Provisioned Amendments to Laws Governing the Management of Strata Properties and Its Impact On Developers

Introduction

It was recently announced on 1 February 2017 that the Building Maintenance and Strata Management Act (Cap 30C) ("BMSMA"), which came into effect in April 2005, will be revised for the first time to ensure that the legislation remains up to date with the relevant current needs, promote better governance and transparency in the management of strata-titled developments, and provide greater clarity to existing provisions.

This first ever revision of the BMSMA comes after two earlier rounds of consultation on proposed amendments to the BMSMA. This third and final round of consultation will end on 21 February 2017. The date on which the amendments will come into effect will be announced after the consolidated list of amendments from all three consultations are tabled and read in Parliament.

This update looks at the key proposed amendments that may affect developers of strata-titled developments. The consolidated list of amendments, 33 of them in all, can be accessed via this link.

Key Proposed Amendments Affecting Developers

Approval of Maintenance Charges before Launch of Sale of Units in a Development

Presently, under Section 18 of the BMSMA read together with Section 16, an owner developer is only obliged to obtain the approval of the Commissioner of Buildings ("COB") and establish a maintenance fund prior to any collection of maintenance charges from a purchaser of a lot in a development.

Currently, pursuant to the terms of the prescribed form of the sale and purchase agreement under the Housing Developers (Control and Licensing) Rules ("HDR") and the Sale of Commercial Properties Rules ("SCPR") (as the case may be), a purchaser is only obliged to pay for the maintenance charges on the date the developer delivers vacant possession of the unit to the purchaser, or on the 15th day after the purchaser receives, amongst other documents, a copy of the temporary occupation permit ("TOP") in respect of the development, whichever is later.

In practice, developers usually kick-start the process of obtaining approval from the COB just before the TOP is issued by the relevant authorities. It is also more practical for developers to seek approval from the COB only closer to the issuance date of the TOP as it is then easier for them to accurately quantify the maintenance charges that will be required to maintain the development.
With the proposed amendment, developers will now have to obtain the COB’s approval on the quantum of the maintenance charges prior to the launch of sale of units in a development and such approval will have to be furnished to the potential purchasers.

Given that the rationale of this amendment is to provide some form of comfort and certainty to purchasers as to their share of the costs involved in maintaining the development and to assess their affordability of maintaining their unit(s), we would expect that the COB may not be inclined to approve any subsequent proposed adjustment of the approved quantum of maintenance charges unless there are compelling reasons.

In view of the aforesaid, developers will have to maintain a fine balance between the projected cost of maintaining the development after TOP is issued 2 to 3 years down the road (after the commencement of the construction of the development), and the expectation of the purchasers having regard to the maintenance charges of other similar developments at the time of the sale of the units in the development.

**Transfer of Balance Moneys from Developers to the MCST**

In addition to the obligation of developers to determine maintenance charges prior to the launch of sale of the units in a development, with the proposed amendments, developers will also have to be accountable for a positive balance of monies in the maintenance fund established to be transferred to the management corporation strata title (“MCST”) (when formed). In this connection, it is all the more important that developers exercise prudence in the quantification of the maintenance charges at the very outset to avoid a negative balance in the maintenance fund.

**Use of Management Fund for Social Activities, seeking Legal Advice and Payment of Honorarium**

It is unclear whether this proposed amendment for the use of the management fund to include organising social and sports activities will extend to the owner developer under Section 16 of the BMSMA. If it does, developers can consider budgeting part of the maintenance charges to organise social or sports activities. This also provides more scope for the developer to market and differentiate their development as one that provides facilities and amenities that compliments its purchasers’ lifestyles.

**Chairing of First Annual General Meeting by Owner Developer**

In line with the general direction of the proposed amendments to the BMSMA for the owner developer to be more accountable in the maintenance and management of the development, one of the proposed changes will be for an owner developer to chair the first annual general meeting, instead of its agent.

With this amendment, the owner developer will have to be present during the first annual general meeting to meet with the subsidiary proprietors to address their queries and feedback directly.
Developers Liabilities with regard to Payment to the Maintenance Fund

Currently, pursuant to Section 17 of the BMSMA, a developer is required to pay into the maintenance fund within 3 months after the TOP is issued for the development:

(i) in respect of units sold before the TOP for the development is issued, an amount equivalent to the maintenance charges which would have been payable by a purchaser (ie. from the date of receipt of the first payment of the maintenance charges by one of the purchasers of a lot in the development) until such time when the maintenance charges are due and payable by the respective purchasers of the units in a development; and

(ii) in respect of unsold lots or lots sold after TOP for the development is issued, an amount equivalent to the maintenance charges which would have been payable by a purchaser of such a lot until such time the maintenance charges is due and payable by the purchaser of such a lot.

With the proposed amendments to the BMSMA, in respect of sold units, it appears that developers will be given a waiver of the maintenance charges for 4 weeks commencing from the date of the issuance of the TOP but the payment of the amount as set out item (i) above into the maintenance funds will have to be made within 4 weeks from the date of the issuance of TOP instead of 3 months as previously provided. It remains to be seen whether the 4 week waiver of maintenance charges and time period to pay into the maintenance funds will also apply to unsold lots or lots sold after the issuance of TOP.

In order to take advantage of the waiver, developers must be prompt in the service of the notice of vacant possession. Such a waiver will be welcomed by developers of huge developments, where staggered service of notices of possession is required due to administrative and logistic limitations.

Due to the shortened timeline to pay into the maintenance fund account, developers must be mindful and be prepared to serve the notices of vacant possession on the respective purchasers pursuant to the terms of the prescribed form of the sale and purchase agreement under the HDR and SCPR (as the case maybe) as soon as TOP is being issued. The later the notice of vacant possession is served on the respective purchasers after the issuance of TOP, the shorter the time developers will have to make arrangement for the payment of the maintenance charges into the maintenance fund.

Payment of Any Income from Rental Charges Derived from Common Property into MCST’s Management Fund

At present, the BMSMA provides avenues for the MCST to lease and transfer part of the common property in a development. The BMSMA is, however, silent on how the potential income derived from such leasing or transfer is to be dealt with.

The proposed amendment to allow income from such rentals to be paid into the maintenance fund to defray the maintenance expenses of the development will provide clarity to the MCST on the use of such potential income.
Developers may wish to keep this amendment (if and when it comes into effect) in mind when quantifying the maintenance charges for the development prior to the launch of the development.

**Safety Grilles**

With the proposed amendment expressly setting out the prerogative of the respective subsidiary proprietors to install safety grilles in their homes, especially in the balconies, developers must be mindful to put in place design guidelines for safety grilles in order to maintain the uniformity of the façade of the development.

Developers may want to consult their architects at the design stage of the development on the design criteria of the safety grilles so that such design criteria may be incorporated in the sale and purchase agreement at the outset. In addition or alternatively, the developer may want to take steps under Section 32 of the BMSMA to include the design guidelines for the installation of safety grilles in the by-laws.

**Conclusion**

If you have any questions on the above, or wish to make submissions to the Building and Construction Authority, please contact our team members below who will be happy to assist.
Please feel free to also contact Knowledge and Risk Management at eOASIS@rajahtann.com

ASEAN Economic Community Portal

The launch of the ASEAN Economic Community (“AEC”) in December 2015, businesses looking to tap the opportunities presented by the integrated markets of the AEC can now get help a click away. Rajah & Tann Asia, United Overseas Bank and RSM Chio Lim Stone Forest, have teamed up to launch “Business in ASEAN”, a portal that provides companies with a single platform that helps businesses navigate the complexities of setting up operations in ASEAN.

By tapping into the professional knowledge and resources of the three organisations through this portal, small- and medium-sized enterprises across the 10-member economic grouping can equip themselves with the tools and know-how to navigate ASEAN’s business landscape. Of particular interest to businesses is the “Ask a Question” feature of the portal which enables companies to pose questions to the three organisations which have an extensive network in the region. The portal can be accessed at http://www.businessinasean.com.
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