

**PROPOSED AMENDMENTS TO THE STRATA TITLES ACT 1985 [ACT 318] BY
THE INSTITUTION OF SURVEYORS MALAYSIA (ISM)
AND
THE ASSOCIATION OF VALUERS AND PROPERTY CONSULTANTS IN
PRIVATE PRACTICE MALAYSIA (PEPS)**

PERUNTUKAN-PERUNTUKAN AKTA HAKMILIK STRATA 1985(AKTA 318)

This paper is prepared and presented by Sr Wong Kok Soo, on behalf of ISM and PEPS, at Workshop for the Review of the Strata Titles Act 1985 [Act 318] organised by the Ketua Pengarah Tanah Dan Galian in Johor Bahru on Sunday, 30 November 2008, at 9.45 p.m.

Bil	Yang akan dpinda: Section	Yang sedia ada	Yang dicadangkan
1.	S36 S45 (3)(b)	<p style="text-align: center;"><u>INEQUITABLE SHARE UNITS</u></p> <p>Currently, there is no single type of share units that, on its own, will give a fair and equitable apportionment of the cost items and value items to the parcels. The problems become more acute in mixed developments, having many development types under one land title.</p> <p>The examples of cost items and value items are as follows:-</p> <p>a) <u>Cost Items</u> They are cost related items that are best apportioned in direct proportion to the areas of the parcels (including accessory parcels):</p> <ul style="list-style-type: none"> • Operating cost in the maintenance and management of the common property; • Insurance premiums; • Capital expenditure; • Insurance claim for reinstatement cost (in the event the MC decided not to reinstate the building). 	<p>This approach is proposed to solve the current dilemma to give equitable apportionment for cost items and value items in all types of developments, including the mixed developments:-</p> <p>a) All cost items will be apportioned by the <u>share units based on areas of parcels (including accessory parcels)</u> [hereinafter called “type A share units” which are cost related].</p> <p>b) All value items will be apportioned by the <u>share units based on capital values of parcels (including accessory parcels)</u> [hereinafter called “type B share units which are value related].</p> <p>The capital values can be based on the developer’s selling prices before whatsoever discounts. In case of disputes or doubts, the relevant Authorities may commission a licensed property valuer to determine such capital values at the cost of the developer.</p>

	<p>b) <u>Value Items</u> They are value related items that are best apportioned in direct proportion to the capital values of the parcels:</p> <ul style="list-style-type: none"> • Sale proceeds of whole development; • Insurance claim for loss of income; • Quit rent; • Voting rights of the proprietors. <p>All the existing types of share units have inherent shortcomings. An understanding of the 3 current main types of share units will illustrate the problems:-</p> <p>a) <u>Share units based on areas of parcels (including accessory parcels)</u></p> <ul style="list-style-type: none"> • Equitable apportionment for cost items only in a single type development. • Inequitable apportionment for cost items in a mixed type development. • Inequitable apportionment for all value items. <p>b) <u>Share units based on weighted areas of parcels (plus accessory parcels)</u></p> <ul style="list-style-type: none"> • Difficult to achieve equitable apportionment for cost items in a mixed development due to difficulty in determining equitable weight factors for each development type. • Such difficulty is compounded in complicated mixed developments, e.g. 9-in-1 mixed development. 	<p>c) In a phased development, the share units for subsequent phases shall be based on adjusted capital values - the developer's selling prices before whatsoever discounts of each subsequent phase shall be adjusted back to the launch date of the first phase by an adjustment factor for each development type reflecting the average market price movement over time between the first phase and the subsequent phase.</p> <p>In case of a new development type for the subsequent phase, the developer may commission a licensed property valuer to determine the adjustment factor.</p> <p>In case of disputes or doubts, the relevant Authorities may commission a licensed property valuer to determine such capital values at the cost of the developer.</p> <p>d) A strata titled mixed development will have a Management Corporation (MC) and also a Subsidiary Management Corporation (Sub-MC) for each development type.</p> <p>e) Each Sub-MC will take care of its own cost items and value items through separate billings to all the members of the Sub-MC for the particular development type.</p> <p>f) The MC will take care of those cost items and value items that are shared in common by all Sub-MCs through separate billings to all the members of the MC.</p>
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	<ul style="list-style-type: none"> • Inequitable apportionment of cost items to land parcels in a mixed development, i.e. land parcels versus highrise buildings. • Inequitable apportionment for all value items. <p>c) <u>Share units based on developer's sale prices</u></p> <ul style="list-style-type: none"> • Equitable apportionment for value items. • Generally, it cannot be used for value items in phased type of development that is carried out and launched in phases. Only applicable after modification as shown in the proposal column under para. (c) hereto. • Inequitable apportionment for all cost items. 	<p><u>Notes:</u> A list of the development types in mixed developments are as follows:-</p> <ol style="list-style-type: none"> (1) Land parcels, (2) Townhouses, (3) Lowrise & Highrise Condominium, (4) Walkup Condominium, (5) Lowrise & Highrise Highrise Serviced Apartment, (6) Walkup Serviced Apartment, (7) Lowrise & Highrise Apartment without recreational facilities, (8) Walkup Apartment without recreational facilities, (9) Lowrise & Highrise Soho Building, (10) Walkup Soho Building, (11) Lowrise & Highrise Office Building, (12) Walkup Office Building, (13) Shop/office Building with lift, (14) Shop/office Building without lift, (15) Shophouse with lift, (16) Shophouse without lift, (17) Shopping Mall, (18) Hotel, (19) Motel, (20) Medical Centre, (21) Industrial Building with lift, (22) Industrial Building without lift, (23) Carpark under a single strata title, (24) Lowrise & Highrise Block under a single strata title. <p>There is also a need to provide for separation of utility supplies and services to the different development types in a mixed development so that their respective consumptions and costs can be properly recorded in each of their own operating costs.</p> <p>There is a need to provide for the existing strata titled properties to comply with the above.</p> <p>For purpose of consistency of treatment, there is a need to amend the Building Common Property (Maintenance And Management)</p>
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			<p>Act 2007 [Act 663] to provide for Subsidiary Joint Management Bodies and the above proposed share units.</p> <p>The ISM and PEPS request that KPTG extends the details of the amendments to ISM and PEPS for their comments and feedback.</p>
2.	<p>S52 S53 S53A</p>	<p><u>POOR COLLECTIONS</u> <u>- THE CHICKEN & EGG PROBLEM</u></p> <p>The problem of poor collections of maintenance charges has become alarming of late as the existing provisions are unable to deal with matter effectively. This has created a vicious spiral of poor maintenance and disrepairs due to poor cash flow in operating cost.</p> <p>This chicken & egg dilemma must be resolved to stop the rot.</p>	<p>In order to resolve the chicken and egg dilemma to stop the rot, there must be strong political will to provide the much needed bold changes in the Strata Titles Act 1985 [Act 318] as follows:-</p> <p>a) A new provision for the setting up of a Tribunal (having the authority and power of a magistrate court) in each state to effectively and specially deal with cases of defaulters and inter-floor leakages where the decision of the Tribunal will be final except on points of law.</p> <p>b) A new provision for the MC to apply to the said Tribunal to seize and auction off those defaulting parcels with outstanding arrears in the contributions to the Management Fund and Special Account amounting to not less than RM10,000.00 or a sum equivalent to twelve (12) months' service charge, whichever is the smaller.</p> <p>c) A new provision for the MC to caveat the strata titles of those defaulting parcels with outstanding arrears in the contributions to the Management Fund and Special Account amounting to not less than RM1,000.00 or a sum equivalent to three (3) months' service charge, whichever is the smaller.</p>

			<p>d) A new provision requiring the Registrar of Titles or the Land Administrator, as the case may be, to obtain a prior written consent letter from the MC stating that there is no outstanding payment due to the MC before any transfer of proprietorship is made.</p> <p>e) A new provision requiring the Receiver & Manager, the Liquidator or the PN17 companies, as the case may be, to pay maintenance charges, especially when there is a rental income or the parcel is being occupied.</p> <p>f) A new provision for the MC to apply to the said Tribunal to seize any parcel which has been abandoned for more than five (5) years; and the balance of proceeds after deducting for arrears, costs of auction, etc. shall be kept in the Treasury Public Trust Account.</p> <p>g) An amendment to section 53A(1) authorising the attachment of any movable property found in the defaulting parcel and/or any movable property belonging to the defaulting proprietor which may be found anywhere in the state.</p> <p>h) An amendment to section 53A(3A) authorising the attachment of any rental income in the defaulting parcel without being subject to a prior action for attachment of movable property and the absence of any written agreement to the contrary.</p> <p>For purpose of consistency of treatment, there is a need to amend the Building Common Property (Maintenance And Management) Act 2007 [Act 663] to provide for the above changes where appropriate.</p>
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	<p>2nd Sch., P11(1)</p>	<p>c) <u>Quorum</u></p> <p>There is a need to reduce the quorum from half to one quarter of persons entitled to vote; and, at the same time, to take into account the common situation where the number of proprietors are less than the number of parcels due to some proprietors owning more than one parcel each.</p>	<p>c) <u>The Solution</u></p> <ul style="list-style-type: none"> It is proposed to amend provision 11(1) of the 2nd Schedule to: “A quorum at a general meeting shall be made up of one quarter of the persons entitled to vote who are together entitled to at least one quarter of the aggregate share units.”
	<p>2nd Sch., P13 (2A)</p>	<p>d) <u>Issues on Proxy</u></p> <p>There are 2 pertinent issues regarding proxy:-</p> <ul style="list-style-type: none"> There will inadvertently be some proxies present in a general meeting. As proxies can only vote by poll due to the amendment (Act A1290), it is inevitable that all general meetings nowadays become a long drawn out process because of the long and tedious procedure in voting by poll. 	<p>d) <u>The Solution</u></p> <ul style="list-style-type: none"> In order to resolve the present dilemma in all general meetings, it is proposed to amend provision 13(2A) of the 2nd Schedule to: “A proxy shall <u>be entitled to vote by a show of hand or by poll.</u>”
	<p>P14(2)</p>	<ul style="list-style-type: none"> The instrument appointing a proxy needs time to be verified in order to exclude phantom voters. 	<ul style="list-style-type: none"> In order to provide time for verification of the instrument, it is proposed to amend provision 14(2) of the 2nd Schedule to: “An instrument appointing a proxy or for a particular meeting, <u>and shall be submitted for verification at least 3 days before the date of the general meeting.</u>”
	<p>P16(1)</p>	<ul style="list-style-type: none"> There is a need to make it clear that the co-proprietors can appoint one amongst themselves as a jointly appointed proxy. 	<ul style="list-style-type: none"> It is proposed to amend provision 16(1) of the 2nd Schedule to: “Co-proprietors may vote by means of a <u>jointly appointed proxy who may be one of the co-proprietors or any other person.</u>”

			<p>For purpose of consistency of treatment, there is a need to amend the Building Common Property (Maintenance And Management) Act 2007 [Act 663] to provide for the above changes where appropriate.</p> <p>The ISM and PEPS request that KPTG extends the details of the amendments to ISM and PEPS for their comments and feedback.</p>
<p>4.</p>	<p>2nd Sch., P2(1)</p> <p>2nd Sch., P3 P4(1)</p> <p>2nd Sch., P3</p>	<p><u>ISSUES RELATING TO COUNCIL</u></p> <p>a) Illegal Council Members</p> <p>In the current situation, it is common to find proxies, agents and power of attorney donees being elected or appointed into the council due to public ignorance. Hence, there is a need for the Act to be expressly clear and explicit on the matter.</p> <p>b) Absentee Council Members</p> <p>Many councils are facing difficulty in convening council meetings due to lack of quorum caused by absentee council members. The frequent postponing of such meetings has given rise to great inconvenience and affects the performance and moral of the councils as a whole.</p> <p>c) Quorum in a reduced Council</p> <p>The number of members in a council is decided in an AGM. Many councils are not clear whether this number will be the basis to determine the quorum for council meeting or the remaining number left in the council whenever a vacancy or vacancies occur in a council.</p>	<p>a) Solution</p> <p>It is proposed that an amendment should be added to expressly state that proxies, agents and power of attorney donees cannot be elected or appointed into the council.</p> <p>b) Solution</p> <p>It is proposed that an amendment should be added to state that the position of a council member shall automatically become vacant if the council member is absent three times consecutively without leave of the council.</p> <p>c) Solution</p> <p>It is proposed that an amendment should be added to state that, whenever a vacancy or vacancies occur in a council, the remaining number of members in the council will for the time being formed the basis for the determination of the quorum for such meetings of the council provided it is not less than the minimum number of three members in the council.</p>

	<p>d) Need for Disclosure of Interest</p> <p>A disclosure of interest will help the council members to be transparent in their decision making process in the council and will also help to reduce the number of allegations made against the council.</p> <p>e) Need for Preventive Provision against Ultra Vires Acts & Misappropriation of Funds</p> <p>Office bearers in certain councils have transferred part of the funds in the management fund and special account into their own accounts. Such actions could eventually lead to misappropriation of funds.</p>	<p>d) Solution</p> <p>It is proposed that a new provision should be provided in the Act 318 as follows:-</p> <ol style="list-style-type: none"> (1) A member of the council having any interest, directly or indirectly, in any matter under discussion and decision making by the council shall disclose to the council the facts of his interest and its nature; and (2) A disclosure shall be recorded in the minutes of the council and, after the disclosure, the member having an interest, directly or indirectly, in the matter shall not take part nor be present in any deliberation or decision of the council. <p>e) Solution</p> <p>It is proposed that a new provision should be provided in the Act 318 to expressly state that:-</p> <ol style="list-style-type: none"> (1) Any member in the council shall not abuse his position to commit any form of ultra vires acts; and (2) The council shall always act in a fiduciary capacity to the management corporation; and it is a criminal offence for any member of a council to transfer, directly or indirectly, any monies in the management fund and special account into his own account or to misappropriate any monies in the management fund and special account. (3) Stiff penalties should be provided for such criminal offences.
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	<p>2nd Sch., P7(4)</p>	<p>f) Need for Auditing of Accounts by Independent External Licensed Auditor</p> <p>Certain councils have only internal auditor for their annual accounts without auditing by an independent external licensed auditor.</p>	<p>f) Solution</p> <p>It is proposed to amend provision 7(4) of the 2nd Schedule to</p> <p>“The accounts of the corporation shall be audited annually by <u>an independent external licensed auditor</u> appointed by the council.”</p> <p>For purpose of consistency of treatment, there is a need to amend the Building Common Property (Maintenance And Management) Act 2007 [Act 663] to provide for the above changes where appropriate.</p> <p>The ISM and PEPS request that KPTG extends the details of the amendments to ISM and PEPS for their comments and feedback.</p>
<p>5.</p>	<p>S77</p>	<p><u>ISSUES RELATING TO MAINTENANCE AND OTHERS</u></p> <p>a) Inter-floor Leakages</p> <p>In inter-floor leakages, many councils are faced with strong denials and acrimonious resistance from the upper floor parcel proprietor, leading to prolong delays and undue suffering and anguish by the occupants of the affected lower floor parcel.</p>	<p>a) Solution</p> <p>It is proposed that an additional amendment be made to section 77 of the Act to expressly state that, in any case of inter-floor leakages, the upper floor parcel proprietor is presumed liable unless he can prove otherwise; and he must rectify and fully resolve the inter-floor leakages at his own cost to the satisfaction of the council within fourteen (14) days from the date of notice by the council. Otherwise, he will be charged with a penalty by the council and the council will then proceed to rectify the same at his own cost pursuant to section 77 under the Act.</p>

<p>3rd Sch.,</p> <p>P6</p>	<p>b) Work affecting External Façade & Others</p> <p>It is common to find proprietors carrying out improvement or renovation works to their own parcels which affect the external façade and appearance of the building, affect the façade of the common property or encroach onto the common property.</p>	<p>b) Solution</p> <p>It is proposed that an additional amendment be made to provision 6 of the Third schedule under the Act to expressly state that a parcel proprietor shall not carry out any improvement, renovation or change in his parcel which will affect the external façade and appearance of the building, affect the façade of the common property, affect the structural integrity of the building or encroach onto the common property. This provision shall have retrospective effect.</p>
<p>3rd Sch.,</p> <p>P6</p>	<p>c) <u>Killer Litters & Breeding of Aedes Mosquitoes</u></p> <p>It is still a concern to find occupants throwing down solid objects from high building, hanging or placing potted plants precariously on the balconies or ledges of high building, discarding lighted cigarette butts from windows and balconies, and the accidental breeding of aedes mosquitoes larvae in flower pot containers or empty containers.</p> <p>d) <u>Redevelopment or Disposal for purpose of redevelopment</u></p> <p>As the existing buildings grow old with dilapidations, there is a need to redevelop or dispose for purpose of redevelopment. It is difficult to achieve a unanimous decision by all parcel proprietors when such a situation arises.</p>	<p>c) Solution</p> <p>It is proposed that an additional amendment be made to provision 6 of the Third Schedule under the Act to expressly state that a parcel proprietor shall not throw down solid objects from high building, shall not hang or place potted plants precariously on the balconies or ledges of high building, shall not discard lighted cigarette butts from windows and balconies in high building, and shall not cause any breeding of mosquitoes larvae in flower pot containers or whatsoever containers.</p> <p>d) Solution</p> <p>It is proposed that a new provision should be provided in the Act 318 to allow a decision for the redevelopment of old buildings or the disposal of such old buildings for purpose of redevelopment to be made based on majority vote of not less than sixty percent (60%) of the aggregate share units.</p> <p>For purpose of consistency of treatment, there</p>

			<p>is a need to amend the Building Common Property (Maintenance And Management) Act 2007 [Act 663] to provide for the above changes where appropriate.</p> <p>The ISM and PEPS request that KPTG extends the details of the amendments to ISM and PEPS for their comments and feedback.</p>
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Prepared by Sr Wong Kok Soo
Property Management Advisor to ISM & PEPS

**THE INSTITUTION OF SURVEYORS MALAYSIA (ISM) AND
THE ASSOCIATION OF VALUERS AND PROPERTY CONSULTANTS IN
PRIVATE PRACTICE MALAYSIA (PEPS)**

30 November 2008, 9.30 p.m.

REPORT DATED 2 DECEMBER 2008 BY SR WONG KOK SOO:

1. The presentation of the above paper by Sr Wong Kok Soo was very well received by KPTG for further detailed study by KPTG in the review of the Strata Titles Act 1985. Two other papers were presented by Bar Council and REDHA at the workshop.
2. Sr Wong Kok Soo informed KPTG that, due short notice by KPTG, there was insufficient time to prepare a complete paper covering all the aspects for the review of the Strata Titles Act 1985. Hence, the present paper only contains salient points covering only about 70% of all the said aspects.
3. After the presentation of the above paper on Sunday, 30 November 2008, the other salient points were made verbally by Sr Wong Kok Soo to KPTG workshop on Monday, 1 December 2008:-
 - 3.1 The Original Proprietor acts on behalf of the MC during the Initial Period under the Act to carry out property management of the common property; and the accounting period of the MC commences from the commencement of the Initial Period. Likewise, the current confusion over the role of the JMB during the Initial Period can be easily addressed by a new provision in the Act 318 to expressly state that the JMB acts on behalf of the MC during the Initial Period.
 - 3.2 The notice period for general meeting is too short and should be amended from 7 days to 14 days to allow for delay in mailing and other attendant matters.

- 3.3 The Act should expressly state that a person entitled to vote, who owns many parcels, may vote by himself in respect of one parcel and, at the same time, appoints proxies to vote for each of his other remaining parcels.
- 3.4 A new provision should be incorporated in the Act to allow corporate body proprietor, which is entitled to vote and owns many parcels, is entitled to nominate as many representatives (not exceeding the total number of its parcels) for election to the council subject to the proviso that the elected representatives of such a corporate body proprietor should not be more than 50% of the total members in the council at the time of the election at the AGM.
- 3.5 Irrespective of whether the verification of the share units is carried out by the Land Office or COB, the most important matter is the approach/method for the determination of share units must be very clear.
- 3.6 The definition of common property in the Act 318 is too concise and should be made clear by stating the 3 important criteria, viz:
 - a) Not comprised in any parcel (including accessory parcel);
 - b) Share in common; and
 - c) Enjoy and use in common.
- 3.7 The Special Account, which is actually Sinking Fund, in the Act should be properly defined as the monthly or annual equivalent where the capital expenditure for the replacement of each major component in the building is amortized over its economic life span after taking into account inflationary factor.
- 3.8 Furthermore, the Act should provide some guidance as to the approach for the determination of such Sinking Fund. Otherwise, all MCs will be plucking the numbers from the air without any basis.
- 3.9 KPTG should look into the plight of the guarded community schemes which were sold under Schedule G of the Housing Development Act 1966.
- 3.10 There should a holistic approach to the whole review and amendments of the Strata Title Act 1985.
- 3.11 ISM & PEPS would like to call for the amalgamation of the Strata Titles Act 1985 and the Building And Common Property (Maintenance And Management) Act 2007 into one single Act where the process of subdivision should be taken out and treated separately under the National Land Code 1960.
- 3.12 KPTG will call ISM and PEPS for further discussion on the review and amendments of the Strata Title Act 1985. End of report.