second Schedule, SMA 2013.

However, we will maintain that a corporate proprietor may still be represented by a corporate representative. As part of this, we will introduce a prescribed corporate representative form into the regime.

Codifying court's procedures

The Court of Appeal in *Perbadanan Pengurusan Solaris Dutamas v Suruhanjaya Tenaga Malaysia & Anor* [2022] 6 CLJ 219 (which was later affirmed by the Federal Court) upheld the princi-

ple that what the SMA does not expressly or impliedly authorise must be considered as prohibited when interpreting the powers of the Management Corporation. With this in mind and to encourage greater clarity, we may need to explicitly outline additional powers for the Joint Management Body (JMB) or Management Corporation (MC), such as:

(A) Expanding the use of funds in the maintenance account;
(B) Allowing the use of funds outside the boundary of a scheme;
(C) Providing incentives to proprietors who pay charges in advance (for instance, on a quarterly basis).

At the same time, we will explicitly prohibit the JMB/MC from:

Transferring funds from the maintenance account to the sinking fund account or vice versa;

Waiving the requirement to pay charges into the maintenance or sinking fund accounts;

Waiving late payment interest.

Just and reasonable charges

The second principle we wish to introduce is drawn from *Aikbee Timbers Sdn Bhd & Anor v Yii Sing Chiu and Pearl Suria Management Corporation* (the Pearl Suria case). We aim to expand the test of just and reasonable, which should further mean:

(A) Charges introduced reflect

the actual or expected expenditure;
(B) Charges are neither inadequate nor excessive.

Enhancing enforcement capabilities

We will be guided by the case of *Badan Pengurusan Bersama Paradesa Rustika v Sri Damansara Sdn Bhd* (Federal Court) [2013] 9 CLJ 813 in reassessing the powers granted to the Commissioner of Buildings (COB). To enhance enforcement capabilities, we may consider granting COB additional powers and will engage with the Attorney General's Chambers to seek blanket consent for COB to issue compounds for strict liability offences.

We will further refine the jurisdiction of the tribunal. As part of this process, we may reassign jurisdiction over defects related to parcels, common property and buildings to the House Buyers Tribunal.

Given the increasing complexity of strata schemes, we will establish more robust criteria for implementing different rates of charges.

Simplifying handover process

Under the current regime, once the MC is established, a bank account can be opened in the MC's name, even during the preliminary management period. The account's signatory may be

the developer's authorised representative but the account itself must be under the MC's name. This approach is intended to simplify the transfer of control over the account rather than transferring the account itself from one party to another.

Additionally, we are exploring the possibility of handing over documents in soft copy format. The adoption of technology in this process will be discussed separately.

We do not intend to mandate that as-built plans be certified by consultants, as we aim to avoid imposing additional conditions on the handover process. However, as-built plans will remain a compulsory requirement for handover.

Balancing Interests

We are considering whether funds payable into the common property defects account should be consolidated into the Housing Development Account (HDA). This change would also apply to non-housing strata schemes following amendments to the Housing Development (Control and Licensing) Act 1966.

We aim to impose stricter requirements to ensure developers display the schedule of parcels—whether for single-phase or multi-phase developments with provisional blocks—to all purchasers before the sale. This measure will ensure buyers fully understand the scheme they are purchasing into, leaving little room for disputes over their awareness of the overall strata development.

We are exploring ways to relax the threshold for amending the schedule of parcels, particularly regarding provisional share units assigned to provisional blocks. This flexibility would allow developments to better align with the evolving needs of the community.

Tackling core strata issues

This is one of our key focus areas. We aim to streamline the process for:

(A) Opening investigation papers;
(B) Conducting investigations;
(C) Issuing compounds; and/or
(D) Prosecuting wrongdoers.

As part of this effort, we will seek blanket consent from the Attorney General's Chambers (AGC) to empower the Commissioner of Buildings (COB) to issue compounds and initiate prosecutions. We believe the full enforcement of prosecutorial powers is essential for stricter implementation of the law.

Determining charges

We intend to place the responsibility for determining charges on the developer, JMB or MC. Charges should accurately reflect the actual and expected expenditures of a scheme. Any challenge to these charges should require proof in court that they are excessive, inadequate or unreasonable. By ensuring that the JMB or MC sets the charges, we aim to reduce the burden on the courts, which may not always be in the best position to determine the appropriate rates for a scheme.

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.

