

Strata Titles Act 1985 - Legal Needs, Implications and Impacts of the Recent Amendments: Part II

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Abstract

One of the present trends of the construction industry is on the construction of high-rise buildings which is to accommodate the growth in demand for property within the cities where land is a scarce resource. The requirement of ownership especially in the residential and commercial sub-sectors requires the sub-divisions of buildings which will give rise to demands for strata titles. In comparison to properties issued with land titles, properties issued with strata titles have three main stages instead of one. There are the pre-issuance, the issuance and post issuance stages. During the pre-issuance stage there are issues on meeting the requirements of the law for application of titles and the issues on building management by the developers. During the issuance stage there are issues of owners who pass away and companies that have wound up or are declared bankrupt and at the post-issuance stage, there are issues again on building management, this time under the management corporations. These issues have given rise to problems over the implementation of the Act and hence the Act was recently amended to meet the needs. One of the major amendments under the Act is the establishment of the Strata Titles Board. These amendments are not conclusive and are subject to further amendments in future.

Keywords: strata titles, sub-divided buildings, management corporations, strata titles board

- **The Strata Titles Board (STB)**

The new amendments made under the new provisions in Sections 67A to 67X are wholly on the establishment and on the powers conferred upon the STB.

New Section 67A - Strata Titles Board

1. Under the new provisions, there shall be a Strata Titles Board which shall consist of a President and such number of Deputy Presidents and other members as are appointed in accordance with this section. The President, Deputy Presidents and members of the Board shall be appointed by the State Authority.
2. No person shall be appointed as the President or a Deputy President of the Board unless he is a qualified person within the meaning of the Legal Profession Act 1976. At the same time, not more than twenty persons shall appointed by the State Authority to be members of the Board in addition to the President and Deputy Presidents of the Board.
3. The names the President, Deputy Presidents and members appointed under this section shall be notified in the State Gazette. Except where otherwise provided by this Act, the Board shall, for the purpose of hearing and determining a dispute of which the Board has cognizance or any other matter with respect to which the Board has jurisdiction under this Act, be constituted by a division of the Board consisting of
 - a. the President or a Deputy President of the Board as chairman; and

- b. two other persons to be selected by the chairman from amongst the member of the Board and fill any vacancy in its membership.

New Section 67B - Tenure of Office

1. A member of the Board shall be appointed for a term of two years but shall be eligible for reappointment. A member may also resign by letter addressed to the Director.
2. The State Authority may at any time revoke the appointment of any member of the Board and fill any vacancy in its membership.

New Section 67C - Continuation of Hearing

1. If after the Board has been constituted in relation to a dispute or matter has been determined a member of the Board is unable to hear or continue to hear or to determine the dispute or matter or ceases to be a member of the Board and in so hearing may have regard to the evidence given, the arguments adduced and any interim order made during the previous hearing.
2. Notwithstanding subsection (1) and section 67B, a member of the Board who resign or whose appointment expires during the course of any proceedings of the Board shall for the purpose of such proceedings of the Board shall for the purpose of such proceedings and until their determination be deemed to remain a member of the Board and shall continue to hear and determine the dispute or matter which is the subject matter of the proceedings.

New Section 67D - Bar To Actions

No action shall lie against any member of the Board in respect of anything done or omitted to be done by him in good faith in the execution or purported execution of his functions, powers and duties this Part.

New Section 67E - Allowances

1. A member of the Board may be paid allowances prescribed under this Act in respect of each day on which he is engaged in the hearing and determining of a dispute or matter.
2. In addition to the allowances provided for in subsection (1), the President and the Deputy Presidents of the Board may be paid such allowances as may be prescribed under this Act.

New Section 67F - Board to Carry Out Its Work Expeditiously

1. The Board shall carry out its work expeditiously and shall make a finding or determination within 6 months from the date it is constituted.
2. The period specified in subsection (1) may be extended by the President or a Deputy President of the Board where the dispute or matter involves complex issues.

New Section 67G - Proceedings of Board

1. The proceedings of the Board shall be open to the public and minutes of the Board including a note of any oral evidence given before the Board

shall be kept by the President of the Board.

2. The members of the Board shall be deemed to be public servants within the meaning of the Penal Code.

New Section 67H - Order revoking amendment of by-law

1. In response to an application by any person entitled to vote at a meeting of the management corporation (including a first charge and charge of a parcel), the Board considers that, having regard to the interest of all parcel proprietors in the use and enjoyment of their parcels or the common property, an amendment or revocation of an additional by-law or addition of a new additional by-law should not have been made or effected, that Board may order that the amendment be revoked, that the revoked additional by-law be revived or that the new additional by-law be revoked.
2. When making an order under subsection (1) in respect of an additional by-law referred to in subsection (2) of section 44, the Board may direct the management corporation to pay compensation to the proprietor of the parcel adversely affected by the additional by-law. The compensation ordered to be paid under subsection (2) is recoverable by the parcel proprietor as a debt in any court of competent jurisdiction.

New Section 67I - Order invalidating purported by-law

In considering an application by any person entitled to vote at a meeting of

a management corporation (including a first charge and a charger of a parcel), if the Board finds that the management corporation has made an additional by-law but that the management corporation did not have the power to make the additional by-law the Board may make an order declaring the additional by-law to be invalid.

New Section 67J - Power of Board to invalidate proceedings

1. Where, pursuant to an application by a parcel proprietor of first charge of parcel, the Board considers that the provisions of this Act have not been complied with relation to a meeting of the management corporation, the Board may by order-
 - a. invalidate any resolution of, or election held by, the persons present at the meeting; or
 - b. refuse to invalidate any such resolution or election.
2. The Board shall not make an order under subsection (1) refusing to invalidate a resolution or election unless it considers –
 - a. that the failure to comply with the provisions of this Act did not prejudicially affect any person; and
 - b. that compliance with the provisions of this Act would not have resulted in a failure to pass the resolution, or have affected the result of the election, as the case may be.

New Section 67K - Order varying certain rates of interest

Where, pursuant to an application by a parcel proprietor for an order under this section, the Board considers that the management corporation for the subdivided building to which the application relates has determined an unreasonable rate as the rate of interest payable for the late payment of a contribution levied under section 45, the Board may order that no interest be so payable or that the interest so payable be at a rate specified by the Board may order that no interest be so payable or that the interest so payable be at a rate specified or that the interest so payable be at a rate specified by the Board instead of the rate so determines.

New Section 67L - Order where voting rights denied or due notice of item of business not given

1. Where, pursuant to an application by a person under this section, the Board is satisfied that a particular resolution would not have been passed at a general meeting of a management corporation but for the fact that the applicant –

- a. was improperly denied a vote on the motion for the resolution; or
- b. was not given due notice of the item of business pursuant to which the resolution was passed,

the Board may order that the resolution be treated as a nullity on and from the date of the order.

2. Where -

- a. an order under subsection (1) is made in respect of a resolution making an additional by-law amending, adding to or revoking another additional by-law;
- b. the additional by-law made pursuant to that resolution is in force,

the additional by-law shall, subject to its having been or being amended, added to or revoked under subsection (2) of section 44, have force and effect on and from the date the order is so made to the same extent as it would have had if the resolution had not been passed.

3. An application for an order under subsection (1) may not be made after 21 days after the date of the meeting at which the resolution was passed.

New Section 67M - Order varying amount of insurance to be provided.

The Board may, pursuant to an application by a management corporation, a parcel proprietor or a chargee in possession of a parcel, make an order for the settlement of a dispute, or the rectification of a complaint with respect to any defects in a parcel, a subdivided building and its common property or the liability of a parcel proprietor to bear the costs of or any part thereof for any work carried out by a management corporation in the exercise or performance of its powers, duties or functions conferred or imposed by this Act and the by-laws in

connection with the subdivided building.

New section 67O - Order to make or pursue insurance claim.

Where , pursuant to an application by a parcel proprietor, the Board considers that the management corporation for the subdivided building to which the application relates has unreasonably refused to make or pursue an insurance claim in respect of damage to the building or any other property insured by the management corporation under this Act, the Board may order the management corporation to make or pursue the claim.

New Section 67P – Order to supply information or documents.

Where, pursuant to an application by a parcel proprietor, the Board considers that the management corporation for the subdivided building or any member of its council to which the application relates, or managing agent for the subdivided building, has wrongfully withheld from the applicant information to which he is entitled under this Act, the Board may order that management corporation, managing agent, or any member of the council to supply or make available the information to the applicant.

New section 67Q -Order with respect to certain consents affecting common property .

Where, pursuant to an application by a parcel proprietor, the Board considers that the management corporation for the subdivided building to which the

application for the subdivided building to which the application relates has unreasonably refused to consent to a proposal by that parcel proprietor to effect alterations to the common property, the Board may order that management corporation to consent to the proposal.

New Section 67R - General provisions relating to orders under this Part.

1. An order made by the Board may include such ancillary or consequential provisions as the Board thinks fit including costs to be paid by the applicant, a management corporation or any person against whom the order is made or costs to be paid by a party for making a frivolous application to the Board.
2. For the purpose of securing compliance with an order under this Part, the Board may order a management corporation or any member of its council, a managing agent or any other person having registered interest in a parcel or an occupier to do or refrain from doing a specified act with respect to a subdivided building and the common property.

Section 67S - Representation before the Board

1. An applicant for an order this Part may appear before the Board or may be represented by counsel who may examine witnesses and address the Board on behalf of the applicant.
2. A management corporation appearing before the Board may be represented by counsel or a member

of the council of the management corporation.

New Section 67T - Witness may be summoned

1. The Board may summon any person to attend before the Board at the time and place specified in the summons to given evidence and to produce books, documents or writings in his custody or control which he is required by the summons to produce.
2. A person served with a summons under subsection (1) who, without reasonable excuse, disobeys the summons shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand Ringgit or to imprisonment for a term not exceeding six month or to both.
3. A person shall not be bound to produce any books, documents or writings not specified or otherwise sufficiently described in the summons or which he would not be bound to produce upon a subpoena for production in a court.

New Section 67U - Board may administer oath

1. The Board may administer an oath affirmation to a person appearing as a witness before the Board whether or not he has appeared in answer to a summons, and may examine the witness upon oath or affirmation.
2. A person appearing as witness before a Board -
 - a. shall not refuse to be sworn or to make an affirmation;

- b. shall not refuse to answer any question relevant to any proceedings before the Board which are put to him by the Board or by any person entitled to appear before the Board in those proceedings; and
 - c. shall not knowingly give false testimony in any evidence given by him to the Board.
4. A witness before a Board shall have-
- a. the same protection; and
 - b. in addition to the penalties provided by this Act, the same liabilities,
- as he would have had if he had been a witness before a court.

New Section 67V - Penalty for contravention

- 1. A person who contravenes an order made by the Board to do or refrain from doing a specified act shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten thousand Ringgit or to imprisonment for a term not exceeding two years or to both.
- 2. A document purporting to be copy of an order made by the Board shall be admissible in evidence and shall, until the contrary is proved, be deemed to be an order made by the Board.

New Section 67X - Appeal on point of law

- 1. No appeal shall lie to the High Court against an order made by the Board under this Part except on a point of law.

2. Where an appeal is made to the High Court, the Court may confirm, vary or set aside the order or remit the order to the Board for reconsideration together with such directions as the Court thinks fit.

3. The filing of a notice of appeal shall not operate as a stay of execution of an order or suspend the effect of an order unless the Board or the High Court, as the case may be, otherwise orders and any stay or suspension of an order may be subject to such conditions as the Board or High Court thinks fit.

• New Section 80A - Prosecution

No prosecution shall be instituted for an offence under this Act or any rules made under this Act without the consent in writing of the Public Prosecutor.

The drafting of this 2001 amendment to the Strata Titles Act 1985 has undergone a grueling exercise in which the areas requiring amendments have been identified and worked upon. This amendment should be able to overcome problems over the delay in applying for strata titles, overcome disputes between parcel owners themselves and overcome disputes between parcel owners and the management corporations. However, the previous provisions plus the new amendments cannot be regarded as a conclusive attempt in addressing the problems faced by aggrieved parcel owners of sub-divided buildings.

CONCLUSION

This paper has highlighted the increasing need for strata titles currently and in the future. Evidently,

the number of applications has multiplied over the years. The challenges put upon the shoulders of the powers that be is for the act be implemented as an effective legal tool to address the public woes over subdivided buildings requiring the issuance of strata titles. The implementation of the act has to be backed up by a solid enforcement mechanism so as to be able to measure up to public expectations in processing and issuing strata titles expeditiously. However, apart from having an effective legal system to meet the challenges, the Land Administrators and the Directors of Lands And Mines also require the

corresponding cooperation and commitment from the developers, licensed land surveyors and the State Directors of Survey. It should be pointed out that although the processing of strata titles is a straightforward procedure, somehow, the technical nature of the strata title application makes it appear rather cumbersome and complicated. Hence despite of the extensive study carried out in formulating the amendments, we have to submit to the fact that there will definitely be further amendments to the act. The Strata Titles Act 1985 has not reached its maturity stage or in other words it has not reached the plateau.