

THIS concludes the final article in the eight-part series discussing possible amendments to the SMA 2013 and its regulations. Throughout the series, we have extensively explored the proposed amendments, their objectives and the new elements introduced to address the ever-evolving strata regime. However, as with any legislative proposal, there are inherent limitations that must be carefully navigated.

### Federal Constitution

Under Section 74 of the Federal Constitution, Parliament is empowered to legislate only on matters listed in the Federal List or the Concurrent List (First or Third List in the Ninth Schedule). State legislatures, on the other hand, make laws concerning matters in the State List (Second List in the Ninth Schedule).

Item 2 of List II in the Ninth Schedule states that land tenure and the registration of titles fall under the State List, except in the Federal Territories of Kuala Lumpur, Labuan and Putrajaya. In essence, the registration of titles falls under state jurisdiction and state legislatures have authority over it.

To err on the side of caution, the proposed amendments must avoid encroaching on state jurisdiction to prevent conflicts. This also ensures that the amendments are not deemed ultra vires in the Federal Constitution. For instance, under the current strata regime, the application for the Certificate of Share Unit Formula falls under respective state strata title rules, rather than federal regulations.

If there is a proposal to shift the application for the Certificate of Share Unit Formula under federal jurisdiction, it must be carefully structured to ensure it does not affect land tenure or the registration of strata titles. Instead, it should be confined to matters such as voting rights and the proportion of contributions payable by each proprietor.

### Powers to institute prosecution

A significant gap in the current regulatory framework is the lack of effective enforcement, which undermines compliance. We believe that strict enforcement will foster a stronger sense of adherence to the law.

Unfortunately, despite the penal consequences outlined in the existing regime, enforcement remains weak, rendering the Commissioner of Buildings (COB) a toothless tiger. This is largely due to the requirement for written consent from the Public Prosecutor before initiating prosecution. This requirement aligns with the Attorney General's exclusive authority to institute, conduct or discontinue any proceedings, except in Syariah Courts, native courts or courts-martial.

### Investigating unit

Obtaining consent from the Attorney General (AG) is essential, but conducting thorough investigations is equally important. Successful prosecution requires robust investigative efforts to establish a prima facie case.

Currently, the power to investigate lies with the Commissioner



The success of the SMA 2013 amendments hinges on political will. With strong political commitment and industry collaboration, these changes can significantly enhance the future of strata management in Malaysia.



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of Buildings (COB). However, the COB faces severe manpower shortages while managing a wide range of issues, including service charge rates, the tenure of elected committee members and non-compliance with AGM procedural requirements. A significant portion of their workload consists of petty complaints lodged by property purchasers.

Due to these limited resources, investigations often take a back seat. We hope that under the new regulatory framework, a dedicated investigation team will be allocated to the COB, enabling

them to actively pursue misconduct within strata schemes.

That said, public awareness is equally important. Strata scheme owners must understand that not all misdeeds within a strata scheme fall under the jurisdiction of the COB. For instance, allegations of misappropriation of maintenance funds are Penal Code offences and fall under police jurisdiction for investigation and prosecution in a criminal court. In such cases, the COB can only act as an intermediary or facilitator, rather than an enforcement authority.

### Integration between COB and local authorities

At present, the Commissioner of Buildings (COB) primarily plays a reactive role, with its authority largely limited to accepting the schedule of parcels. It lacks involvement in the initial planning stages of a strata scheme, such as the development order and building plan approvals, even though most issues only surface after vacant possession is handed over—at which point complaints inevitably flood the COB's office.

Given that the COB ultimately becomes responsible for addressing these issues, it would be beneficial to integrate them into the planning process from the outset. This could be achieved by involving the COB in the One Stop

Centre (OSC) of the respective local authority, allowing them to provide input during the early stages of development. Such an approach aligns with the guidelines issued by PLAN Malaysia for local authorities.

### Readiness to move forward with VPST

Vacant Possession with Simultaneous Issuance of Strata Titles (VPST) has long been a key objective for stakeholders. It enhances efficiency and marks a major milestone for developers in fulfilling their contractual obligations. Additionally, VPST eliminates the need for a Joint Management Body (JMB), as the Management Corporation (MC) is immediately established upon the delivery of vacant possession.

One of the primary obstacles to VPST is the Super Structure Stage requirement. Currently, strata title applications can only be submitted once a development reaches this stage, delaying the issuance of strata titles until well after vacant possession is granted. This gap creates unnecessary complications in management transitions and legal ownership. Addressing this structural hurdle is essential for successfully implementing VPST.

### Alignment with National Housing Policies

Any proposed amendments must align with National Housing Policies, which encompass broader considerations such as affordable housing, purchasing power, residual income and social integration at federal, state and local levels.

### Political will is vital

Ultimately, the success of these amendments hinges on political will. We hope the Ministry will endorse the proposed changes and that the Minister will present the Bill to Cabinet. However, these amendments can only materialise if the Bill secures the necessary support in Parliament.

In conclusion, while the proposed amendments aim to modernise the strata management framework, their successful implementation requires careful navigation of constitutional boundaries, effective enforcement strategies, adequate resource allocation, stakeholder collaboration and alignment with national policies. With the right political commitment and legislative backing, these reforms have the potential to significantly enhance the strata management landscape.

*If you have any specific subject matter you feel strongly about which requires amendment, kindly email [info@cheehoe.com](mailto:info@cheehoe.com) or [izzah@pkpt.gov.my](mailto:izzah@pkpt.gov.my)*