



LAWS OF SARAWAK

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Chapter 76

STRATA MANAGEMENT ORDINANCE, 2019

STRATA MANAGEMENT ORDINANCE, 2019

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STRATA MANAGEMENT ORDINANCE, 2019

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LAWS OF SARAWAK

Chapter 76

STRATA MANAGEMENT ORDINANCE, 2019

An Ordinance to provide for the management and maintenance of building or land intended to be subdivided into parcels and subdivided building or land, and for matters connected therewith.

[1.3.2022]
[Swk. L.N. 48/2022]

Enacted by the Legislature of Sarawak—

PART I
PRELIMINARY

Short title and commencement

1.—(1) This Ordinance may be cited as the Strata Management Ordinance, 2019, and shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint.

(2) Notwithstanding subsection (1), the Minister may, by notification in the *Gazette*, exempt any part of any local authority area or government agencies from any or all the provisions of this Ordinance or any regulations made under this Ordinance.

(3) The Minister may, if in his opinion it would not be contrary to the public interest and the interest of the purchasers to do so, suspend the operation of this Ordinance or any provision of this Ordinance in any local authority area or any part of any local authority area for such periods as he deems fit.

Interpretation

2.—(1) In this Ordinance, unless the context otherwise requires—

“accessory parcel” has the same meaning assigned to it in the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*];

“aggregate share units” means—

(a) in relation to a building or land intended to be subdivided into parcels, the sum of the allocated share units of the parcels or proposed parcels, including a provisional block, in a development; or

(b) in relation to a subdivided building or land, the sum of the share units of the parcels, including provisional block, as shown in the subsidiary register prepared and maintained by the Registrar under the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*];

“allocated share units” means the share units assigned to each parcel intended to be subdivided under the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*], and certified by a land surveyor appointed by the developer or in a case where share units have not been so assigned, means the share units assigned under section 7;

“approved building plans” means the plans and specifications for a building prepared by a qualified person and approved under the Buildings Ordinance, 1994 [*Cap. 8*];

“approved company auditor” has the same meaning assigned to it in the Companies Act 2016 [*Act 777*];

“approved plans” means all plan approved by State Planning Authority, local authority and any other government agencies in relation to the building or land intended to be subdivided into parcels for the development;

“bank or financial institution” means a bank or financial institution licensed under the Financial Services Act 2013 [*Act 758*] or Islamic Financial Services Act 2013 [*Act 759*] or regulated by the Central Bank under any written law;

“building” has the same meaning assigned to it in the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*];

“building or land intended to be subdivided into parcels” means building or land capable of being subdivided into parcels under section 4 of the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*];

“by-laws” means the by-laws made under sections 30, 63 or 64;

“Commissioner” means the Commissioner of Buildings, including any Deputy Commissioner and other officers, appointed under section 3(1) to exercise the powers or perform the duties imposed on the Commissioner;

“common property” has the same meaning assigned to it in the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*];

“competent planning authority” has the same meaning assigned to it in the Buildings Ordinance, 1994 [*Cap. 8*];

“comprehensive resolution” means, in a duly convened general meeting of a joint management body, management corporation or subsidiary management corporation—

(a) the motion is passed of which at least thirty-days’ notice specifying the motion has been given; and

(b) at the end of the period of sixty days after the general meeting in paragraph (a) is convened, on a poll, the total of the share unit of the parcels for which valid votes are counted for the motion is at least ninety percent of the aggregate share unit of the parcel of all the subsidiary proprietors who, at the end of that period, constitute the management corporation or subsidiary management corporation, as the case may be;

“contribution to sinking fund” means the sum of money in respect of a parcel to be paid into the sinking fund account solely for the purpose of meeting future capital expenditure of the building and land intended to be subdivided into parcels or the subdivided building or land and the common property;

“dealing” has the same meaning assigned to it in the Land Code [*Cap. 81 (1958 Ed.)*];

“develop” or “development” has the same meaning assigned to it under Part X of the Land Code [*Cap. 81 (1958 Ed.)*];

“developer”, in relation to—

(a) a development, means any person or body of persons, by whatever name described, who develops any land for the purpose of residential, commercial or industrial use, or a combination of such uses; and

(b) a subdivided building or land, includes the proprietor of the lot before the issuance of subsidiary titles,

and includes the executors, administrators and successors-in-title and permitted assigns of such person or body of persons, and in a case where the person or body of persons is under liquidation, includes such person or body appointed by a court of competent jurisdiction to be the provisional liquidator or liquidator;

“Director” has the same meaning assigned to it in the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*];

“exclusive benefit”, in relation to a limited common property, includes but is not limited to the exclusive use or enjoyment of, and right to contributions and earnings in respect of, the limited common property but excludes any proprietary interest;

“Government” means the Government of the State of Sarawak;

“housing accommodation” has the same meaning in the Housing Development (Control and Licensing) Ordinance, 2013 [*Cap. 69*];

“joint management body” means the body established under section 16;

“joint management committee”, in relation to a joint management body, means the committee of the joint management body elected under section 20;

“land” has the same meaning assigned to it in the Land Code [*Cap. 81 (1958) Ed.*];

“land parcel” has the same meaning assigned to it in the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*];

“land surveyor” means any person who has been issued with a licence to practice in Sarawak as a land surveyor under the Land Surveyors Ordinance, 2001 [*Cap. 40*];

“limited common property” has the same meaning assigned to it in the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*];

“local authority”—

(a) means any local authority established or deemed to have been established under the section 3 of the Local Authorities Ordinance, 1996 [*Cap. 20*]; and

(b) includes any person or body of persons appointed or authorized under any written law to exercise and perform the powers and functions of a local authority under any written law;

“local authority area” means any area in Sarawak that has been declared to be a local authority area in accordance with the Local Authorities Ordinance, 1996 [*Cap. 20*];

“maintenance account” means an account required to be opened and maintained by a developer, joint management body, management corporation or subsidiary management corporation under this Ordinance;

“maintenance charges” means the sums of money in respect of a parcel to be paid into the maintenance account solely for the purpose of meeting the actual or expected expenditure for regular and general maintenance of the common property;

“managing agent” means a person who is appointed by the Commissioner under section 76(4);

“management committee”, in relation to a management corporation, means the committee of the management corporation elected under section 46(1);

“management corporation” means the management corporation established under the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*];

“Minister” means the Minister for the time being charged with the responsibility for local government;

“occupation permit” means such permit given or granted under the Building Bylaws contained in the Fourth Schedule of the Buildings Ordinance, 1994 [*Cap. 8*];

“occupier” means the person in actual occupation or control of the parcel, but in the case of premises for lodging purposes, does not include a lodger;

“parcel” has the same meaning assigned to it in the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*];

“parcel owner” includes the purchaser or developer in respect of those parcel in a development which have not been sold by the developer;

“parcels in a development which have not been sold” includes the proposed parcels in each provisional block;

“property manager” means a person who is registered with and has been issued with an authority to practise property management by the Valuers, Appraisers, Estate Agents and Property Managers Act 1981 [*Act 242*] and appointed by the Commissioner under section 76;

“proprietor” has the same meaning assigned to it in the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*];

“provisional block” has the same meaning assigned to it in the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*];

“provisional share units” has the same meaning assigned to it in the (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*];

“purchaser” means the purchaser of a parcel and includes any person or body of persons who has acquired an interest as a purchaser in the parcel or any person or body of persons for the time being registered as a parcel owner in the register of parcel owners under section 28(1);

“rating authority”, in relation to a subdivided building or land, means any authority authorized by law to levy rates on the subdivided building or land;

“Registrar” has the same meaning assigned to it in the Land Code [*Cap. 81(1958 Ed.)*];

“share units” has the same meaning assigned to it in the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*];

“sinking fund account” means an account required to be opened and maintained by a developer, joint management body, management corporation and subsidiary management corporation under this Ordinance;

“special resolution” means in a duly convened general meeting of a joint management body, management corporation or subsidiary management corporation—

(i) a motion which is passed of which at least twenty-one days’ notice specifying the motion has been given; and

(ii) on a poll, the resolution is supported by a majority of not less than three quarter of the valid votes cast by the subsidiary proprietors or parcel owner who are present (in person or proxy) at the time the vote is taken;

“certified strata plan” has the same meaning assigned to it in the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*];

“strata subdivision plan” has the same meaning assigned to it in the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*];

“subdivided building” has the same meaning assigned to it in the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*];

“subdivided land” has the same meaning assigned to it in the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*];

“subsidiary management committee”, in relation to a subsidiary management corporation, means the committee of the subsidiary management corporation elected under section 42(1);

“subsidiary management corporation” has the same meaning assigned to it in the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*];

“subsidiary proprietor” has the same meaning assigned to it in the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*];

“subsidiary register” has the same meaning assigned to it in the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*];

“Superintendent” has the same meaning assigned to it in the Land Code [*Cap. 81(1958 Ed.)*];

“Tribunal” means the Strata Management Tribunal established under Part IX;

“unanimous resolution” means in a duly convened general meeting of a joint management body, management corporation or subsidiary management corporation—

(i) a motion which is passed of which at least twenty-one days’ notice specifying the motion has been given; and

(ii) is supported by every valid vote cast by subsidiary proprietors or parcel owner who are present (in person or proxy) at the time the vote is taken;

“vacant possession” means the delivery of a completed parcel to a purchaser or subsidiary proprietor after the issuance of an occupation permit for the immediate enjoyment of the purchaser or subsidiary proprietor as required to be delivered by the developer to the purchaser or subsidiary proprietor under the sale and purchase agreement;

“valid vote” means a vote cast by a parcel owner or a subsidiary proprietor entitled to vote, other than a vote which is—

- (a) given both for and against the motion;
- (b) unmarked; or
- (c) void for uncertainty.

PART II

ADMINISTRATION OF THE ORDINANCE

Appointment of Commissioner of Buildings, deputies and other officers

3.—(1) The Minister may appoint a person with requisite qualifications and experience to be known as the Commissioner of Buildings and such number of Deputy Commissioners of Buildings and other officers as may be necessary for the purpose of administering and carrying out the provisions of this Ordinance.

(2) The appointment of the Commissioner of Buildings, any Deputy Commissioner of Buildings and other officers under subsection (1) shall be made by notification in the *Gazette*.

(3) Subject to any direction of the Minister which is not inconsistent with the provisions of this Ordinance, the Commissioner shall have charge of the administration of this Ordinance and may perform such duties as are imposed and may exercise such powers as are conferred upon him by this Ordinance or any other written law.

(4) Subject to any direction of the Commissioner which is not inconsistent with the provisions of this Ordinance, any powers conferred on and duties to be performed by the Commissioner under this Ordinance or any other written law may be exercised or performed by any Deputy Commissioner or other officer appointed under subsection (1).

(5) Notwithstanding subsection (4), the Commissioner may, by notification in the *Gazette*, delegate all or any of his powers or functions under this Ordinance to any other person.

(6) The Commissioner may, by notification in the *Gazette*, give any direction as he deems fit which is not inconsistent with the provisions of this Ordinance to any person charged with the responsibility to manage and maintain any building or land intended to be subdivided into parcels or subdivided building or land, as the case may be.

PART III

DEALINGS IN BUILDING OR LAND INTENDED TO BE SUBDIVIDED INTO PARCELS

Application of this Part

4.—(1) This Part shall apply to any sale of a parcel by a developer on or after the commencement of this Ordinance.

(2) For the purpose of this Part, a developer shall be deemed to have sold a parcel or proposed parcel in a development if by an agreement in writing or by any deed or instrument, conditional or otherwise, the developer has agreed to sell, convey,

transfer, assign or otherwise, the dispose of its interest in the parcel or proposed parcel to another person for valuable consideration or otherwise.

Strata subdivision plan to be filed with the Commissioner before sale of any parcel

5.—(1) A developer of a development shall not sell any parcel or proposed parcel unless—

(a) a strata subdivision plan prepared and submitted under section 6(1)(b) of the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*], has been filed with the Commissioner under this Part;

(b) in the case of a phased development, a proposed quantum of provisional share unit for each provisional block prepared and submitted under section 7(2)(e) of the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*], has been filed with the Commissioner; and

(c) in the case of a development involving housing accommodation, the developer has complied with all the requirements under the Housing Development (Control and Licensing) Ordinance, 2013 [*Cap. 69*], and any regulations made under that Ordinance.

(2) The developer shall also not sell any parcel or proposed parcel in any provisional block unless the developer has filed with the Commissioner the strata subdivision plan prepared and submitted under section 17 of the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*], showing the proposed allocation of the provisional share units among the new parcels in the provisional block.

(3) A strata subdivision plan filed under this section shall—

(a) comprise an index plan, storey plan and delineation plan and proposed schedule of parcels as specified in sections 6 and 7(2) of the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*];

(b) show a legend of all parcels, all common properties and all accessory parcels, and in the case of accessory parcels, specify in the legend the parcels they are made appurtenant to;

(c) contain a certificate by the land surveyor appointed by the developer that the buildings or lands parcels shown in the strata subdivision plan are capable of being subdivided under the provisions of the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*];

(d) contain a certificate prepared by the architect or engineer appointed by the developer that the buildings or lands parcels to be constructed in accordance with the approved building plans, are capable of being subdivided under the provisions of the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*]; and

(e) contain such details as may be required by the Commissioner.

(4) After the filing of the strata subdivision plan for a development with the Commissioner, the Commissioner shall, as soon as practicable,—

(a) notify the developer concerned in writing that the requirements in subsection (3) have been complied with; or

(b) where such requirements have not been complied with, notify the developer concerned of such non-compliance.

(5) The proposed share units of each parcel or proposed parcel as shown in the strata subdivision plan filed with the Commissioner under subsection (1), and the proposed allocation of the provisional share units among the parcels in a provisional block as shown in the strata subdivision plan filed with the Commissioner under subsection (2) shall be deemed to be the allocated share units assigned to each parcel for the purpose of Part IV, until such time as the certified strata plan has been filed pursuant to the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*].

(6) A copy of the strata subdivision plan filed with the Commissioner under this Part shall be exhibited at all times in a conspicuous position in any office and branch office of the developer and at such place where sale of a parcel is conducted.

(7) Any developer who fails to comply with subsections (1), (2) or (6) shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding five hundred

thousand ringgit or imprisonment for a term not exceeding five years or to both.

(8) Any developer who—

(a) knowingly makes or produces or causes to be made or produced any false or fraudulent certification that purports to comply with the requirement of subsection (3)(c) or (d); or

(b) negligently makes or produces or causes to be made or produced any false certification that purports to comply with the requirement of subsection (3)(c) or (d), shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding two hundred and fifty thousand ringgit or imprisonment for a term not exceeding three years or to both.

PART IV

STRATA MANAGEMENT BEFORE EXISTENCE OF MANAGEMENT CORPORATION

Chapter 1

General

Application of this Part

6.—(1) Subject to Part V, this Part shall apply to a development where before or after the commencement of this Ordinance—

(a) occupation permit of a building on the development has been issued by the local authority; and

(b) at the time of issuance of the occupation permit under paragraph (a), the management corporation has not been established.

(2) In this Part, “developer’s management period” means the period commencing from the date of issuance of the occupation permit of the building on the development until one month after the establishment of the joint management body or such other time as may be extended by the Commissioner.

Allocated share units

7.—(1) Where the sale of a parcel by a developer was made before the commencement of this Ordinance and no share units have been assigned to each parcel, the share units for each parcel shall be assigned by the proprietor in accordance with Strata (Subsidiary Title) Ordinance, 2019 [Cap. 75/2019].

(2) The share units for each parcel assigned pursuant to subsection (1) shall be deemed to be the allocated share units assigned to each parcel for the purpose of this Part until such time as the certified strata plan has been filed by the Superintendent pursuant to the Strata (Subsidiary Titles) Ordinance, 2019 [Cap. 75/2019].

Chapter 2

Management by developer before joint management body is established

Duties and powers of developer during developer's management period

8.—(1) Subject to the provisions of this Ordinance, a developer shall, during the developer's management period, be responsible to manage and maintain any building or land intended to be subdivided into parcels and the common property.

(2) The developer shall perform its duties and exercise its powers as provided in the First Schedule.

(3) During the developer's management period—

(a) the developer shall ensure that a separate and distinct area is set aside out of the common property of the development for the sole purpose of an administration office for the carrying out of duties of the developer under this Ordinance;

(b) the developer shall not be entitled to be paid any remuneration for carrying out the management and maintenance of a building or land intended to be subdivided into parcels and the common property in the development; and

(c) the developer shall be allowed to enter into any contract for the purposes of management and maintenance of

a building or land intended to be subdivided into parcels and the common property in the development provided that such contract shall not extend beyond the developer's management period.

(4) Any developer who fails to comply with the provisions with this section shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding two hundred and fifty thousand ringgit or imprisonment for a term not exceeding three years or to both.

Developer to establish maintenance account

9.—(1) A developer shall open a maintenance account in respect of each development with a bank or financial institution—

(a) if occupation permit of a building on the development was issued before the commencement of this Ordinance, within fourteen days from the date of the commencement of this Ordinance; or

(b) if occupation permit of a building on the development is issued after the commencement of this Ordinance, within fourteen days from the date of the issuance of the occupation permit,

but in any case, before the maintenance charge and contribution to sinking fund are collected from the purchaser of any parcel in the development.

(2) Each maintenance account shall be operated and maintained until the expiry of the developer's management period.

(3) All maintenance charges in respect of those parcels in the development which have not been sold together with those maintenance charge received from the purchasers shall be deposited into the maintenance account within seven working days of receipt.

(4) Notwithstanding any other written law to the contrary, all monies in the maintenance account shall—

(a) not form part of the property of the developer;

(b) be held in trust for the purchasers; and

(c) to be used solely for the purpose of meeting the actual or expected general or regular expenditure necessary in respect of the following matters;

(i) maintaining the common property in good condition on a day-to-day basis;

(ii) paying for the expenses incurred in providing cleaning services for the common property, security services and amenities for the occupiers of the building;

(iii) paying any premiums for the insurance effected under this Ordinance;

(iv) complying with any notice or order given or made by the local authority in respect of periodical inspection of any building in the development in the manner as specified in the Buildings Ordinance, 1994 [*Cap. 8*];

(v) minor painting work on the premises of the common property;

(vi) carrying out inspection of all electrical wiring systems of the common property and replacing or repairing any faulty wiring system, if any;

(vii) carrying out inspection, maintenance and repair of the main water tanks;

(viii) paying rent and rates, if any;

(ix) paying any fee incurred for the auditing of the accounts;

(x) paying all maintenance charges reasonably incurred for the administration of the accounts required to be maintained under this Ordinance as may be determined by the Commissioner;

(xi) paying the remuneration or fees for the property manager or managing agent appointed under Part VI;

(xii) paying any expenses, costs or expenditure in relation to the procurement of services, including the engagement of consultants, legal fees or costs and other

fees and costs, properly incurred or accepted in the performance of its functions and the exercise of its powers under this Ordinance; or

(xiii) meeting other expenses of a general or regular nature relating to the management and maintenance and management of the buildings or lands intended for subdivision into parcels and the common property.

(5) In the event that—

(a) the developer enters into any composition or arrangement with his creditors or has a receiving order or an adjudication order made against him; or

(b) the developer, being company, goes into voluntary or compulsory liquidation,

the monies in the maintenance account shall vest in the administrator, official receiver, trustee in bankruptcy or liquidator, as the case may be, to be applied for all or any of the purposes for which monies in the maintenance account and sinking fund account are authorized to be applied under this Ordinance.

(6) Any money remaining in the maintenance account, after all payments have been properly made under this Ordinance, shall be held by the administrator, official receiver, trustee in bankruptcy or liquidator, as the case may be, and shall be transferred into a maintenance account and sinking fund account in the name of the joint management body upon its establishment.

(7) Any person who fails to comply with the provisions of this section shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding two hundred and fifty thousand ringgit or imprisonment for a term not exceeding three years or to both.

Developer to establish sinking fund account

10.—(1) A developer shall open a sinking fund account in respect of each development with a bank or financial institution—

(a) if occupation permit of a building on the development was issued before the commencement of this

Ordinance, within fourteen days from the date of the commencement of this Ordinance; or

(b) if occupation permit of a building on the development is issued after the commencement of this Ordinance, within fourteen days from the date of the issuance of the occupation permit,

but in any case, before the maintenance charge and contribution to sinking fund are collected from the purchaser of any parcel in the development.

(2) Each sinking fund account shall be operated and maintained until the expiry of the developer's management period.

(3) All contributions to sinking fund in respect of those parcels in the development which have not been sold together with those contributions to sinking fund received from the purchasers shall be deposited into the sinking fund account within seven working days of receipt.

(4) Notwithstanding any other written law to the contrary, all monies in the sinking fund account shall—

(a) not form part of the property of the developer;

(b) be held in trust for the purchasers; and

(c) to be used solely for the purpose of meeting the actual or expected capital expenditure necessary in respect of the following matters;

(i) the painting or repainting of any part of the common property;

(ii) the acquisition of any movable property for use in relation to the common property; or

(iii) the renewal or replacement of any fixture or fitting comprised in any common property.

(5) In the event that—

(a) the developer enters into any composition or arrangement with his creditors or has a receiving order or an adjudication order made against him; or

(b) the developer, being company, goes into voluntary or compulsory liquidation,

the monies in the sinking fund account shall vest in the administrator, official receiver, trustee in bankruptcy or liquidator, as the case may be, to be applied for all or any of the purposes for which monies in the maintenance account and sinking fund account are authorized to be applied under this Ordinance.

(6) Any money remaining in the sinking fund account, after all payments have been properly made under this Ordinance, shall be held by the administrator, official receiver, trustee in bankruptcy or liquidator, as the case may be, and shall be transferred into a maintenance account and sinking fund account in the name of the joint management body upon its establishment.

(7) Any person who fails to comply with the provisions of this section shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding two hundred and fifty thousand ringgit or imprisonment for a term not exceeding three years or to both.

Purchaser and developer to pay maintenance charge and contribution to sinking fund

11.—(1) Each purchaser shall pay the maintenance charge, and contribution to the sinking fund, in respect of his parcel to the developer for the management and maintenance of the building or land intended to be subdivided into parcels and the common property of the development.

(2) The developer shall pay the maintenance charge, and contribution to the sinking fund, in respect of those parcels in a development which have not been sold.

(3) The amount of the maintenance charge to be paid under subsections (1) and (2) shall be determined by the developer in proportion to the allocated share units of each parcel or the proposed quantum of provisional share units for each provisional block and any amount so determined, shall be fair and reasonable in meeting the expected and estimated expenditure to properly manage and maintain the building or land intended to be subdivided into parcels and the common property.

(4) The amount of contribution to the sinking fund to be paid under subsections (1) and (2) shall be a sum equivalent to ten percent of the maintenance charge.

(5) The purchaser shall, within fourteen days of receiving a notice from the developer, pay the maintenance charge, and contribution to the sinking fund, to the developer and if any sum remains unpaid by the purchaser in respect of his parcel at the expiry of the period of fourteen days, the developer may recover the sum in the manner set out in section 32.

(6) In respect of those parcels in the development which have not been sold, the developer shall pay maintenance charge, and contribution to the sinking fund, for each parcel within fourteen days from the date of the first notice issued to any purchaser under subsection (5).

(7) If any sum remains unpaid by the purchaser in respect of his parcel at the expiry of the period of fourteen days specified in subsection (5), the purchaser shall pay interest at the rate of ten percent per annum on a daily basis.

(8) If any sum remains unpaid by the developer in respect of those parcels in the development which have not been sold at the expiry of the period of fourteen days specified in subsection (6), the developer shall pay interest at the rate of ten percent per annum on daily basis.

(9) Any purchaser who is not satisfied with the sums determined by the developer under subsection (3) or (4) may apply to the Commissioner for a review and the Commissioner may—

(a) determine the sum to be paid as the maintenance charge, or contribution to the sinking fund; or

(b) instruct the developer to appoint, at the developer's own cost and expense, a property manager to recommend the sum payable as the maintenance charge, or contribution to the sinking fund, and submit a copy of the property manager's report to the Commissioner.

(10) Upon receiving the report under subsection (9)(b), the Commissioner shall determine the sum payable as he thinks just and reasonable, and any sum so determined by the Commissioner shall be deemed to be the sum payable as the maintenance charge, or contribution to the sinking fund.

(11) Any developer who fails to comply with subsection (2), (6) or (8) shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding twenty thousand

ringgit or imprisonment for a term not exceeding three years or to both and, in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for every day or part thereof during which the offence continues after conviction.

Prohibition on collection of monies before accounts are opened

12.—(1) No person shall at any time collect any maintenance charge or contribution to the sinking fund from any purchaser for the management and maintenance of any building or land intended to be subdivided into parcels and the common property unless—

(a) a maintenance account and a sinking fund account have been opened in respect of the development; and

(b) occupation permit of a building on the development has been issued.

(2) Notwithstanding subsection (1), any developer of a development which has been completed on or before the commencement of this Ordinance and has, immediately before that date, been collecting monies from the purchasers for the management and maintenance of any building or land intended to be subdivided into parcels and the common property comprised in the development, may continue to do so until the joint management body is established, provided that all monies collected shall be dealt with by the developer in accordance with this Ordinance.

(3) Any person who fails to comply with the provisions of this section shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding two hundred and fifty thousand ringgit or imprisonment for a term not exceeding three years or to both.

Duties of developer in relation to accounts

13.—(1) A developer, prior to the establishment of joint management body, in respect of the maintenance account and the sinking fund account shall—

(a) cause to be prepared such accounts and records of accounts as will sufficiently explain the transactions of the accounts and enable true and fair balance sheet, income and expenditure statement and profit and loss statement to be

prepared for the period starting from the commencement of the developer's management period;

(b) appoint an approved company auditor to carry out the audit of the accounts annually and the accounts shall be—

(i) in the case where monies are to be transferred under section 14(1)(a), audited up to the date of the actual transfer; and

(ii) in the case where the accounts are to be presented at the first annual general meeting of the joint management body, audited up to a date not earlier than three months before the meeting;

(c) file with the Commissioner a certified true copy of the audited accounts together with the auditor's report within fourteen days of the accounts being audited; and

(d) permit the Commissioner or any person authorized by the Commissioner in writing to act on its behalf, full and free access to the accounts and records of accounts and to make copies or extracts of such accounts and records of accounts.

(2) Notwithstanding subsection (1), the Commissioner shall have, at any time, the right to appoint an approved company auditor to investigate the accounts and records of accounts specified in subsection (1), and the developer shall bear all the expenses incurred for that purpose.

(3) The developer shall furnish to the Commissioner or any public authority such returns, reports, accounts and information with respect to its activities and finances as the Commissioner may, from time to time, require or direct.

(4) The returns, reports, accounts and information referred to in subsection (3) shall be in such form as the Commissioner may, from time to time, specify.

(5) Any developer who fails to comply with the provisions of this section shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding two hundred and fifty thousand ringgit or imprisonment for a term not exceeding three years or to both.

Handing over by developer to the joint management body

14.—(1) A developer shall, before the developer's management period expires—

(a) transfer all balances of monies in the maintenance account and the sinking fund account, after payment of all the expenditures which have been properly charged to the accounts, to the joint management body;

(b) hand over to the joint management body—

(i) the administration office set up by the developer under section 8(3)(a);

(ii) the audited accounts of the maintenance account and the sinking fund account or, if such accounts have not been audited, the unaudited accounts;

(iii) all the assets of the development; and

(iv) all records relating to and necessary for the management and maintenance of the building or land intended to be subdivided into parcels and the common property of the development; and

(v) all invoices, receipts and payment vouchers in respect of the maintenance account and sinking fund account.

(2) If only unaudited accounts have been handed over under subsection (1)(b)(ii), the developer shall, not more than three months after the expiry of the developer's management period, hand over to the joint management body the audited accounts up to the date of transfer of the balances of money referred to in subsection (1)(a).

(3) Without prejudice to the generality of subsection (1)(b)(iv), the developer shall deliver to the joint management body certified true copy of all of the following documents:

(a) all approved building plans or any approved amendment thereto under the Buildings Ordinance, 1994 [*Cap. 8*] for the building or land intended to be subdivided into parcels relating to the development;

(b) any document in the developer's possession that indicates, as far as practicable, the actual location of any pipe, wire, cable, chute, duct or other facility for the passage or provision of systems or services, if the developer has reason to believe that the pipe, wire, cable, chute, duct or other facility is not located as shown on an approved building plan or any approved amendment thereto under the Buildings Ordinance, 1994 [*Cap. 8*];

(c) all contracts entered into by the developer in respect of the management and maintenance of any building or land intended to be subdivided into parcels and the common property comprised in the development;

(d) a copy of the strata subdivision plan filed with the Commissioner under section 5(1) or (2), if applicable, or a copy of the certified strata plan filed by the Superintendent under the provisions of the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*], if any;

(e) the names and addresses of such contractors, subcontractors and persons who supplied labour or materials to the development during the construction of any building or land intended to be subdivided into parcels and the common property comprised in the development;

(f) all warranties, manuals, schematic drawings, operating instructions, service guides, manufacturer's documentation and other similar information in respect of the construction, installation, operation, maintenance, repair and servicing of any common property, including any warranty or information provided to the developer by any person referred to in paragraph (e);

(g) the register of parcel owners of the building or land intended to be subdivided into parcels; and

(h) the original copy of all insurance policies effected under this Ordinance.

(4) Any developer who fails to comply with the provisions of this section shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding two hundred and fifty thousand ringgit or imprisonment for a term not exceeding

three years or to both and, in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for every day or part thereof during which the offence continues after conviction.

Balances not transferred shall vest in joint management body

15.—(1) If any balance of monies in the maintenance account and in the sinking fund account has not been transferred by the developer under section 14 (1)(a), the monies shall vest in the joint management body on the date of the expiry of the developer's management period.

(2) Any right, power or remedy granted to the developer under this Part in respect of the maintenance charge, contribution to the sinking fund, and any other assets of the maintenance account and the sinking fund account, shall vest in the joint management body on the date of the expiry of the developer's management period, and the joint management body shall have the same right, power or remedy as if it had all times been a right, power or remedy of the joint management body, including those rights in respect of any legal proceedings or applications to any authority by the developer pending immediately before the expiry of the developer's management period.

(3) Any judgment or award or any arbitral or other tribunal obtained by a developer in respect of the maintenance charge, contribution to the sinking fund and any other assets of the maintenance account and the sinking fund account, and not fully satisfied before the expiry of the developer's management period shall be enforceable by the joint management body.

Chapter 3

Management by joint management body

Establishment of a joint management body

16.—(1) A joint management body shall be established upon the convening of the first annual general meeting of that joint management body—

(a) if occupation permit of a building on the development was issued before the commencement of this

Ordinance, not later than twelve months from the commencement of this Ordinance; or

(b) if occupation permit of a building on the development is issued after the commencement of this Ordinance, not later than twelve months from the date of first delivery of vacant possession of a parcel to a purchaser.

(2) The joint management body established by subsection (1) shall be a body corporate having perpetual succession and a common seal.

(3) The joint management body may sue and be sued in its name.

(4) The joint management body shall comprise the developer and the purchasers.

(5) If the management corporation comes into existence before the first annual general meeting of the joint management body specified in subsection (1) is convened—

(a) the first annual general meeting shall not be required to be convened and no joint management body shall be established for that development; and

(b) the provisions in Part V shall apply to the development.

Duty of developer to convene first annual general meeting of joint management body

17.—(1) It shall be the duty of the developer to convene the first annual general meeting of the joint management body within the period specified in section 16(1) in accordance with the Second Schedule.

(2) Any developer who fails to comply with subsection (1) shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding two hundred and fifty thousand ringgit or imprisonment for a term not exceeding three years or both and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for every day or part thereof during which the offence continues after conviction.

(3) If the developer fails to convene the first annual general meeting of the joint management body within the period specified in section 16(1), the Commissioner may appoint any person to convene the first annual general meeting of the joint management body within such time as may be specified by the Commissioner, and the developer shall bear all the expenses incurred for the purpose relating to the appointment of such person and the convening of the first annual general meeting.

Duty of joint management body to inform its name to Commissioner

18.—(1) A joint management body shall inform and register with the Commissioner the name of the joint management body within thirty days from the date of the first annual general meeting.

(2) The Commissioner may, upon an application by the joint management body, issue a certificate certifying that the joint management body has been duly established under this Ordinance on the day when the first annual general meeting was convened.

(3) The constitution of the joint management body under this Ordinance shall not be affected in the event that the first annual general meeting is subsequently invalidated or the provision of paragraph (3) of the Second Schedule is not complied with or a situation under paragraph (4) of the Second Schedule occurs.

Duties and powers of joint management body

19.—(1) The joint management body shall perform its duties and exercise its powers as provided under the Third Schedule.

(2) Notwithstanding any other provisions of this Ordinance, the joint management body shall not enter into any contract relating to the management and maintenance of any buildings or lands intended to be subdivided into parcels and the common property for any period exceeding twelve months.

(3) Where—

(a) the joint management body incurs any expenditure or performs any repair, work or act that it is required or authorized by or under this Part or under any other written law to perform, irrespective of whether or not the expenditure was

incurred or the repair, work or act was performed consequent upon the service of any notice or order on it by local authority or any competent public authority; and

(b) the expenditure or the repair, work or act referred to in paragraph (a) was rendered necessary by reason of any wilful or negligent act or omission on the part of, or breach of any provision of its by-law, by any parcel owner or his tenant, lessee, licensee or invitee, the amount of the expenditure of any money expended by the joint management body in performing the repair, work or act shall be recoverable by it from that parcel owner as a debt in an action in any court of competent jurisdiction or before the Tribunal.

(4) The provisions of this section shall not be prejudiced by any other provisions in this Part conferring a power or imposing a duty on the joint management body.

Joint management committee

20.—(1) A joint management body shall elect a joint management committee which shall, subject to any restriction imposed or direction given by the joint management body at a general meeting, perform the joint management body's duties and conduct the joint management body's business on its behalf, and may for that purpose exercise any of the powers of the joint management body.

(2) The provisions of the Fourth Schedule shall apply to the joint management body and the joint management committee with modifications, including the following:

(a) a reference to the "management corporation" shall be construed as a reference to the joint management body;

(b) a reference to the "management committee" shall be construed as a reference to the joint management committee;

(c) a reference to the "subsidiary proprietors" shall be construed as a reference to the parcel owners;

(d) a reference to the "share units" shall be construed as a reference to the allocated share units;

(e) the constitution of the joint management body and the joint management committee shall include the developer;

(f) at any general meeting, including the first annual general meeting, and for the purpose of determining the quorum, the developer shall be considered as one person, regardless of the number of parcels in the development which have not been sold;

(g) at any general meeting, including the first annual general meeting, and for the purpose of determining voting rights, the developer, in respect of the parcels in the development which have not been sold, shall have the same voting rights as that of a purchaser; and

(h) at any general meeting, including the first annual general meeting, and for the purpose of election of members of the joint management committee, the developer shall not be eligible to nominate any person for election in respect of any parcel in the development which have not been sold.

Joint management body to establish maintenance account

21.—(1) A joint management body shall open, maintain, control and administer a maintenance account with a bank or financial institution for the purposes specified in subsection (3).

(2) The maintenance account shall be administered and controlled by the joint management body and shall consist of—

(a) all balances of monies in the maintenance account transferred by the developer to the joint management body under section 14 (1)(a);

(b) all or any part of the maintenance charge imposed by or payable to the joint management body under this Ordinance;

(c) all monies derived from the lease, rent or use of any property which may be lawfully charged by the joint management body;

(d) all other monies and property which may in any manner become payable to or vested in the joint management body in respect of any matter incidental to its functions and powers; and

(e) all other monies lawfully received by the joint management body, including interest, donation and trust.

(3) Maintenance account referred to in subsection (1) shall be used solely for the purpose of meeting the actual or expected general or regular expenditure necessary in respect of the following matters;

(a) maintaining the common property in good condition on a day-to-day basis;

(b) paying for the expenses incurred in providing cleaning services for the common property, security services and amenities for the occupiers of the building;

(c) paying any premium for the insurance effected under this Ordinance or any other insurance approved by a special resolution in a general meeting;

(d) complying with any notice or order given or made by the local authority in respect of periodical inspection of any building in the development in the manner as specified in the Buildings Ordinance, 1994 [*Cap. 8*];

(e) minor painting works on the premises of the common property;

(f) carrying out inspection of all electrical wiring systems of the common property and replacing or repairing any faulty wiring system, if any;

(g) carrying out inspection, maintenance and repair of the main water tanks;

(h) paying rent and rates, if any;

(i) paying any fee incurred for the auditing of the accounts required to be maintained by the joint management body;

(j) paying all charges reasonably incurred for the administration of the account required to be maintained by the

joint management body as may be determined by the Commissioner;

(k) paying the remuneration or fees for the property manager or managing agent appointed under Part VI;

(l) paying all the allowances and other expenses of the members of the joint management body and members of the joint management committee according to such rates as may be approved by the Commissioner;

(m) paying any expenses, cost or expenditure in relation to the procurement of services, including the engagement of consultants, legal fees or costs, and other fees or costs, properly incurred or accepted by the joint management body in the performance of its functions and the exercise of its powers under this Ordinance; or

(n) meeting other expenses of a general or regular nature relating to the maintenance and management of the buildings or lands intended for subdivision into parcels and the common property.

Joint management body to establish sinking fund account

22.—(1) A joint management body shall open and maintain a sinking fund account with a bank or financial institution, into which shall be deposited all balances of monies in the sinking fund account transferred by the developer to the joint management body under section 14(1)(a), and all contributions to the sinking fund account paid by the parcel owners to the joint management body.

(2) The sinking fund account to be used solely for the purpose of meeting the actual or expected capital expenditure in respect of the following matters:

(a) the painting or repainting of any part of the common property;

(b) the acquisition of any movable property for use in relation to the common property;

(c) the renewal or replacement of any fixture or fitting comprised in any common property;

(d) the upgrading and refurbishment of the common property; or

(e) any other capital expenditure as the joint management body deems necessary.

Parcel owners to pay maintenance charge, and contribution to the sinking fund, to the joint management body

23.—(1) Each purchaser shall pay the maintenance charges and contribution to the sinking fund in respect of his parcel to the joint management body for the management and maintenance of the buildings or lands intended to be subdivided into parcels and the common property of the development.

(2) The developer shall pay the maintenance charges and contribution to the sinking fund to the joint management body in respect of those parcels in the development which have not been sold.

(3) The amount of the maintenance charges to be paid under subsections (1) and (2) shall be determined by the joint management body from time to time in proportion to the allocated share units to each parcel or the proposed quantum of provisional share units for each provisional block and any amount so determined, shall be fair and reasonable in meeting the expected and estimated expenditure to properly maintain and manage the building or land intended to be subdivided into parcels and the common property.

(4) The amount of contribution to the sinking fund to be paid under subsections (1) and (2) shall be determined by the joint management body at a general meeting and such amount shall not at any time be less than ten percent of the maintenance charge.

(5) A parcel owner shall, within fourteen days of receiving a notice from the joint management body, pay the maintenance charge and contribution to the sinking fund, to the joint management body.

(6) If any sum remains unpaid by the parcel owner at the expiry of the period of fourteen days specified in subsection (5) –

(a) the joint management body may recover the sum in the manner set out in section 32; and

(b) the parcel owner shall pay interest at the rate to be determined by the joint management body under paragraph 3(d) of Second Schedule but such interest shall not exceed ten per cent per annum.

Duties of joint management body in relation to accounts

24.—(1) A joint management body in respect of the maintenance account and the sinking fund account shall—

(a) cause to be prepared such accounts and records of accounts as will sufficiently explain the transactions of the accounts and enable true and fair balance sheet, income and expenditure statement and profit and loss statement to be prepared for the period starting from its first annual general meeting;

(b) appoint an approved company auditor to carry out the audit of the accounts annually and the accounts shall be—

(i) in the case where monies are to be transferred under section 25(2)(a) in this Ordinance, audited up to the date of the actual transfer; and

(ii) in the case where the accounts are to be presented at the first annual general meeting of the management corporation, audited up to a date not earlier than three months before the meeting;

(c) file with the Commissioner a certified true copy of the audited accounts together with the auditor's report within fourteen days of the accounts being audited; and

(d) permit the Commissioner or any person authorized by the Commissioner in writing to act on its behalf full and free access to the accounts and records of accounts and to make copies or extracts of those accounts and records of accounts.

(2) Notwithstanding subsection (1), the Commissioner shall have, at any time, the right to appoint an approved company auditor to investigate the accounts and records of accounts

specified in subsection (1), and the joint management body shall bear all the expenses incurred for that purpose.

(3) The joint management body shall furnish to the Commissioner or any public authority such returns, reports, accounts and information with respect to its activities and finances as the Commissioner may, from time to time, require or direct.

(4) The returns, reports, accounts and information referred to in subsection (3) shall be in such form as the Commissioner may, from time to time, specify.

(5) If the joint management body fails to comply with subsection (1), (2), (3) or (4), every member of the joint management committee shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding two hundred and fifty thousand ringgit or imprisonment to a term not exceeding three years or to both.

(6) In proceedings against the member of the joint management committee for an offence under subsection (5), it is a defence if the member proves that—

(a) the offence was committed without his knowledge, consent or connivance; and

(b) he had taken all reasonable precautions and had exercised due diligence to prevent the commission of the offence.

Dissolution of joint management body

25.—(1) A joint management body shall dissolve three months from the date of the first annual general meeting of the management corporation for the development.

(2) The joint management body shall, not more than one month from the date of the first annual general meeting of the management corporation—

(a) transfer all balances of monies in the maintenance account and in the sinking fund account, after payment of all expenditures which have been properly charged to the accounts, to the management corporation;

- (b) hand over to the management corporation—
- (i) any by-laws;
 - (ii) the audited accounts of the maintenance account and the sinking fund account or, if such accounts have not been audited, the unaudited accounts;
 - (iii) all the assets and liabilities of the joint management body;
 - (iv) all the documents delivered by the developer to the joint management body under section 14(3);
 - (v) all records relating to the subdivision of the building or land into parcels and common property; and
 - (vi) all records relating to and necessary for the management and maintenance of the building or land intended to be subdivided into parcels and common property.

(3) If only unaudited accounts have been handed over under subsection (2)(b)(ii), the joint management body shall hand over to the management corporation the audited accounts of the joint management body not more than three months from the date of the first annual general meeting of the management corporation.

(4) If the joint management body fails to comply with subsection (2) or (3), every member of the joint management committee shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding two hundred and fifty thousand ringgit or imprisonment for a term not exceeding three years or to both.

(5) In proceedings against the member of the joint management committee for an offence under subsection (4), it is a defence if the member proves that—

- (a) the offence was committed without his knowledge, consent or connivance; and

(b) he had taken all reasonable precautions and had exercised due diligence to prevent the commission of the offence.

Balances not transferred shall vest in management corporation

26.—(1) If any balance of monies in the maintenance account and in the sinking fund account has not been transferred by the joint management body under section 25(2)(a), the monies shall vest in the management corporation on the date of the expiry of the period specified in section 25(2).

(2) Any right, power or remedy granted to, or any liability imposed on, the joint management body under this Part in respect of the development, including maintenance charges, contribution to the sinking fund, and any other assets of maintenance account and the sinking fund account, shall vest in the management corporation on the date of expiry of the period specified in section 25(2), and the management corporation shall have the same right, power, remedy or liability as if it had all times been a right, power, remedy or liability of the management corporation, including those rights in respect of any legal proceeding or application to any authority by or against the joint management body pending immediately before the date of the expiry of the period specified in section 25(2).

(3) Any judgment or award of any arbitral or other tribunal obtained by the joint management body in respect of the development, including the maintenance charge, contribution to the sinking fund and any other assets of the maintenance account and the sinking fund account, and not fully satisfied before the expiry of the period specified in section 25(2), shall be enforceable by the management corporation.

Chapter 4

Miscellaneous provisions applicable to this Part

Duty of developer in respect of maintenance charge for building or land intended to be subdivided into parcels completed before commencement of this Ordinance

27.—(1) Any developer of a development which occupation permit has been issued before the commencement of this

Ordinance, but for which a management corporation has not been established shall, not later than six months following the establishment of the joint management body, submit to the Commissioner an account audited by an approved company auditor of all monies collected and expended for the purpose of the management and maintenance of any building or land intended to be subdivided into parcels and the common property, prior to the establishment of the joint management body.

(2) The Commissioner may, upon request by the developer of a development, extend the period stated in subsection (1) for another period not exceeding three months.

(3) A developer who fails to comply with subsection (1) shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding two hundred and fifty thousand ringgit or imprisonment for a term not exceeding three years or to both.

Register of parcel owners

28.—(1) A developer, during the developer's management period, or the joint management body, as the case may be, shall prepare and maintain a register in such form as the Commissioner may require, containing the following particulars in respect of all the parcels in the development:

- (a) the allocated share units assigned to each parcel;
- (b) the floor area of the parcel referred to in paragraph (a);
- (c) the name and address of every parcel owner or his last known address at which notices may be served on the parcel owner; and
- (d) the name and address of the solicitor acting for the parcel owner in the sale and purchase of the parcel, if any.

(2) Any developer who fails to comply with subsection (1) shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding ten thousand ringgit or imprisonment for a term not exceeding three years or to both.

(3) If a joint management body fails to comply with subsection (1), every member of the joint management committee shall be guilty of an offence and shall, upon conviction, be

punished with a fine not exceeding ten thousand ringgit or imprisonment for a term not exceeding three years or to both.

(4) In proceedings against the member of the joint management committee for an offence under subsection (3), it is a defence if the member proves that—

(a) the offence was committed without his knowledge, consent or connivance; and

(b) he had taken all reasonable precautions and had exercised due diligence to prevent the commission of the offence.

Right of parcel owner or prospective purchaser

29. Subject to a payment of a fee as may be determined by the Commissioner, on application by or on behalf of a person who is a parcel owner, or by or on behalf of a person who is a prospective purchaser, the developer or the joint management body, as the case may be, shall issue to that person a certificate certifying—

(a) the amount of the maintenance charge, and contribution to the sinking fund, payable by a parcel owner;

(b) the time and manner of payment of the amount of such maintenance charge, and contribution to the sinking fund;

(c) the amount, if any, of arrears of such maintenance charge, and contribution to the sinking fund, in respect of the parcel;

(d) the sum standing to the credit of the maintenance account and the sum in the account that has been committed or reserved for expenses already incurred by the developer or the joint management body, as the case may be;

(e) the sum standing to the credit of the sinking fund account and the sum in the account that has been committed or reserved for expenses already incurred by the developer or the joint management body, as the case may be; and

(f) the nature of the repairs and estimated expenditure, if any, where the developer or the joint management body, as the case may be, has incurred any expenditure or is about to perform any repair, work or act in respect of which liability is

likely to be incurred by the parcel owner of the parcel under any provision of this Ordinance.

By-laws by the joint management body

30.—(1) A developer during the developer's management period may, with the approval of the Commissioner, make by-laws or make amendments to such by-laws, not inconsistent with the regulations made under section 137.

(2) A joint management body may, by a special resolution, make by-laws or make amendments to such by-laws, for the matters prescribed in the Fifth Schedule:

Provided that such by-laws are not inconsistent with the regulations made under section 137.

(3) The by-laws made under this section shall bind the developer or the joint management body, as the case may be, and the parcel owner, and any chargee or assignee, lessee, tenant or occupier of a parcel to the same extent as if the by-laws—

(a) had been signed or sealed by the developer or the joint management body, as the case may be, and each parcel owner and each such chargee or assignee, lessee, tenant or occupier, respectively; and

(b) contain mutual covenants to observe, comply and perform all the provisions of those by-laws.

(4) The developer or the joint management body, as the case may be, shall—

(a) keep a record of the by-laws in force from time to time;

(b) on receipt of an application in writing made by a parcel owner or a person duly authorized to apply on behalf of a parcel owner for a copy of the by-laws in force, supply to such parcel owner or person duly authorized by him, at a reasonable cost, a copy of the by-laws; and

(c) on the application of any person who satisfies the developer or the joint management body, as the case may be, that he has a legitimate interest in so applying, make such by-laws available for inspection.

(5) A copy of any by-laws made by the developer or the joint management body, as the case may be, for the time being in force, certified as a true copy under the seal of the developer or the joint management body, shall be filed by the developer or the joint management body with the Commissioner—

(a) in the case where such by-laws are made by the developer, within fourteen days from the date of the approval of the Commissioner; and

(b) in the case where such by-laws are made by the joint management body, within fourteen days from the date of the passing of the special resolution by the joint management body approving the by-laws.

(6) The developer or the joint management body, as the case may be, or any parcel owner shall be entitled to apply to a court of competent jurisdiction or the Tribunal—

(a) for an order to enforce the performance of or restrain the breach of, any by-laws by; or

(b) to recover damages for any loss or injury to any person or property arising out of the breach of any by-laws from,

any person bound to comply with the by-laws.

Recovery of sum as a debt due to joint management body

31.—(1) The payment of any amount of money incurred by the joint management body in the course of the exercise of any of its powers or functions or the carrying out of its duties or obligations under this Ordinance shall by virtue of this section be guaranteed by the parcel owners for the time being constituting the joint management body.

(2) Each parcel owner shall be liable under the guarantee referred to in subsection (1) only for such proportion of the money so incurred as the allocated share units of his parcel or the proposed quantum of provisional share units for each provisional block bear to the aggregate share units.

(3) Where any parcel owner has not discharged or fully discharged his liability for the purpose of subsection (1), the joint management body shall be entitled to recover from the parcel

owner in a court of competent jurisdiction or in the Tribunal as a debt due to it.

(4) Where for reasons of insufficiency of funds to meet the sum guaranteed under subsection (1), the joint management body may, at an annual general meeting or at an extraordinary general meeting, determine the amount to be contributed by each parcel owner and decide any other issue or matter relating to the settlement of the said sum.

Procedure on recovery of sums due

32.—(1) Where a sum becomes recoverable by the developer from the purchaser in respect of his parcel or by the joint management body from the parcel owner in respect of his parcel, the developer or joint management body may serve on the purchaser or the parcel owner, as the case may be, a written notice demanding payment of the sum due within the period as may be specified in the notice which shall not be less than fourteen days from the date of service of the notice.

(2) If any sum remains unpaid by the purchaser or parcel owner at the end of the period specified in the notice under subsection (1), the developer or joint management body, as the case may be, may file claim in a court of competent jurisdiction or in the Tribunal for the recovery of the said sum or as an alternative to recovery under this section, resort to recovery under section 33.

(3) Any purchaser or parcel owner who, without reasonable excuse, fails to comply with the notice referred to in subsection (1) shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding five thousand ringgit or imprisonment for a term not exceeding three years or to both, and in the case of a continuing offence, to a further fine not exceeding fifty ringgit for every day or part thereof during which the offence continues after conviction.

(4) All the monies, fees, contributions or other charges which may be lawfully claimed by the developer or joint management body under subsection (1) from any purchaser or parcel owner and until such monies, fees, contributions or other charge so paid, the said sum due to developer or joint management body shall be a first charge on the parcel.

Recovery of sums by attachment of movable property

33.—(1) The Commissioner may, upon sworn application in writing made by the developer or any member of the joint management committee, issue a warrant of attachment in Form A of the Eighth Schedule authorizing the attachment of any movable property belonging to the defaulting parcel owner which may be found in the building or elsewhere in the State.

(2) The warrant of attachment under subsection (1) shall be executed by the developer or a member of the joint management committee or by a person specially employed by the developer or the joint management body to execute such warrant, in the presence of the Commissioner or an officer from the office of the Commissioner.

(3) If the developer or the member of the joint management committee or the person referred to in subsection (2) encounters difficulties in executing the warrant, such developer, member or person may seek the assistance of the Commissioner, and in providing such assistance, the Commissioner may request for the assistance of a police officer not below the rank of Inspector.

(4) A person executing the warrant—

(a) may, from 8 a.m. until 6 p.m., effect forcible entry into any house or building or any part of the house or building for the purpose of executing the warrant; and

(b) shall, immediately after attachment, make an inventory of the property attached under the warrant and serve a notice in Form B of the Eighth Schedule on the person who, at the time of attachment, was or appeared to be in possession of the property.

(5) Any tenant, subtenant, or occupier who, in order to avoid the attachment or sale of the movable property for non-payment of any sum due to the developer or the joint management body by the parcel owner, pays such sum may—

(a) in the absence of any written agreement to the contrary, deduct the amount so paid by him from the rent due or to become due by him to the parcel owner; and

(b) retain possession of the property until such amount so paid by him has been fully reimbursed to him whether by deduction from the rent or otherwise.

(6) The receipt issued by the developer or the joint management body for any amount so paid by any such tenant, subtenant or occupier under subsection (5) shall be deemed a discharge in full for the like amount of rent.

(7) If any person whose property is attached disputes the legality of the attachment, he may, within fourteen days of the date of attachment, apply to the Court having jurisdiction in the place of attachment for an order for the release of the property, and the Court, after making such enquiry as may be necessary, shall grant or refuse to grant the order.

(8) If the sum due is not paid within fourteen days from the date of attachment, the property attached or such portion of the property attached as may be sufficient to realize the sum shall be sold either by way of auction conducted by a licensed auctioneer under Miscellaneous Licences (Auctioneers and Valuers) Regulations [Vol. VIII, p. 63], or by way of tender by a registered estate agent under Valuers, Appraisers, Estate Agents and Property Managers Act 1981 [Act 242], appointed by the developer or the joint management body under the supervision of the Commissioner unless within that period an application is made under subsection (7), in which case, the property shall be held pending the decision of the Court and shall then be dealt with as the Court may order.

(9) If the Court refuses to grant an order for the release of the property, and that decision of the Court is reached within fourteen days from the date of attachment, the property shall not be sold before the expiry of that period.

(10) Notwithstanding subsections (8) and (9), if the property is of a perishable nature, it may be sold at once, and in that case, the proceeds of sale shall be held pending the decision of the Court and shall then be dealt with as the Court may order.

(11) In any other case, the proceeds of sale shall be applied in satisfaction of the sum due together with the costs of the attachment and sale, and any surplus and any property not sold shall be paid or returned to the person who, at the time of attachment, was or appeared to be in possession of the property.

(12) The costs of attachment shall include the expenses of the maintenance of livestock and the custody of movable property.

(13) Where any property is sold by virtue of subsection (10) before the expiry of fourteen days from the date of attachment, the reference in subsection (7) to “an order for the release of the property” shall be construed as a reference to an order for the release of the proceeds of the sale of the property.

Monies not required for immediate use

34. All monies in the accounts required to be opened and maintained under this Part, which exceeds ten thousand ringgit and which are not required for immediate use, shall be placed or deposited by the developer or the joint management body, as the case may be, into an income-bearing deposit account with a bank or financial institution.

Time period for monies to be deposited

35. All monies in the accounts required to be opened and maintained under this Part shall be deposited into the respective accounts by the developer or the joint management body, as the case may be, within seven working days of receiving the monies.

PART V

STRATA MANAGEMENT AFTER EXISTENCE OF MANAGEMENT CORPORATION

Chapter 1

General

Application of this Part

36.—(1) This Part shall apply to a development, where before or after the commencement of this Ordinance—

(a) occupation permit of a building on the development has been issued by the local authority; and

(b) the management corporation has come into existence under the provisions of the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*].

(2) In this Part, unless the context otherwise requires—

“developer” includes the registered proprietor of the lot relating to the development;

“initial period”, in relation to a management corporation, means the period commencing on the day on which the management corporation comes into existence and ending on the day on which there are subsidiary proprietor, excluding the proprietor of the lot or the developer who is registered as the subsidiary proprietor of a parcel or a provisional block, the sum of whose share units is at least one-quarter of the aggregate share units;

“preliminary management period” means the period commencing from the date of first delivery of vacant possession of a parcel to a purchaser by the developer until one month after the first annual general meeting of the management corporation.

Chapter 2

Management by developer before first annual general meeting of management corporation

Application

37. This Chapter shall apply to a development specified in section 36(1) where no joint management body is established under section 16 for the development.

Duties and powers of developer to manage and maintain

38.—(1) A developer shall, during the preliminary management period and subject to the provisions of this Ordinance, be responsible to manage and maintain the subdivided building or land, and the common property.

(2) The developer shall exercise the powers and perform the duties of the management committee of the management corporation from the time the management corporation comes into existence until the expiry of the preliminary management period.

(3) During the preliminary management period, the developer shall ensure that a separate and distinct area is set aside out of the common property of the development for the purpose of

an administration office or any other facilities as may be decided by the Commissioner if so required subject to further approval by competent planning authority to meet the planning requirement to carry out the duties of the developer under this Ordinance.

(4) Any developer who fails to comply with subsection (1) or (3) shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding two hundred and fifty thousand ringgit or imprisonment for a term not exceeding three years or to both.

Restrictions during preliminary management period

39.—(1) Notwithstanding any other provisions of this Ordinance, the developer shall, during the preliminary management period, hold all monies in the accounts required to be opened and maintained under this Chapter on trust for the subsidiary proprietors and shall not—

(a) borrow monies or give securities; or

(b) enter into any contract relating to the management and maintenance of any subdivided building or land and the common property in the development for any period extending beyond the expiration of the preliminary management period.

(2) Without prejudice to any other remedy available against the developer, if any developer fails to comply with subsection (1), the developer shall be liable for any loss or damage suffered by the management corporation or any subsidiary proprietor as a result of the contravention, and the management corporation or any subsidiary proprietor may recover from the developer, as damages for each breach of a statutory duty, any loss suffered by it or him in consequence of such contravention.

(3) Any person who fails to comply with subsection (1) shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding two hundred and fifty thousand ringgit or imprisonment to a term not exceeding three years or to both.

Developer to establish maintenance account in the name of management corporation

40.—(1) A developer shall, during preliminary management period open and maintain a maintenance account in respect of the development in the name of the management corporation with a bank or financial institution—

(a) if vacant possession of a parcel has been delivered before the commencement of this Ordinance, fourteen days from the date of the commencement of this Ordinance; or

(b) if vacant possession of a parcel has been delivered after the commencement of this Ordinance and after the management corporation came into existence, at any time before the delivery of vacant possession; or

(c) if vacant possession of a parcel has been delivered after the commencement of this Ordinance and before the management corporation comes into existence and if no joint management body is established under section 16(1), within fourteen days from the date the management corporation comes into existence,

but in any case, before the maintenance charges are collected from the subsidiary proprietors of any parcel in the development.

(2) The maintenance account shall consist of—

(a) all maintenance charges paid by the subsidiary proprietors to the management corporation;

(b) all or any part of the maintenance charges imposed by or payable to the management corporation under this Ordinance;

(c) all monies derived from the sale, disposal, lease or hire of, or any other dealing with any property, mortgages, charges or debentures vested in or acquired by the management corporation;

(d) all other monies and property which may in any manner become payable to or vested in the management corporation in respect of any matter incidental to its functions and powers; and

(e) all other monies lawfully received by the management corporation, including interest, donation and trust.

(3) The maintenance account shall be used solely for the purpose of meeting the actual or expected general or regular expenditure necessary in respect of the following matters;

(a) maintaining the common property in good condition on a day-to-day basis;

(b) paying for the expenses incurred in providing cleaning services for the common property, security services and amenities for the occupiers of the building;

(c) paying any premiums for the insurance effected under this Ordinance or any other insurance approved by a special resolution in a general meeting;

(d) complying with any notice or order given or made by the local authority in respect of periodical inspection of any building in the development in the manner as specified in the Buildings Ordinance, 1994 [*Cap. 8*];

(e) minor painting on the premises of the common property;

(f) carrying out inspection of all electrical wiring systems of the common property and replacing or repairing any faulty wiring system, if any;

(g) carrying out inspection, maintenance and repair of the main water tanks;

(h) paying rent and rates, if any;

(i) paying any fee incurred for the auditing of the accounts required to be maintained by the management corporation under this Ordinance;

(j) paying all charges reasonably incurred for the administration of the accounts required to be maintained by the management corporation under this Ordinance as may be determined by the Commissioner;

(k) paying the remuneration or fees for the property manager or managing agent appointed under Part VI;

(*l*) paying for the allowances and other expenses of the members of the management committee according to such rates as may be approved by the Commissioner;

(*m*) paying any expenses, costs or expenditure in relation to the procurement of services, including the engagement of consultants, legal fees or costs and other fees and costs, properly incurred or accepted by the management corporation in the performance of its functions and the exercise of its power under this Ordinance; or

(*n*) meeting other expenses of a general or regular nature relating to the management and maintenance of the building or land intended for subdivision into parcels and the common property.

(4) Any developer who fails to comply with subsection (1) or (3) shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding two hundred and fifty thousand ringgit or imprisonment for a term not exceeding three years or to both.

Developer to establish sinking fund account in the name of management corporation

41.—(1) At the same time when the developer is required to open and maintain the maintenance account under section 40(1), the developer shall, open and maintain a sinking fund account in the name of the management corporation, with a bank or financial institution, into which shall be deposited the contribution to the sinking fund paid by the subsidiary proprietors.

(2) The sinking fund account shall be used solely for the purposes of meeting the actual or expected capital expenditure in respect of the following matters:

(*a*) the painting or repainting of any part of the common property;

(*b*) the acquisition of any movable property for use in relation to the common property;

(*c*) the renewal or replacement of any fixture or fitting comprised in any common property and any movable property vested in the management corporation;

(*d*) the upgrading and refurbishment of the common property; and

(e) any other capital expenditure as the management corporation deems necessary.

(3) Any developer who fails to comply with subsection (1) or (2) shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding two hundred and fifty thousand ringgit or imprisonment for a term not exceeding three years or to both.

Subsidiary proprietors to pay maintenance charge, and contribution to the sinking fund

42.—(1) Each subsidiary proprietor shall pay the maintenance charge, and contribution to the sinking fund, to the management corporation for the management and maintenance of the subdivided building or land and the common property in a development.

(2) During the preliminary management period, the amount of the maintenance charge to be paid under subsection (1) shall be determined by the developer in proportion to the share units assigned to each parcel or the proposed quantum of provisional share units for each provisional block and any amount so determined shall be fair and reasonable in meeting the expected and estimated expenditure to properly maintain and manage the building and the common property.

(3) The amount of the contribution to the sinking fund to be paid under subsection (1) shall be a sum equivalent to ten percent of the maintenance charge.

(4) The subsidiary proprietor shall, within fourteen days of receiving a notice from the developer, pay the maintenance charge, and contribution to the sinking fund, to the management corporation and if any sum remains unpaid by the subsidiary proprietor at the expiry of the period of fourteen days, the developer may in the name of the management corporation recover the sum in the manner set out in section 71.

(5) If any sum remains unpaid by the subsidiary proprietor at the expiry of the period of fourteen days specified in subsection (4), the subsidiary proprietor shall pay interest at the rate of ten percent per annum on a daily basis.

(6) Any subsidiary proprietor who is not satisfied with the sums determined by the developer under subsection (2) or (3) may

apply to the Commissioner for a review and the Commissioner may—

(a) determine the sum to be paid as the maintenance charge, or contribution to the sinking fund; or

(b) instruct the developer to appoint, at the developer's own cost and expense, a property manager to recommend the sum payable as maintenance charge, or contribution to the sinking fund, and submit a copy of the property manager's report to the Commissioner.

(7) Upon receiving the report under subsection (6)(b), the Commissioner shall determine the sum payable as he thinks just and reasonable, and any sum so determined by the Commissioner shall be deemed to be the sum payable as the maintenance charge, or contribution to the sinking fund.

(8) For the purpose of this part, "subsidiary proprietor" includes—

(a) the person for the time being receiving the rent of the parcel, whether as agent or a trustee or a receiver, and who would receive the same if the parcel were let to tenant;

(b) a purchaser to be duly registered as a subsidiary proprietor; or

(c) a developer in respect of those parcels in the development which have not been sold.

Prohibition on collection of monies for maintenance from subsidiary proprietors

43.—(1) No person shall at any time collect any maintenance charges, or contribution to the sinking fund, from any subsidiary proprietor for the management and maintenance of any subdivided building or land and the common property unless—

(a) a maintenance account and a sinking fund account have been opened in the name of the management corporation; and

(b) vacant possession has been delivered to the subsidiary proprietor.

(2) Notwithstanding subsection (1), any developer of a development which has been completed on or before the

commencement of this Ordinance and has, immediately before that date, been collecting monies from the subsidiary proprietors for the management and maintenance of any subdivided building or land and the common property comprised in the development, may continue to do so until the expiry of the preliminary management period, provided that all monies collected shall be dealt with by the developer in accordance with this Ordinance.

(3) Any person who fails to comply with the provisions of this section shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding two hundred and fifty thousand ringgit or imprisonment for a term not exceeding three years or to both.

Duties of developer in relation to accounts

44.—(1) During the preliminary management period, a developer in respect of the maintenance account and the sinking fund account shall—

(a) cause to be prepared such accounts and records of accounts as will sufficiently explain the transactions of the accounts and enable true and fair balance sheet, income and expenditure statement and profit and loss statement to be prepared for the period starting from the commencement of the preliminary management period;

(b) appoint an approved company auditor to carry out the audit of the accounts annually and the accounts shall be audited—

(i) in the case where control of all balances of monies in the maintenance account and in the sinking fund account is to be transferred under section 45(1)(a), up to the date of the actual transfer of control; or

(ii) in the case where the accounts are to be presented at the first annual general meeting of the management corporation, up to a date not earlier than three months before the meeting;

(c) file with the Commissioner a certified true copy of the audited accounts together with the auditor's report within fourteen days of the accounts being audited; and

(d) permit the Commissioner or any person authorized by the Commissioner in writing to act on its behalf full and

free access to the accounts and records of accounts and to make copies or extracts of those accounts and records of accounts.

(2) Notwithstanding subsection (1), the Commissioner shall have, at any time, the right to appoint an approved company auditor to investigate the accounts and records of accounts specified in subsection (1), and the developer shall pay all the expenses incurred for that purpose.

(3) The developer shall furnish to the Commissioner or any public authority such returns, reports, accounts and information with respect to the activities and finances of the respective accounts, as the Commissioner may, from time to time, require or direct.

(4) The returns, reports, accounts and information referred to in subsection (3) shall be in such form as the Commissioner may, from time to time specify.

(5) Any developer who fails to comply with the provisions of this section shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding two hundred and fifty thousand ringgit or imprisonment to a term not exceeding three years or to both.

Handing over of control to management corporation

45.—(1) A developer shall, not later than the date of the expiry of the preliminary management period—

(a) transfer the control of all balances of monies in the maintenance account and in the sinking fund account to the management committee of the management corporation; and

(b) hand over to the management committee of the management corporation—

(i) the administration office set up by the developer under section 38(3);

(ii) the audited accounts of the maintenance account and the sinking fund account or, if such accounts have not been audited, the unaudited accounts;

(iii) all the assets of the management corporation;
and

(iv) all records related to and necessary for the management and maintenance of the subdivided building or land and the common property of the development.

(2) If only unaudited accounts have been handed over under subsection (1)(b)(ii), the developer shall hand over to the management committee of the management corporation the audited accounts up to the date of transfer of control of all balances of monies in the maintenance account and sinking fund account not later than three months after the expiry of the preliminary management period.

(3) Without prejudice the generality of subsection (1)(b)(iv), the developer shall deliver to the management committee of the management corporation copies of all the following documents:

(a) all approved plans for the subdivided building or land relating to the development;

(b) any document in the developer's possession that indicates, as far as practicable, the actual location of any pipe, wire, cable, chute duct or other facility for the passage or provisions of systems or services, if the developer has reason to believe that the pipe, wire, cable, chute, duct or other facility is not located as shown on an approved plan or an approved amended plan;

(c) all contracts entered into by the developer in respect of the management and maintenance of any subdivided building or land and the common property comprised in the development;

(d) a copy of the strata subdivision plan or the amended strata subdivision plan filed with the Commissioner under section 5(1) or (2), if applicable, or the certified strata plan filed by the Superintendent under the provisions of the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*];

(e) the names and addresses of such contractors, subcontractors and person who supplied labour or materials to the development during construction of any subdivided building or land and the common property comprised in the development; and

(f) all warranties, manuals, schematic drawings, operating instructions, service guides, manufacturer's documentation and other similar information in respect of the construction, installation, operation, maintenance, repair and servicing of any common property, including any warranty or information provided to the developer by any person referred to in subsection (e).

(4) Any developer who fails to comply with the provisions of this section shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding two hundred and fifty thousand ringgit or imprisonment for a term not exceeding three years or to both and, in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for every day or part thereof during which the offence continues after conviction.

Chapter 3

Management after first annual general meeting of the management corporation

Management committee

46.—(1) Subject to section 52(4), the management corporation shall elect a management committee which, subject to any restriction imposed or direction given by the management corporation at a general meeting, shall perform the management corporation's duties and conduct the management corporation's business on its behalf, and may for that purpose exercise any of the management corporation's powers.

(2) The provisions of the Fourth Schedule shall apply to the management corporation and the management committee.

Duty of developer to convene first annual general meeting

47.—(1) It shall be the duty of the developer to convene the first annual general meeting of the management corporation within one month after the expiration of the initial period in accordance with the Sixth Schedule.

(2) Any developer who fails to comply with subsection (1) shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding two hundred and fifty thousand

ringgit or imprisonment for a term not exceeding three years or to both.

(3) If the developer fails to convene the first annual general meeting within the period specified in subsection (1), the Commissioner may, on application by a subsidiary proprietor, appoint a person to convene the first annual general meeting of the management corporation within such time as may be specified by the Commissioner, and the developer shall bear all the expenses incurred for the purpose relating to the appointment of such person and the convening of the first annual general meeting.

Duties and powers of management corporation

48.—(1) The management corporation shall perform its duties and exercise its powers as provided under the Seventh Schedule.

(2) Where the management corporation performs any repair, work or act that is required or authorized by or under this Part or under any written law to perform, whether or not repair, work or act was performed consequent upon any notice or order issued by the Commissioner but the repair, work or act was wholly or substantially the liability or the responsibility of the subsidiary proprietor of a parcel only, or wholly or substantially for the benefit of some of the parcels only, any money expended by the management corporation in performing the repair, work or act shall—

(a) in the case where the repair, work or act was wholly substantially the liability or the responsibility of the subsidiary proprietor of a parcel only, be recoverable by the management corporation in an action before the Tribunal or in a court of competent jurisdiction as a debt due to it jointly and severally from—

(i) the relevant subsidiary proprietor of the parcel at the time when the repair, work or act was performed; and

(ii) the relevant subsidiary proprietor of the parcel at the time when the action was commenced; or

(b) in the case where the repair, work or act was wholly or substantially the liability or the responsibility of the

subsidiary proprietor of a parcel or wholly or substantially for the benefit of some of the parcels, be recoverable by the management corporation in an action in a court of competent jurisdiction or before the Tribunal as a debt due to it jointly and severally from—

(i) the relevant subsidiary proprietor of each of such parcels at the time when the repair, work or act was performed; and

(ii) the relevant subsidiary proprietor of each of such parcels at the time when the action was commenced.

(3) The amount payable by any subsidiary proprietor and former subsidiary proprietor under subsection (2) in respect of any parcel shall not exceed the amount in proportion of the parcel's share units to the total share units of the affected parcels.

(4) A subsidiary proprietor of a parcel who is not the subsidiary proprietor of the parcel at the time when the repair, work or act referred to in subsection (2) was performed shall not be liable to pay the management corporation any amount due under that subsection if he has, at any time on or within twenty one days before the date he acquired the title or interest in the parcel, made a requisition in writing to the management corporation to inquire about the amount, if any, recoverable by the management corporation under that subsection in respect of the parcel, and the management corporation has—

(a) certified that no amount is recoverable by the management corporation in respect of the parcel; or

(b) not given a reply to the requisition at any time within fourteen days of the date of the service of the requisition.

(5) Where—

(a) the management corporation incurs any expenditure or performs any repair, work or act that it is required or authorized by or under this Part or under any other written law to perform, irrespective of whether or not the expenditure was incurred or the repair, work or act was performed consequent

upon the service on it of any notice or order by any local authority; and

(b) the expenditure or the repair, work or act referred to in paragraph (a) was rendered necessary by reason or any willful or negligent act or omission on the part of, or breach of any provision of its by-laws by, any person or his tenant, lessee, licensee or invitee,

the amount of the expenditure of any money expended by the management corporation in performing the repair, work or act shall be recoverable by it from that person as a debt in an action in any court of competent jurisdiction or before the Tribunal.

(6) The provisions of this section shall not be prejudiced by any other provision in this Part conferring a power or imposing a duty on the management corporation.

Maintenance account of the management corporation

49.—(1) If the maintenance account in the name of the management corporation had not been earlier established under section 40(1) the management corporation shall open and maintain a maintenance account in the name of the management corporation with a bank or financial institution into which shall be deposited the maintenance charge paid by the subsidiary proprietors.

(2) The maintenance account shall consist of all monies specified in section 40(2) and all monies in the maintenance account shall be used for the purposes specified in section 40(3).

(3) For the purpose of a maintenance account of a management corporation and subject to section 42, the management corporation may at a general meeting—

(a) determine from time to time the amount to be raised for the purposes mentioned in section 40(3);

(b) raise the amounts so determined by imposing maintenance charge on the subsidiary proprietors in proportion to the share units or provisional share units of their respective parcels or provisional blocks, and the management corporation may determine different rates of maintenance charge to be paid in respect of parcels which are used for significantly different purposes and in respect of the provisional blocks; and

(c) determine the amount of interest payable by a subsidiary proprietor in respect of late payments which shall not exceed the rate of ten per cent per annum.

(4) Any maintenance charge imposed under subsection (3) in respect of a parcel shall be due and payable on the passing of a special resolution to that effect by the management corporation and in accordance with the terms of that resolution, and may be recovered in the manner set out in section 71 from the proprietor of the provisional block or where the building to which the provisional block relates has been subdivided, from the subsidiary proprietor of the parcels in the building, or his successor-in-title, or the person for the time being receiving the rent of the parcel, whether as an agent or a trustee or a receiver, and who would receive the same if the parcel were let to a tenant.

(5) Any maintenance charge imposed under subsection (3) in respect of a provisional block shall be fully borne by the developer.

(6) For the purposes of subsection (4), "subsidiary proprietor" includes a purchaser to be duly registered as a subsidiary proprietor.

Sinking fund account of the management corporation

50.—(1) If the sinking fund account in the name of the management corporation had not been earlier established under section 41(1) the management corporation shall open and maintain a sinking fund account in the name of the management corporation with a bank or financial institution into which shall be deposited the contribution to the sinking fund paid by the subsidiary proprietors.

(2) The contribution to the sinking fund account shall be used solely for the purposes specified in section 41(2).

(3) Subject to section 42, for the purpose of establishing and maintaining a sinking fund account, the amount to be paid by the subsidiary proprietors of the parcels or provisional blocks shall be a sum equivalent to ten per cent of the maintenance charge imposed under subsection 49(3), unless otherwise determined from time to time at a general meeting of the management corporation,

but such contribution to the sinking fund shall not be less than ten per cent of the maintenance charge.

(4) Any contribution to sinking fund imposed under subsection (3) in respect of a parcel shall be due and payable on the passing of a resolution to that effect by the management corporation and in accordance with the terms of that resolution, and may be recovered in the manner set out in section 71 from the proprietor of the provisional block or where the building to which the provisional block relates has been subdivided, from the subsidiary proprietor of the parcels in the building, or his successor-in-title, or the person for the time being receiving the rent of the parcel, whether as an agent or a trustee or a receiver, and who would receive the same if the parcel were let to a tenant.

(5) Any maintenance charge imposed under subsection (3) in respect of a provisional block shall be fully borne by the developer.

(6) For the purposes of subsection (4), “subsidiary proprietor” includes a purchaser to be duly registered as a subsidiary proprietor.

Duties of management corporation in relation to accounts

51.—(1) A management corporation shall in respect of the maintenance account and sinking fund account—

(a) cause to be prepared such accounts and records of accounts as will sufficiently explain the transactions of the accounts and enable true and fair balance sheet, income and expenditure statement and profit and loss statement to be prepared for the period starting from commencement of the preliminary management period;

(b) appoint an approved company auditor to carry out the audit of the accounts annually;

(c) file with the Commissioner a certified true copy of the audited accounts together with the auditor’s report within fourteen days of the accounts being audited; and

(d) permit the Commissioner or any person authorized by the Commissioner in writing to act on its behalf full and free access to the accounts and records of accounts and to

make copies or extracts of those accounts and records of accounts.

(2) Notwithstanding subsection (1), the Commissioner shall have the right to appoint an approved company auditor to investigate the accounts and records of accounts specified in subsection (1), and the management corporation shall pay all the expenses incurred for that purpose.

(3) The management corporation shall furnish to the Commissioner or any public authority such returns, reports, accounts and information with respect to its activities and finances, as the Commissioner may, from time to time, require or direct.

(4) The returns, reports, accounts and information referred to in subsection (3) shall be in such form as the Commissioner may, from time to time, specify.

(5) If the management corporation fails to comply with subsection (1), (2), (3) or (4) every member of the management committee shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding two hundred and fifty thousand ringgit or imprisonment for a term not exceeding three years or to both.

(6) In proceedings against a member of the management committee for an offence under subsection (5), it is a defence if the member proves that –

(a) the offence was committed without his knowledge, consent or connivance; and

(b) he had taken all reasonable precautions and had exercised due diligence to prevent the commission of the offence.

Chapter 4

Subsidiary management corporation and limited common property

Administration of the subsidiary management corporation

52.—(1) The management corporation may by a comprehensive resolution designate any part of the common property as limited property representing the different interests of the subsidiary proprietors and may establish one or more

subsidiary management corporations for the purpose of representing the different interests of—

(a) subsidiary proprietors of residential lots and subsidiary proprietors of non-residential lots;

(b) subsidiary proprietors of non-residential lots if they use their lots for significantly different purposes;

(c) subsidiary proprietors of non-residential lots if the lots of some of these subsidiary proprietors are comprised in a building that is physically detached from other lots in the certified strata plan, provided that the creation of any limited common property to represent the interests of these subsidiary proprietors will not adversely affect the use or enjoyment of the lots of the other subsidiary proprietors and the conditions prescribed, if any, for this purpose are satisfied; or

(d) subsidiary proprietors of different types of residential lots.

(2) A subsidiary management corporation shall elect a subsidiary management committee which, subject to any restriction imposed or direction given by the subsidiary management corporation at a general meeting, shall perform the duties and conduct the business of the subsidiary management corporation on its behalf, and may for that purpose exercise any of its powers.

(3) The subsidiary management corporation shall comprise all the subsidiary proprietors of all parcels comprised in the development for whose exclusive benefit of the limited common property is designated.

(4) The subsidiary proprietors who constitute a subsidiary management corporation may call and hold meetings and pass resolutions in the same manner as subsidiary proprietors constituting a management corporation.

(5) At least one member of the subsidiary management committee of a subsidiary management corporation shall be a member of the management committee of the management corporation.

(6) The provisions of the Fourth Schedule shall apply to the subsidiary management corporation and the subsidiary

management committee, with necessary modifications, including—

(a) a reference to the “management corporation” shall be construed as a reference to the subsidiary management corporation; and

(b) a reference to the “management committee” shall be construed as a reference to the subsidiary management committee.

Duties and powers of subsidiary management corporation

53.—(1) Subject to subsection (2), a subsidiary management corporation shall have the same powers and duties as the management corporation with respect to any matter that relates solely to the limited common property designated for the exclusive benefit of all subsidiary proprietors comprising the subsidiary management corporation, and unless expressly otherwise provided, the provisions of Chapter 3 of this Part shall apply, with the necessary modifications, to subsidiary management corporation as they apply to the management corporation.

(2) After the establishment of the subsidiary management corporation for the limited common property, the management corporation shall retain its powers and duties in matters concerning common property of the development which is not designated as limited common property.

(3) For the purpose of carrying out management and maintenance of limited common property under subsection (1), the duties and powers of a subsidiary management corporation shall—

(a) establish its own maintenance account and sinking fund account for the common expenses of its limited common property, including expenses related to its limited common property;

(b) require subsidiary proprietors of parcels in the subsidiary management corporation to pay the maintenance charge, and contribution to the sinking fund;

(c) enforce the by-laws relating to its limited common property; and

(d) otherwise have the control, management and administration of its limited common property.

(4) A subsidiary management corporation shall not enter into any contract or sue in the name of the management corporation and the management corporation shall have no liability for such contracts made or debts or legal costs incurred by the subsidiary management corporation.

(5) A subsidiary management corporation may obtain insurance only—

(a) against risks that are not insured by the management corporation; or

(b) for amounts that are in excess of amounts insured by the management corporation.

(6) For the purposes of subsection (5), a subsidiary management corporation shall have the same insurable interest in its limited common property as the management corporation has in the common property.

(7) Notwithstanding any other provision of this Ordinance, a subsidiary management corporation for any limited common property comprised in a development may manage and maintain—

(a) a common property within that same development; or

(b) any other limited common property of another subsidiary management corporation within that development,

upon such terms and conditions as may be agreed between the subsidiary management corporation and the management corporation or other subsidiary management corporation, as the case may be.

Expenses of subsidiary management corporation

54. The expenses of a subsidiary management corporation that relate solely to its limited common property shall be shared, from time to time, by the subsidiary proprietors of all parcels entitled under this Chapter to the exclusive benefit of the limited common property, and each parcel's share of contribution shall be calculated as follows:

$$\frac{x}{y} \times Z$$

Where—

- x is the share unit of a parcel;
- y is the aggregate share units of all parcels entitled to the exclusive benefit of the limited common property; and
- Z is the total contribution determined by the subsidiary management corporation as a sum payable by subsidiary proprietors of all parcels entitled to the exclusive benefit of the limited common property.

Maintenance account of subsidiary management corporation

55.—(1) A subsidiary management corporation shall open and maintain a maintenance account with a bank or financial institution, into which shall be deposited all maintenance charges paid by the subsidiary proprietors constituting the subsidiary management corporation.

(2) The maintenance account shall consist of the monies specified in section 40(2) and may be used only for the purposes specified in section 40(3).

Sinking fund account of subsidiary management corporation

56.—(1) A subsidiary management corporation shall open and maintain sinking fund account with a bank or financial institution, into which shall be deposited all contributions to sinking fund paid by the subsidiary proprietors constituting the subsidiary management corporation.

(2) The sinking fund account may be used only for the purposes specified in section 41(2).

Subsidiary proprietors to pay maintenance charge, and contribution to the sinking fund, to subsidiary management corporation

57.—(1) Each subsidiary proprietor constituting a subsidiary management corporation shall pay the maintenance charge, and contribution to the sinking fund, to the subsidiary management corporation for the expenses related to its limited common property.

(2) The amount of maintenance charge to be paid under subsection (1) shall be determined by the subsidiary management corporation from time to time in proportion to the share units of each parcel.

(3) The amount of contribution to the sinking fund to be paid under subsection (1) shall be a sum equivalent to ten percent of the maintenance charge unless otherwise determined by the subsidiary management corporation from time to time at a general meeting, but such contribution to the sinking fund shall not be less than ten percent of the maintenance charge.

(4) Any maintenance charge, or contribution to the sinking fund, imposed under subsection (2) or (3) in respect of a parcel shall be due and payable on the passing of a special resolution to that effect by the subsidiary management corporation and in accordance with the terms of that resolution, and may be recovered in the manner set out in section 71 from a subsidiary proprietor or his successor-in-title to the parcel.

Judgments against management corporation relating to limited common property

58.—(1) If a judgment against a management corporation relates solely to the parcels of the subsidiary proprietors under a subsidiary management corporation, the judgment shall be confined only to the subsidiary proprietors of those parcels.

(2) A parcel's share of a judgment referred to in subsection (1) shall be calculated in accordance with section 54 as if the amount of the judgment were the maintenance charge, or contribution to the sinking fund, and a subsidiary proprietor's liability shall be limited to that proportionate share of the judgment.

Commissioner to maintain a record of management corporations

59.—(1) Commissioner shall maintain a record of management corporations, and permit any person to inspect the record at any reasonable time to ascertain, in connection with the management and maintenance of subdivided building or land, the particulars of a corporation entered in the record under subsection (2).

(2) The Commissioner shall enter in the record the following particulars of each management corporation—

- (a) the name of the management corporation;
- (b) the name (if any) and address of the subdivided building or land;
- (c) the address of the registered office of the corporation;
- (d) the name and address of—
 - (i) the chairman;
 - (ii) the vice-chairman (if any);
 - (iii) the secretary;
 - (iv) the treasurer; and
 - (v) any other person who is a member;
- (e) the name and address of any administrator or property manager or managing agent.

(3) The secretary of the management corporation shall, within thirty days of the date of any change in the particulars registered under subsection (2) give notice thereof to the Commissioner in such form as he may specify.

(4) In the event of a contravention of subsection (3), the secretary of the management corporation shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding twenty thousand ringgit and a further fine of not exceeding one hundred ringgit for every day or part thereof during which the offence continues after conviction.

(5) Subject to a payment of a fee as may be determined by the Commissioner, any person may—

(a) inspect the record and any document required to be submitted to the Commissioner under this Ordinance; and

(b) require a copy or extract of any such record or document to be made and certified under the hand of the Commissioner.

Chapter 5

Termination of strata development

Application of this part

60. Nothing in this section shall apply in derogation of Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*].

Termination of subdivision of building or land

61.—(1) A management corporation in respect of a development may, by a comprehensive resolution take action to terminate the subdivision of building or land.

(2) Upon obtaining the comprehensive resolution to terminate the subdivided building or land, the management corporation shall notify the Commissioner in writing of the decision together with a copy of the resolution.

(3) The Commissioner shall issue the management corporation with a certificate confirming his receipt of the copy of the resolution.

Dissolution of subsidiary management corporation

62.—(1) A subsidiary management corporation for a limited common property may be dissolved and its limited common property shall cease to be designated as a limited common property if—

(a) by comprehensive resolution, the management corporation constituted in respect of the same development resolves that—

(i) the subsidiary management corporation be dissolved;

(ii) the subsidiary management corporation's limited common property ceases to be designated as

limited common property but be part of the common property comprised in that development; and

(iii) the management corporation shall hold and possess all rights and interests, and be subject to all liabilities and obligations, of the subsidiary management corporation subsisting immediately before the dissolution; or

(b) by comprehensive resolution, the subsidiary management corporation concerned resolves that—

(i) it be dissolved;

(ii) its limited common property ceases to be designated as limited common property but be part of the common property comprised in a development; and

(iii) the management corporation shall hold and possess all its rights and interests, and be subject to all its liabilities and obligations, subsisting immediately before the dissolution.

(2) Upon obtaining the comprehensive resolution to dissolve the subsidiary management corporation, the management corporation or subsidiary management corporation as the case may be, shall notify the Commissioner in writing of the decision together with a copy of the resolution.

(3) The Commissioner shall issue the management corporation or subsidiary management corporation as the case may be, with a certificate confirming his receipt of the copy of the resolution.

Chapter 6

Miscellaneous provisions applicable to this Part

By-laws by the management corporation

63.—(1) A management corporation may, by special resolution, make by-laws or make amendments to such by-laws for the matters prescribed in the Fifth Schedule;

Provided that such by-laws are not inconsistent with the regulations made under section 137.

(2) The by-laws made under this section shall bind the management corporation and the subsidiary proprietors, and any chargee, lessee, tenant or occupier of a parcel to the same extent as if the by-laws—

(a) had been signed or sealed by the management corporation, and each subsidiary proprietor and each such chargee, lessee, tenant or occupier, respectively; and

(b) contained mutual covenants to observe, comply and perform all the provisions of these by-laws.

(3) The management corporation shall—

(a) keep a record of the by-laws in force from time to time;

(b) on receipt of an application in writing made by a subsidiary proprietor or by a person duly authorized to apply on behalf of a subsidiary proprietor for a copy of the by-laws in force, supply to such subsidiary proprietor or person duly authorized, at a reasonable cost, a copy of the by-laws; and

(c) on the application of any person who satisfies the management corporation that he has a proper interest in so applying, make such by-laws available for inspection.

(4) No by-laws shall be capable of operating—

(a) to prohibit or restrict the transfer, lease or charge of, or any other dealing with any parcel of a subdivided building or land; and

(b) to destroy or modify any easement expressly or impliedly created by or under the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*].

(5) A copy of any by-laws made by the management corporation under this section for the time being in force, certified as a true copy under the seal of the management corporation, shall be filed by the management corporation with the Commissioner within thirty days of the passing of the special resolution by the management corporation approving the by-laws.

(6) The management corporation or any subsidiary proprietor shall be entitled to apply to the Tribunal or a court of competent jurisdiction—

(a) for an order to enforce the performance of, or restrain the breach of, any by-laws by; or

(b) to recover damages for any loss or injury to any persons or properties arising out of the breach of any by-law from,

any person bound to comply with the by-laws.

By-laws by the subsidiary management corporation

64.—(1) The by-laws of the management corporation shall apply to the limited common property managed and maintained by the subsidiary management corporation unless the by-laws have been otherwise expressly amended—

(a) by the subsidiary management corporation pursuant to a special resolution passed at a general meeting of the subsidiary management corporation; and

(b) in respect of any matter that related solely to that limited common property or subsidiary management corporation.

(2) A subsidiary management corporation may, by special resolution, make by-laws, not inconsistent with the regulations made under section 137, relating to the limited common property designated for the exclusive benefit of all the parcels in the subsidiary management corporation.

(3) The by-laws made under this section shall bind the subsidiary management corporation and the subsidiary proprietors of parcels constituting that subsidiary management corporation, and any chargee, lessee, tenant or occupier of such parcel to the same extent as if the by-laws—

(a) had been signed or sealed by the subsidiary management corporation, and each such subsidiary proprietor and each such chargee, lessee, tenant or occupier, respectively; and

(b) contained mutual covenants to observe, comply and perform all the provisions of these by-laws.

(4) A copy of any by-laws made by the subsidiary management corporation under this section for the time being in force, certified as a true copy under the seal of the subsidiary

management corporation, shall be filed by the subsidiary management corporation with the Commissioner within thirty days of the passing of the special resolution by the subsidiary management corporation approving the by-laws.

(5) The subsidiary management corporation or any subsidiary proprietor of parcel constituting that subsidiary management corporation shall be entitled to apply to the Tribunal or a court of competent jurisdiction—

(a) for an order to enforce the performance of, or restrain the breach of, any by-laws; or

(b) to recover damages for any loss or injury to any person or property arising out of the breach of any by-laws from,

any person bound to comply with the by-laws.

Subsidiary roll

65.—(1) A developer, during the preliminary management period, or the management corporation, as the case may be, shall prepare and maintain a subsidiary roll in such form as the Commissioner may require, containing the following particulars in respect of all the parcels in the subdivided building or land—

(a) the share units of each parcel;

(b) the floor area of each parcel;

(c) the name and address of every subsidiary proprietor or last known address at which notices may be served on the subsidiary proprietor; and

(d) the name and address of the solicitor acting for the subsidiary proprietor in the sale and purchase of the parcel, if any.

(2) Any developer who fails to comply with subsection (1), shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding ten thousand ringgit or imprisonment for a term not exceeding three years or to both.

(3) If a management corporation fails to comply with subsection (1), every member of the management committee shall be guilty of an offence and shall, upon conviction, be punished

with a fine not exceeding ten thousand ringgit or imprisonment for a term not exceeding three years or to both.

(4) In proceedings against the member of the management committee for an offence under subsection (3), it is a defence if the member proves that—

(a) the offence was committed without his knowledge, consent or connivance; and

(b) he had taken all reasonable precautions and had exercised due diligence to prevent the commission of the offence.

Right of subsidiary proprietor or prospective subsidiary proprietor

66. Subject to a payment of a fee as may be determined by the Commissioner and on application by or on behalf of a person who is a subsidiary proprietor, or by or on behalf of a person who is a prospective subsidiary proprietor, the management corporation or the subsidiary management corporation, as the case may be, shall issue to that person a certificate certifying—

(a) the amount of maintenance charge, and contribution to the sinking fund, payable by a subsidiary proprietor to the management corporation or the subsidiary management corporation, as the case may be;

(b) the time and manner of payment of the amount of such maintenance charge and contribution to the sinking fund;

(c) the amount, if any, of arrears of maintenance charge, and contribution to the sinking fund, in respect of the parcel;

(d) the sum standing to the credit of the maintenance account and the sum in the account that has been committed or reserved for expenses already incurred by the management corporation or the subsidiary management corporation, as the case may be;

(e) the sum standing to the credit of the sinking fund account and the sum in the account that has been committed or reserved for expenses already incurred by the management

corporation or the subsidiary management corporation, as the case may be; and

(f) the nature of repairs and estimated expenditure, if any, where the management corporation or subsidiary management corporation, as the case may be, has incurred any expenditure or is about to perform any repair, work or act in respect of which a liability is likely to be incurred by the subsidiary proprietor of the parcel under any provision of this Ordinance.

Acquisition of additional land, grant and acceptance of easements, etc.

67.—(1) A management corporation, if authorized by a unanimous resolution, may—

(a) acquire land outside the lot to be used for the purposes connected with subdivided building or land;

(b) accept the benefit of an easement imposed in favour of the lot on some other land; or

(c) grant or accept the burden of an easement imposed on the lot for the benefit of some other land.

(2) The land outside the lot acquired under subsection (1)(a)—

(a) shall be treated and dealt with as if it was part of the common property; and

(b) shall be held on a separate title and shall not be amalgamated with the lot.

(3) Where an instrument is executed by the management corporation in the exercise of its powers under subsection (1)—

(a) the instrument shall be valid and effective without execution by any subsidiary proprietor or other person or body having an interest in the land;

(b) the receipt by the management corporation of any monies payable to the management corporation under the instrument shall be a good and sufficient discharge which exonerates the person or body paying the monies from responsibility for the application of the monies; and

(c) the instrument shall be lodged with the Registrar in accordance with the provision of the Land Code [*Cap. 8 (1958 Ed.)*], and it shall be accompanied with a certificate under the seal of the management corporation stating that—

(i) the resolution directing the transaction to which the instrument relates was duly passed; and

(ii) the transaction conforms to the terms of the resolution.

(4) A certificate given under subsection (3)(c) shall, be conclusive evidence of the facts certified to the Commissioner or a party to the transaction other than the management corporation.

Rating

68.—(1) A management corporation shall—

(a) within one month after its establishment, or within such further period as the rating authority may allow, supply the rating authority with two copies of the certified strata plan in respect of the subdivided building or land and with the names and addresses of the members of the management committee of the management corporation; and

(b) keep the rating authority informed of any changes in the plan, names and addresses supplied under subsection 1(a).

(2) Where a rate is imposed on the common property, the management corporation shall be liable to pay the rate.

(3) For the purposes of this section, “the rating authority”, in relation to a subdivided building or land means any authority authorized by any written law to impose rates.

Appointment of administrator for management corporation

69.—(1) Where a management corporation established under the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*], has failed or neglected to discharge the duties or functions imposed by this Ordinance on the management corporation, the Tribunal may, on the application of a subsidiary proprietor or any other person or body having a registered interest in a parcel, appoint an administrator for the management corporation for a fixed or

indefinite period and on such terms and conditions as the court thinks fit.

(2) The remuneration and expenses of the administrator shall be charged on the maintenance account of the management corporation.

(3) The administrator shall, to the exclusion of the management corporation, have the power and perform the duties of the management corporation, or any other power or duties as the Tribunal may direct.

(4) An administrator when appointed shall forthwith file with the Commissioner an office copy of the order of Tribunal making his appointment.

(5) The Tribunal may, on the application of the management corporation or any person or body entitled to apply under subsection (1), remove or replace the administrator.

(6) Where an order of the Tribunal for removal or replacement of an administrator has been granted to any person, such person shall forthwith file a copy of such order with the Commissioner.

(7) On any application made under this section, the Tribunal may make such order for the payment of costs as it thinks fit.

Recovery of sum as a debt due to management corporation or subsidiary management corporation

70.—(1) The payment of any amount incurred by the management corporation or the subsidiary management corporation in the course of the exercise of any of its powers or carrying out of its duties or obligations under this Ordinance shall by virtue of this section be guaranteed by the subsidiary proprietors for the time being constituting the management corporation or the subsidiary management corporation.

(2) Each subsidiary proprietor shall be liable under such guarantee referred to in subsection (1) only for such proportion of the money so incurred as the share units of his parcel or the provisional share units of his provisional block bear to the aggregate share units.

(3) Where any subsidiary proprietor has not discharged or fully discharged his liability for the purpose of subsection (1), the management corporation or the subsidiary management corporation shall be entitled to recover from the subsidiary proprietor before the Tribunal or in a court of competent jurisdiction as a debt due to it.

(4) Where for reasons of insufficiency of fund to meet the sum guaranteed under subsection (1), the management corporation or the subsidiary management corporation may at an annual general meeting or at an extraordinary general meeting determine the amount to be contributed by each subsidiary proprietor and decide any other issue or matter relating to the settlement of the said sum.

Procedure on recovery of sums due

71.—(1) Where a sum becomes recoverable by a management corporation or subsidiary management corporation, from a subsidiary proprietor under this Ordinance, the management corporation or the subsidiary management corporation, as the case may be, may serve on the subsidiary proprietor a written notice demanding payment of the sum due within the period as may be specified in the notice which shall not be less than fourteen days from the date of service of the notice.

(2) If any sum remains unpaid by the subsidiary proprietor at the end of the period specified in the notice under subsection (1), the management corporation or the subsidiary management corporation, as the case may be, may file a claim before the Tribunal or in a court of competent jurisdiction for the recovery of the said sum or, as an alternative to recovery under this section, resort to recovery under section 72.

(3) Any subsidiary proprietor who, without reasonable excuse, fails to comply with the written notice under subsection (1) shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding five thousand ringgit or imprisonment for a term not exceeding three years or to both, and in the case of a continuing offence, to a further fine not exceeding fifty ringgit for every day or part thereof during which the offence continues after conviction.

(4) All monies, fees, contributions or other charges which may be lawfully claimed by the management corporation or subsidiary management corporation under subsection (1) from a subsidiary proprietor and until such monies, fees, contributions or other charges so paid, the said sum due to the management corporation or subsidiary management corporation shall be a first charge on the parcel.

Recovery of sums by attachment of movable property

72.—(1) The Commissioner may, upon sworn application in writing made by any member of the management committee of the management corporation or subsidiary management committee of the subsidiary management corporation, issue a warrant of attachment in Form A of the Eighth Schedule authorizing the attachment of any movable property belonging to the defaulting subsidiary proprietor which may be found in the building or elsewhere in Sarawak.

(2) The warrant of attachment under subsection (1) shall be executed by a member of the management committee of the management corporation or subsidiary management committee of the subsidiary management corporation or by a person specially employed by the management committee or subsidiary management committee to execute such warrants, in the presence of the Commissioner or an officer from the office of the Commissioner.

(3) If the member of the management committee of the management corporation or subsidiary management committee of the subsidiary management corporation or the person referred to in subsection (2) encounters difficulties in executing the warrant, he may seek the assistance of the Commissioner, and in providing such assistance, the Commissioner may request for the assistance of a police officer not below the rank of Inspector.

(4) A person executing the warrant of attachment—

(a) may, from 8 a.m. until 6 p.m., effect forcible entry into any house or building or any part of the house or building for the purpose of executing the warrant; and

(b) shall, immediately after attachment, make an inventory of the property attached under the warrant and serve a notice in Form B of the Eighth Schedule on the person who,

at the time of attachment, was or appeared to be in possession of the property.

(5) Any tenant, subtenant, or occupier who, in order to avoid the attachment or sale of the movable property for non-payment of any sum due to the management corporation or the subsidiary management corporation by the subsidiary proprietor, pays such sum and may thereafter, in the absence of any written agreement to the contrary, deduct the amount so paid by him from the rent due or to become due by him to the subsidiary proprietor, and may retain possession of the property until such amount has been fully reimbursed to him whether by deduction from the rent or otherwise.

(6) The receipt issued by the management corporation or the subsidiary management corporation for any amount so paid by any such tenant, subtenant or occupier under subsection (5) shall be deemed a discharge in full for the like amount of rent.

(7) If any person whose property is attached disputes the legality of the attachment, he may, within fourteen days of the date of attachment, apply to the Court having jurisdiction in the place of attachment for an order for the release of the property, and the Court, after making such enquiry as may be necessary, shall grant or refuse to grant the order.

(8) If the sum due is not paid within fourteen days from the date of attachment, the property attached or such portion of the property attached as may be sufficient to realize the sum shall be sold either by way of auction conducted by a licensed auctioneer under Miscellaneous Licences (Auctioneers and Valuers) Regulations [Vol. VIII, p. 63], or by way of tender by a registered estate agent under Valuers, Appraisers, Estate Agents and Property Managers Act 1981 [Act 242] appointed by the management corporation under the supervision of the Commissioner, unless within that period an application is made under subsection (7), in which case the property shall be held pending the decision of the Court and shall then be dealt with as the Court may order.

(9) If the Court refuses to grant an order for the release of the property, and that decision of the Court is reached within fourteen days from the date of attachment, the property shall not be sold before the expiry of that period.

(10) Notwithstanding subsections (8) and (9), if the property is of a perishable nature, it may be sold at once, and in that case, the proceeds of sale shall be held pending the decision of the Court and shall then be dealt with as the Court may order.

(11) In any other case, the proceeds of sale shall be applied in satisfaction of the sum due together with the costs of the attachment and sale, and any surplus and any property not sold shall be paid or returned to the person who, at the time of attachment, was or appeared to be in possession of the property.

(12) The costs of attachment shall include the expenses of the maintenance of livestock and the custody of movable property.

(13) In this section, unless the context otherwise requires, “subsidiary proprietor”, in relation to the recovery of a sum recoverable by virtue of subsection (6) or (8) from a subsidiary proprietor, includes any successor-in-title to the subsidiary proprietor.

(14) Where any property is sold by virtue of subsection (10) before the expiry of fourteen days from the date of attachment, the reference in subsection (7) to an “order for the release of the property” shall be construed as a reference to an order for the release of the proceeds of the sale of the property.

Monies not required for immediate use

73. All monies in the accounts required to be opened and maintained under this Part which exceeds ten thousand ringgit and which are not required for immediate use, shall be placed or deposited by the management corporation or the subsidiary management corporation, as the case may be, into an income-bearing deposit account with a bank or financial institution.

Change of name

74.—(1) At a general meeting the management corporation or subsidiary management corporation may by a special resolution change the name of the management corporation or subsidiary management corporation.

(2) The Commissioner shall be notified in writing by the management corporation on the approval of the resolution to change the name of the management corporation or subsidiary management corporation within fourteen days of such resolution

been made and the Commissioner shall, after consultation with the Superintendent, either;

(a) notify the management corporation or subsidiary management corporation in writing of his acceptance of the change of name; or

(b) notify the management corporation or subsidiary management corporation that he rejects the change of name by stating his reason for the rejection.

(3) The management corporation or subsidiary management corporation upon receiving the approval under subsection 2(a) shall submit the application for change of name to the Superintendent and the Registrar shall thereafter amend the name appearing in the book of subsidiary register for the subdivided land or building. For the purpose of record, a copy of the amended certificate of incorporation shall be lodged to the Commissioner.

(4) A change of a management corporation or subsidiary management corporation under this section shall not affect any liability, rights or obligations of the management corporation or subsidiary management corporation or render defective any legal proceedings by or against the corporation, and any legal proceedings which might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

Time period for monies to be deposited

75. All monies in the accounts required to be opened and maintained under this Part shall be deposited into the respective accounts by the developer during the preliminary management period or the management corporation or the subsidiary management corporation, as the case may be, within seven working days of receiving the monies.

PART VI

PROPERTY MANAGER

Appointment of property manager by Commissioner

76.—(1) Where—

(a) a situation under paragraph 4(b) of the Second Schedule or paragraph 4(b) of the Sixth Schedule occurs; or

(b) after due inquiry has been carried out by the Commissioner or a person appointed by him based on a complaint made to the Commissioner by a purchaser or a subsidiary proprietor or any other person or body having an interest in a parcel, registered or otherwise, the Commissioner is satisfied that the management and maintenance of a building or land intended to be subdivided into parcels or any subdivided building or land and common property is not carried out satisfactorily by the developer, joint management body, management corporation or subsidiary management corporation, as the case may be,

the Commissioner may appoint, by written notification, one or more persons to act as property manager to manage and maintain the building or land intended to be subdivided into parcels or any subdivided building or land and the common property for a period to be specified by the Commissioner

(2) A property manager appointed under this Part shall enter into a management agreement with the developer, joint management body, management corporation or subsidiary management corporation, as the case may be, to carry out the duties and powers of the developer, joint management body, management corporation or subsidiary management corporation, respectively as provided for under this Ordinance.

(3) The property manager shall be entitled to be paid such remuneration or fees as may be agreed upon between the property manager and the developer, joint management body, management corporation or subsidiary management corporation, as the case may be, with the concurrence of the Commissioner, and such remuneration or fees shall be charged to the maintenance account.

(4) In the event that the property manager cannot be appointed due to shortage of such expertise, the Commissioner may appoint in written notification, a managing agent to manage and maintain the building or land intended for subdivision into parcels or any subdivided building or land and the common property for a period to be specified by the Commissioner and the restrictions, requirements, duties, powers, and remuneration under subsection (2), and sections 77 and 78 shall apply.

(5) The managing agent appointed under subsection (4) shall not act as managing agent unless he has lodged with the Commissioner a bond in the form and for the specified amount approved by the Commissioner given by a bank, finance company or insurer and which binds the bank, finance company or insurer to make good any loss caused by the managing agent as a result of his failure to account for monies received or held by him.

Independence of property manager or managing agent

77.—(1) A person shall not be appointed as a property manager or managing agent if he has a professional or pecuniary interest in any building or land intended to be subdivided into parcels or any subdivided building or land.

(2) A person is regarded as having a professional or pecuniary interest in any building or land intended to be subdivided into parcels or any subdivided building or land if—

(a) he has been responsible for the design or construction of the building or land intended to be subdivided into parcels or any part of the subdivided building or land;

(b) he or any of his nominees, officers or employees has any material interest in the building or land intended to be subdivided into parcels or any part of the subdivided building or land;

(c) he is a partner or is in the employment of a person who has any material interest in the building or land intended to be subdivided into parcels or any part of the subdivided building or land; or

(d) he or his family holds any interest in the building or land intended to be subdivided into parcels or any part of the subdivided building or land whether directly as a trustee or otherwise.

(3) For the purpose of this section—

(a) “material interest” means having an aggregate share unit of parcels which is not less than five per cent of the aggregate share unit of all the parcels in the development; and

(b) “family” includes spouse, brother or sister of that person or the spouse, parents of that person or the spouse,

children including adopted children of that person or the spouse.

Powers and duties of property manager or managing agent

78.—(1) Where a property manager or managing agent has been appointed under section 76(1), 76(4) or 80(3) the property manager or managing agent shall have control over the monies in the maintenance account and the sinking fund account.

(2) Subject to the general directions of the Commissioner, the property manager or managing agent appointed shall perform the duties and exercise the powers with regards to the management and maintenance of the building or land intended to be subdivided into parcel or subdivided building or land as if he was acting as the developer, joint management body, management corporation or subsidiary management corporation, as the case may be.

(3) It shall be the duty of the property manager or managing agent to pay all monies received by him in his capacity as property manager or managing agent into the accounts specified in subsection (1) of that development within seven working days of receiving the monies.

(4) As soon as practicable after his appointment, but in any case not more than one month after his appointment, a property manager or managing agent shall prepare and submit to the Commissioner a statement showing as at the date of his appointment—

(a) the monies standing to the credit of the maintenance account or the sinking fund account;

(b) the amounts due and owing by the parcel owner or subsidiary proprietors which are to be deposited into the maintenance account or the sinking fund account;

(c) any income derived from the common property or the proposed limited common property of the development, which is to be deposited into the maintenance account or the sinking fund account; and

(d) any sum incurred for the management and maintenance of any building or land intended to be subdivided into parcel or subdivided building or land, which is authorized

to be paid out of the maintenance account or the sinking fund account, and which remains unpaid.

(5) Any property manager or managing agent who fails to comply with subsection (3) or (4) of this section or section 76(5) shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding two hundred and fifty thousand ringgit or imprisonment for a term not exceeding three years or to both, and in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for every day or part thereof during which the offence continues after conviction.

Developer not to be relieved of his obligations to carry out repairs, etc.

79. The appointment of a property manager or managing agent shall not relieve the developer of his obligation—

(a) towards the purchasers in his development to carry out repairs to the common property or to make good any defect, shrinkage or other faults in the common property during the defects liability period; and

(b) to carry out repairs and varied and additional works to ensure that the development is constructed in accordance with the specifications and plan approved by the competent authority.

Termination of management agreement

80.—(1) Upon the termination of a management agreement entered into under section 76(2), the property manager or managing agent shall—

(a) not than one month from such termination, prepare and submit to the Commissioner the unaudited accounts of the maintenance account and the sinking fund account, and hand over to the Commissioner a complete list of the assets and liabilities of such maintenance account and sinking fund account and all records related to and necessary for the maintenance and management of the building or land intended to be subdivided into parcels or subdivided building or land; and

(b) not later than three months from such termination or such extended time as the Commissioner deems fit, submit to the Commissioner the audited accounts of the maintenance account and the sinking fund account.

(2) Any property manager or managing agent who fails to comply with subsection (1) shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding two hundred and fifty thousand ringgit or imprisonment for a term not exceeding three years or to both.

(3) In the event of the termination of the management agreement, the Commissioner may appoint another property manager to manage and maintain the building or land intended to be subdivided into parcel or subdivided building or land for a period to be specified by the Commissioner.

PART VII

DUTY TO RECTIFY DEFECTS

Developer to pay deposit to rectify defects on common property

81.—(1) The Commissioner may require the developer to provide a deposit either in cash or in the form of bank guarantee for the purpose of carrying out any work to rectify any defects in the common property of the development after the completion of the common property.

(2) The amount of deposit referred to in subsection (1) shall be determined by the Commissioner and paid to the Commissioner by the developer upon the issuance of occupation permit by the local authority.

(3) The Commissioner may use the deposit for the purpose of carrying out any work which is necessary to rectify any defects in the common property of the development.

(4) Where the Commissioner has determined that the deposit is insufficient for rectifying the defects to the common property, the Commissioner may direct the developer to deposit within fourteen days such further sums as the Commissioner may determine.

(5) Any unexpended deposit shall be refunded to the developer on the expiry of the defect liability period for the development.

(6) Any developer who fails to comply with subsection (1) shall be guilty of an offence and shall, upon conviction, be punished a fine not exceeding five thousand ringgit and to a further fine not exceeding fifty ringgit for every day or part thereof during which the offence continues after conviction.

PART VIII INSURANCES

Duty to insure buildings

82.—(1) Any person or body of persons who has a duty or is responsible under this Ordinance to manage and maintain any building shall insure such building under a damage policy with a licensed insurer in accordance with this Part where there is no such insurance policy subsisting.

(2) A damage policy means a contract of insurance providing, in the event of the building being destroyed or damaged by fire, lightning, explosion, bursting or overflowing of water tanks or pipes, windstorms and any other occurrence specified in the policy,

(a) for—

(i) the rebuilding of the subdivided building or its replacement by a similar building in the event of its destruction; and

(ii) the repair of damage to, or the restoration of the damaged portion of, the subdivided building in the event of it being damaged but not destroyed,

so that, in the case of destruction, every part of the rebuilt building or the replacement building and, in the case of damage, the repaired or restored portion, is in a condition no worse nor less extensive than that part or portion or its condition when that part or portion was new;

(b) the payment of expenses incurred in the removal of debris; and

(c) the remuneration of architects or other persons whose services are necessary as an incident to the rebuilding, replacement, repair or restoration.

(3) A damage policy may provide that, instead of the work and the payments being carried out or made on the occurrence of any of the events specified in subsection (2), the liability of the insurer is, on the occurrence of any such event, limited to an amount specified in the policy that is not less than the valuation of the building as determined in section 83.

Amount to be insured

83.—(1) Any building shall be insured for at least the reinstatement value of the building indicated by the last valuation obtained for the building.

(2) For the purpose of determining the reinstatement value of the building that is required to be insured under this Part, a reinstatement valuation of the building shall be obtained from a registered valuer under the Valuers, Appraisers, Estate Agents and Property Managers Act 1981 [*Act 242*] at least once in every three years.

(3) The cost of such valuation shall be paid out from the maintenance account.

Insurance where area cannot be separated from main premises of building

84.—(1) Where any limited common property is managed and maintained by a subsidiary management corporation, and the areas managed and maintained by the subsidiary management corporation cannot be separated from the main premises of the building maintained or managed by the management corporation—

(a) the management corporation shall insure the building under a damage policy; and

(b) the premiums paid for such insurance shall be apportioned between the subsidiary management corporation and the management corporation in accordance with the share units of the subsidiary proprietors constituting the subsidiary management corporation against the aggregate share units of

the subsidiary proprietors constituting the management corporation.

(2) For the purpose of this section, “cannot be separated from the main premises of the building” means that the area managed and maintained by the subsidiary management corporation does not exist as an independent structure, and any damage to the structure or its facilities will materially affect the existence or usability of all other structures within its vicinity.

Insurance where area can be separated from main premises of building

85.—(1) Where any limited common property is managed and maintained by a subsidiary management corporation, and the area managed and maintained by the subsidiary management corporation can be separated from the main premises of the building managed and maintained by the management corporation—

(a) the management corporation shall insure the part of the building excluding the area managed by the subsidiary management corporation; and

(b) the subsidiary management corporation shall insure the part of the building excluding the area managed by the management corporation.

(2) For the purpose of this section, “can be separated from the main premises of the building” means that the area managed and maintained by the subsidiary management corporation exists as an independent structure, and any damage to the structure or its facilities will not materially affect its facilities and also will not materially affect the existence or usability of all other structures within its vicinity.

Land parcels

86. The insurance required to be effected under this Part does not apply to land parcels, and each parcel owner or subsidiary proprietor shall be responsible to insure his building on the land parcel.

Other insurances

87. A joint management body, management corporation or subsidiary management corporation may, apart from the insurance referred to in section 82(1) insure against such other risks as the parcel owners or subsidiary proprietors may, by a special resolution, direct.

Insurable interest

88. A joint management body, management corporation or subsidiary management corporation, including a property manager or managing agent appointed under section 76(1), 76(4) or 80(3) shall be deemed—

(a) for the purposes of effecting any insurance under section 82(1), to have an insurable interest in the building equal to the amount to be insured under section 83(1); and

(b) for the purposes of effecting any insurance under section 87, to have an insurable interest in the subject matter of the insurance.

Obligation to rebuild

89. Subject to sections 27 and 28 of the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*], all payments of money from an insurer in respect of destruction of or damage to a building shall be immediately applied in rebuilding, replacing, repairing or restoring the building.

PART IX STRATA MANAGEMENT TRIBUNAL

Chapter 1

General

Interpretation

90.—(1). In this Part, unless the context otherwise requires—

“award” means a decision of the Tribunal on the substance of the dispute and includes any order on costs or interest but does not include any interlocutory order;

“claim” means a proceeding before the Tribunal between a claimant and a respondent;

“claimant” means a person who commences a proceeding before the Tribunal to have a matter dealt with by the Tribunal;

“court” means any court of competent jurisdiction in Malaysia;

“interlocutory order” means an order that—

(a) is made pursuant to a claim to the Tribunal in the course of any proceeding of the Tribunal; and

(b) is incidental to the principal object of that proceeding;

and includes any direction about the conduct of that proceeding, but does not include any partial or interim order making a final determination in respect of that proceeding;

“party” means a claimant or respondent and includes any person joined as a third party;

“respondent” means a person against whom a proceeding is commenced by the claimant;

“Secretary” means the Secretary to the Strata Management Tribunal appointed under section 94(1)(a);

(2) For the purpose of this Part, where a provision of this Part refers to a claim, it may also apply to a counterclaim, and where it refers to a defence, it may also apply to a defence to that counterclaim.

Chapter 2

Establishment and organization

Establishment of Tribunal

91. There shall be established a tribunal to be known as the Strata Management Tribunal.

Members, terms of office and allowances

92.—(1) The Tribunal shall consist of the following members who shall be appointed by the Minister;

- (a) a Chairman;
- (b) a Deputy Chairman; and

(c) not less than five and not more than twenty members to be appointed from among the persons who are qualified and registered with their respective professional regulatory bodies in Sarawak or Malaysia, as the case may be, having experience in property industries.

(2) No person shall be appointed as the Chairman or Deputy Chairman of the Tribunal unless the person is a qualified person within the meaning of Advocates Ordinance [*Cap.110 (1958 Ed.)*].

(3) Where the Chairman is for any reason unable to perform his functions or during any period of vacancy in the office of the Chairman, the Deputy Chairman shall perform the functions of the Chairman.

(4) The member referred to in subsection (1)(c) shall hold office of a term not exceeding three years and shall be eligible for reappointment upon the expiry of his term of office.

(5) A member of the Tribunal appointed under subsection (1)(c) may at any time resign his office by giving written notice to the Minister.

(6) The Minister may at any time revoke the appointment of a member of the Tribunal referred to in subsection (1)(c) and fill any vacancy in its membership.

(7) The Chairman and the Deputy Chairman shall be paid such fixed allowances and other allowances as the Minister may determine.

(8) The members of the Tribunal appointed under subsection (1)(c) shall be paid a daily sitting allowance during the sitting of the Tribunal and such lodging, travelling and subsistence allowances as the Minister may determine.

Vacation of office

93. The office of a member of the Tribunal shall become vacant—

- (a) upon the death of the member;

- (b) upon the member resigning from such office by giving a written notice to the Minister;
- (c) upon expiration of his term of office; or
- (d) upon revocation of his appointment by the Minister under section 92(6).

Secretary, officers and staff

94.—(1) The Minister shall appoint—

- (a) a Secretary to the Strata Management Tribunal; and
- (b) such other officers and staff of the Tribunal as may be necessary to carry out the functions of the Tribunal.

(2) Subject to the directions of the Chairman, the Secretary may, in connection with any application to the Tribunal, make interlocutory orders.

Chapter 3

Jurisdiction of Tribunal

Jurisdiction of Tribunal

95.—(1) The Tribunal shall have the jurisdiction to hear and determine any claims specified in Part I of the Ninth Schedule and where the total amount in respect of which an award of the Tribunal is sought does not exceed two hundred and fifty thousand ringgit.

(2) The Limitation Ordinance [*Cap. 49 (1958 Ed.)*], shall not apply to the proceedings of the Tribunal.

(3) The jurisdiction of the Tribunal shall not extend to any claim in which the title to any land, or any estate or interest in land, or any franchise, is in question.

(4) Where a claim is filed with the Tribunal and the issues in dispute in the claim to which those proceedings relate, whether as shown in the initial claim or emerging in the course of the hearing is the subject of proceedings between the same parties before the Court, the Tribunal shall not have jurisdiction unless

- (a) the proceedings before the court were commenced after the claim was filed with the Tribunal; or

(b) the claim before the court is withdrawn, abandoned or struck out.

Exclusion of jurisdiction of court

96.—(1) Where a claim is filed with the Tribunal and the claim is within the Tribunal's jurisdiction, the issues in dispute in that claim, whether as shown in the initial claim or as emerging in the course of the hearing, shall not be the subject of proceedings between the same parties in any court unless—

(a) the proceedings before the court were commenced before the claim was filed with the Tribunal; or

(b) the claim before the Tribunal is withdrawn, abandoned or struck out.

(2) For the purpose of this section, a claim shall be deemed to have been made with the Tribunal when section 98 has been complied with.

Persons entitled to file a claim

97. No person other than the following persons shall be entitled to file a claim to the Tribunal:

(a) a developer;

(b) a purchaser;

(c) a subsidiary proprietor, including the proprietor;

(d) a joint management body;

(e) a management corporation;

(f) a subsidiary management corporation;

(g) a property manager or managing agent appointed under section 76(1), 76(4) or 80(3); and

(h) any other interested person, with the leave of the Tribunal.

Chapter 4

*Conduct of proceedings***Claim to be in prescribed form**

98. A claim shall be made in the prescribed form together with the prescribed fee and in accordance with any regulations made under this Part.

Sittings of Tribunal

99.—(1) The jurisdiction of the Tribunal shall be exercised by a panel consisting of a minimum of three members including the Chairman.

(2) The Tribunal shall where reasonably possible conduct the hearing in one continuous sitting until completion at such time and place as may be determined by the Chairman, taking into consideration the nature of complaint and administrative convenience.

(3) A member of the Tribunal having an interest in any matter before it shall, as soon as the member is aware of his interest, disclose the fact and nature thereof to the Chairman and shall take no part or further part in the proceedings of the Tribunal and in such circumstances, the Chairman may appoint a replacement member.

(4) Every disclosure of interest under subsection (3) shall be recorded.

(5) If a member of the Tribunal who is involved in any proceedings in respect of a claim, dies or becomes incapacitated, or is for any other reasons unable to carry out his duties, the Chairman may appoint another member to replace him in the proceedings.

Right to appear at hearings

100.—(1) At the hearing of a claim, every party shall be entitled to attend and be heard.

(2) No party shall be presented by an advocate at a hearing unless, in the opinion of the Tribunal, the matter in question

involves complex issues of law and one party will suffer severe financial hardship if he is not represented by an advocate.

(3) If one party is allowed to be represented by an advocate under subsection (2), the other party shall also be entitled to be represented.

(4) Subject to subsections (2) and (3)—

(a) a corporation or unincorporated body of persons may be represented by a full-time paid employee of the corporation or body; and

(b) a minor or any other person under a disability may be represented by his next friend or guardian *ad litem*.

(5) Where a party is represented as permitted under subsection (4), the Tribunal may impose such conditions as it considers necessary to ensure that the other party to the proceedings is not substantially disadvantaged.

Proceedings to be public

101. All proceedings before the Tribunal shall be open to the public.

Negotiation for settlement

102.—(1) The Tribunal shall, in respect of every claim within its jurisdiction, assess whether, in all the circumstances, it is appropriate for the Tribunal to assist the parties to negotiate an agreed settlement in relation to the matter.

(2) Without limiting the generality of subsection (1), in making an assessment, the Tribunal shall have regard to any factors that, in the opinion of the Tribunal, are likely to impair the ability of either or both of the parties to negotiate an agreed settlement.

(3) Where the parties reach an agreed settlement, the Tribunal shall approve and record the settlement, and the settlement shall then take effect as if it were an award of the Tribunal.

(4) Where—

(a) it appears to the Tribunal that it would not be appropriate for it to assist the parties to negotiate an agreed settlement in relation to the matter; or

(b) the parties are unable to reach an agreed settlement in relation to the matter,

the Tribunal shall proceed to determine the claim.

Determination of rules and procedure

103.—(1) The Tribunal may conduct the proceedings in such manner as it considers appropriate, necessary or expedient for the purpose of ascertaining the facts or law in order that it may determine a claim.

(2) The powers conferred upon the Tribunal under subsection (1) shall include the following:

(a) to determine the language or languages to be used in the proceedings and whether translations of any relevant documents are to be supplied;

(b) to make interlocutory orders;

(c) to determine the relevancy, admissibility and weight of any evidence without being bound by the rules of evidence under the Evidence Act 1950 [*Act 56*];

(d) to draw on its own knowledge and expertise;

(e) to order the provision of further particulars in a statement of claim or statement of defence;

(f) to order the giving of security for costs;

(g) to conduct on-site inspection of the building or land which forms the subject matter of the claim;

(h) to order samples to be taken from, or any observation to be made of or experiment conducted upon, any parcel or common property or limited common property which is or forms part of the subject matter of the claim;

(i) to order the discovery and production of documents or materials within the possession or power of a party;

(j) to order the preservation and interim custody of any evidence for the purpose of the proceedings;

(k) to order the interrogatories to be answered;

(l) to order that any evidence to be given on oath or affirmation; and

(m) to summon the parties to the proceedings or any other person to attend before it to give evidence or to produce any documents, records or other thing in his possession or otherwise to assist the Tribunal in its deliberations.

(3) A summons issued under subsection (2)(m) shall be served and enforced as if it were a summons issued by a court.

Hearings

104.—(1) The Tribunal may decide whether to hold oral hearings for the presentation of evidence or oral arguments, or whether the proceedings shall be conducted on the basis of documents and other materials.

(2) The parties shall be given reasonable prior notice of any hearing and of any meeting of the Tribunal for the purposes of inspection of document or property.

(3) All statements, documents or other information supplied to the Tribunal by one party shall be communicated to the other party.

(4) Any expert report or evidentiary document on which the Tribunal may rely on in making its decision shall be communicated to the parties.

Appointment of expert by Tribunal

105.—(1) The Tribunal may—

(a) appoint one or more experts to report to it on specific issues to be determined by the Tribunal; and

(b) require a party to give the expert any relevant information or to produce or to provide access to any relevant document or property for the expert's inspection.

(2) If the party so requests or if the Tribunal considers it necessary, the expert shall, after delivery of a written or oral report, participate in a hearing where the parties have the opportunity to put questions to the expert and to present other expert witnesses in order to testify on the points at issue.

Chapter 5

Awards of Tribunal

Awards of Tribunal

106.—(1) The Tribunal shall make its award without delay and, where applicable, within sixty days from the first day the hearing before the Tribunal commences.

(2) The Tribunal shall in all proceedings give its reason for its award in the proceedings.

(3) In making an award under subsection (1), the Tribunal may make one or more of the orders specified in Part 2 of the Ninth Schedule, and may include in the award such stipulations and conditions as it thinks fit and just.

(4) In making an order under subsection (3), the Tribunal shall have regard to—

(a) the relevant provisions of this Ordinance; or

(b) the interest of all parcel owners or subsidiary proprietors in the use and enjoyment of their parcels or the common property or limited common property.

(5) The Tribunal may, at any time, rectify or correct clerical mistake in any award or errors arising in the award from any accidental slip or omission.

References to a Judge of the High Court on a question of law

107.—(1) Before the Tribunal makes an award under section 106, it may, in its discretion, refer to a Judge of the High Court a question of law—

(a) which arose in the course of the proceedings; or

(b) which, in the opinion of the Tribunal, is of sufficient importance to merit such reference.

(2) If the Tribunal refers to any question of law under subsection (1) for the decision of a Judge of the High Court, it shall make its award in conformity with such decision.

(3) For the purposes of this section—

(a) a legal officer authorized by the State Attorney-General may appear on behalf of the Tribunal in any proceedings before a Judge of the High Court; and

(b) “High Court” means the High Court of Sabah and Sarawak.

Awards and settlement to be recorded in writing

108. The Tribunal shall make or cause to be made a written record of the terms of—

(a) every agreed settlement reached by the parties under section 102 (3); and;

(b) every award made by it under section 106.

Decisions of Tribunal to be final

109.—(1) An award made under section 102(3) or section 106 shall—

(a) subject to section 110, be final and binding on all parties to the proceedings; and

(b) be deemed to be an order of a court and be enforced accordingly by any party to the proceedings.

(2) For the purpose of subsection (1)(b), in the case where the award made by the Tribunal has not been complied with, the Secretary shall send a copy of the award made by the Tribunal to the court having jurisdiction or in the place where the award was made, and the court shall cause the copy of the award to be recorded.

Disposal of document, etc.

110.—(1) The Tribunal may, at the conclusion of the proceedings before it, order that any documents, records, materials or other property produced during the proceedings be delivered to the rightful owner or be disposed of in such manner as it thinks fit.

(2) Where no person has taken delivery of the documents, records, materials or other property referred in subsection (1) after a period of six months, the ownership in such documents, records, materials or other property shall be deemed to have passed to and become vested in the Government.

Chapter 6

Miscellaneous provisions applicable to this Part

Criminal penalty for failure to comply with award

111. Any person who fails to comply with an award made by the Tribunal shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding two hundred and fifty thousand ringgit or imprisonment for a term not exceeding three years or to both, and in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for every day or part thereof during which the offence continues after conviction.

Regulations in respect of the Tribunal

112.—(1) The Minister may make such regulations as may be necessary or expedient in respect of the Tribunal.

(2) Without prejudice to the generality of subsection (1), regulations may be made for—

(a) prescribing the duties and powers of members, the Secretary, and officers and staff of the Tribunal;

- (b) terms and conditions of appointment of its members;
- (c) prescribing the procedure of the Tribunal;
- (d) prescribing the forms to be used in proceedings under this Part;
- (e) prescribing and imposing fees and providing for the manner for collecting and disbursing such fees;
- (f) prescribing the costs or interest applicable to proceedings in the Tribunal;
- (g) prescribing the limit of the total amount in respect of which an award of the Tribunal can be sought; and
- (h) prescribing any other matters for the better carrying out of the provisions of this Part.

PART X ENFORCEMENT

Power of investigation

113.—(1) The Commissioner may investigate the commission of any offence under this Ordinance.

(2) The Commissioner may authorize in writing any officer of the local authority or public officer to exercise the powers of enforcement under this Ordinance (referred to in this Part collectively as “authorized officer”).

(3) Every authorized officer shall be issued with an authority card to be signed by the Commissioner.

(4) Whenever an authorized officer exercises any of its powers of enforcement under this Ordinance, he shall on demand produce to the person against whom the power is being exercised the authority card issued to him under subsection (3).

(5) In any case relating to the commission of an offence under this Ordinance, the Commissioner or an authorized officer carrying out an investigation may exercise all or any of the powers of a police officer of whatever rank in relation to police

investigation in seizable cases as provided under the Criminal Procedure Code [*Act 593*], and such powers shall be in addition to the powers provided under this Part and not in derogation thereof.

Search and seizure with warrant

114.—(1) If it appears to a Magistrate, upon written information on oath from the Commissioner or authorized officer and after such inquiry as he considers necessary, that there is reasonable cause to believe that an offence under this Ordinance or its subsidiary legislation is being or has been committed on any premises, so that any evidence or thing which is necessary to the conduct of an investigation into an offence may be found in any premises, the Magistrate may issue a warrant authorizing the Commissioner or any authorized officer named in the warrant to enter the premises at any reasonable time by day or by night, with or without assistance.

(2) Without affecting the generality of subsection (1), the warrant issued by the Magistrate may authorize the Commissioner or authorized officer to—

(a) search for and seize any book, register, document or other record;

(b) inspect, make copies of, or take extracts from, any book, register, document or other record so seized;

(c) take possession of, and remove from the premises, any book, register, document or other record so seized; or

(d) make such inquiry as may be necessary to ascertain whether the provisions of this Ordinance have been complied with.

(3) The Commissioner or authorized officer conducting a search under subsection (1) may, for the purpose of investigating into the offence, search any person who is in or on the premises.

(4) The Commissioner or authorized officer making a search of a person under subsection (3) or section 115 may seize, or take possession of, and place in safe custody all things other than the necessary clothing, found upon the person, and any other things, for which there is reason to believe were the instruments or

other evidence of the offence, and they may be retained until the discharge or acquittal of the person.

(5) No person shall be searched except by another person of the same gender, and such search shall be conducted with strict regard to decency.

(6) If, by the reason of its nature, size or amount, it is not practicable to remove any book, register, document or other record seized under this section, the seizing officer shall by any means seal such book, register, document or other record in the premises or container in which it is found.

(7) A person who, without lawful authority, breaks, tampers with or damages the seal referred to in subsection (6) or removes any book, register, document or other record under seal or attempts to do so commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or imprisonment for a term not exceeding three years or to both.

Search and seizure without warrant

115. If the Commissioner or an authorized officer is satisfied upon information received that he has reasonable cause to believe that by reason of delay in obtaining a search warrant under section 116 the investigation would be adversely affected or evidence of the commission of an offence is likely to be tampered with, removed, damaged or destroyed, the Commissioner or authorized officer may enter the premises and exercise all the powers referred to in section 116 in a full and complete manner as if he were authorized to do so by a warrant issued under that section.

Power of arrest

116.—(1) Any authorized officer may arrest without warrant any person whom he reasonably believes has committed or is attempting to commit an offence under this Ordinance or any regulation made under this Ordinance.

(2) An authorized officer making an arrest under subsection (1) shall without unnecessary delay take the person so arrested to the nearest police officer or, in the absence of a police officer, take such person to the nearest police station, and thereafter the person shall be dealt with as is provided for by the law relating to criminal

procedure for the time being in force as if he had been arrested by a police officer.

Access to computerized data

117.—(1) The Commissioner or authorized officer conducting a search under section 114 or 115 shall be given access to computerized data whether stored in a computer or otherwise.

(2) For the purposes of this section, “access”—

(a) includes being provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable comprehension of computerized data; and

(b) has the meaning assigned to it in sections 2(2) and (5) of the Computer Crimes Act 1997 [*Act 563*].

List of things seized

118.—(1) Except as provided in subsection (2), where any book, register, document or other record is seized under this Part, the seizing officer shall as soon as practicable prepare a list of the things seized and of the places in which they are respectively found and deliver a copy of the list signed by him to the occupier of the premises which has been searched, or to his agent or servant, at the premises.

(2) Where the premises are unoccupied, the seizing officer shall whenever possible post a list of the things seized conspicuously on the premises.

Release of things seized

119.—(1) If any book, register, document or other record has been seized under this Ordinance, the Commissioner or authorized officer who effected the seizure, may at any time after that release the book, register, document or other record to the person as he determines to be lawfully entitled to the book, register, document or other record if he is satisfied that the book, register, document or other record is not otherwise required for the purpose of any proceedings under this Ordinance or its subsidiary legislation, or for the purpose of any prosecution under any other written law, and in such event neither the officer effecting the

seizure, nor the Government or the Commissioner shall be liable to any proceedings by any person if the seizure and the release of the book, register, document or other record had been effected in good faith.

(2) A record in writing shall be made by the Commissioner or authorized officer effecting the release of any book, register, document or other record under subsection (1) specifying in detail the circumstances of and the reason for the release and he shall send a copy of the record to the State Attorney-General and to the Commissioner of Police within seven days of the release.

Power to require attendance of person acquainted with case

120.—(1) The Commissioner or authorized officer making an investigation under this Ordinance or its subsidiary legislation may by order in writing require the attendance before himself of any person who appears to the Commissioner or authorized officer to be acquainted with the facts and circumstances of the case, and such person shall attend as so required.

(2) If any person refuses to attend as so required, the Commissioner or authorized officer may report such refusal to a Magistrate who shall issue a warrant to secure the attendance of such person as may be required by the order made under subsection (1).

Examination of person acquainted with case

121.—(1) The Commissioner or authorized officer making an investigation under this Ordinance or its subsidiary legislation may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) The person examined under subsection (1) shall be legally bound to answer all questions relating to such case put to him by the Commissioner or authorized officer, but such person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(3) A person making a statement under this section shall be legally bound to state the truth, whether or not such statement is made wholly or partly in answer to the questions.

(4) The Commissioner or authorized officer examining a person under subsection (1) shall first inform the person of the provisions of subsections (2) and (3).

(5) A statement made by any person under this section shall, whenever possible, be reduced into writing and signed by the person making it or affixed with his thumbprint, as the case may be—

(a) after it has been read to him in the language in which he made it; and

(b) after he has been given an opportunity to make any correction he may wish.

Obstruction

122. A person who—

(a) refuses the Commissioner or any authorized officer access to any premises which the Commissioner or authorized officer is entitled to have under this Ordinance or in the execution of any duty imposed or power conferred by this Ordinance;

(b) assaults, obstruct, hinders or delays the Commissioner or any authorized officer in effecting any entry which the Commissioner or authorized officer is entitled to effect under this Ordinance or in the execution of any duty imposed or power conferred by this Ordinance; or

(c) refuses to give the Commissioner or any authorized officer any information relating to an offence or suspected offence under this Ordinance or its subsidiary legislation or any other information which may reasonably be required of him and which he has in his knowledge or power to give, but such person may refuse to answer or give any information where the answer or information given would lead or expose him to criminal charge or penalty or forfeiture,

shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding one hundred thousand ringgit or imprisonment for a term not exceeding three years or to both.

Requirement to provide translation

123.—(1) Where the Commissioner or an authorized officer finds, seizes, detains, or takes possession of any book, register, document or other record in the exercise of any power under this Ordinance, and such book, register, document or other record or any part of it is in a language other than the national language or the English language, or in any sign or code, the Commissioner or authorized officer may orally or in writing require the person who had the possession, custody or control of such book, register, document or other record to furnish to the Commissioner or authorized officer a translation in the national language or the English language of such book, register, document or other record within such period as, in the opinion of the Commissioner or authorized officer, would be reasonable having regard to the length of the book, register, document or other record, or other circumstances relating to it.

(2) No person shall furnish a translation under subsection (1) which is not an accurate and true translation, or knowingly make a translation under that subsection which is not accurate and true.

(3) Any person who fails to comply with subsection (2) shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding one hundred thousand ringgit or imprisonment for a term not exceeding three years or to both.

Power to compound offences

124.—(1) The Commissioner or any officer authorized by the Commissioner by notification in the *Gazette*, may compound any offence committed by any person under this Ordinance or its subsidiary legislation and prescribed to be a compoundable offence by making a written offer to the person who has committed an offence under this Ordinance or its subsidiary legislation to compound the offence upon payment to the Commissioner an amount of money not exceeding fifty per centum of the maximum fine for that offence within such time as may be specified in the written offer.

(2) An offer under subsection (1) may be made at any time after the offence has been committed but before any prosecution for it has been instituted, and if the amount specified in the offer is not paid within the time specified in the offer, or such extended

time as the Commissioner may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(3) Where an offence has been compounded under subsection (1), no prosecution shall be instituted in respect of the offence against the person to whom the offer to compound was made, and any book, register, document or other record seized under this Ordinance or its subsidiary legislation in connection with the offence may be released by the Commissioner, subject to such terms and conditions as it thinks fit to impose in accordance with the conditions of the compound.

(4) All sums of money received under this section by the Commissioner or any officer authorized by the Commissioner under subsection (1) shall be deposited into the State Consolidated Fund or the local authority account as may be determined by the State Financial Secretary.

Prosecution

125. Prosecution of any offence under this Ordinance or any of its subsidiary legislation may be conducted by the Public Prosecutor or any person authorized by him under section 377(b) of Criminal Procedure Code [*Act 593*].

Jurisdiction of the Sessions Court

126. Notwithstanding the provisions of any written law to the contrary, a Sessions Court shall have jurisdiction to try summarily any offence under this Ordinance or any of its subsidiary legislation and to award a full punishment for any such offence.

Protection of informers

127.—(1) Except as provided in subsections (2) and (3), no witness in any civil or criminal proceedings under this Ordinance shall be obliged or permitted to disclose the name or address of any informer or the substance and nature of the information received from him or state any matter which might lead to his discovery.

(2) If any book, register, document or other record which is in evidence or is liable to inspection in any civil or criminal

proceedings, contain any entry in which any informer is named or described or which might lead to his discovery, the court shall cause all such entries to be concealed from view or to be obliterated in so far as may be necessary to protect the informer from discovery.

(3) If in the trial for any offence under this Ordinance, the court after full enquiry into the case believes that the informer wilfully made in his complaint a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceeding the court is of opinion that justice cannot be fully done between the parties thereto without the identification of the informer, it shall be lawful for the court to require the production of the original complaint, if in writing, and permit enquiry, and require full disclosure concerning the informer.

Offences by body corporate

128. If a body corporate commits an offence under this Ordinance or its subsidiary legislation, any person who at the time of the commission of the offence was an officer of the Company as defined in the Companies Act 2016 [*Act 777*], a member of the management committee, a member of the subsidiary management committee, a member of the joint management committee or other similar officer of the body corporate or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate or was assisting in such management—

(a) may be charged severally or jointly in the same proceedings with the body corporate; and

(b) if the body corporate is found guilty of the offence, shall be deemed to be guilty of that offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves—

(i) that the offence was committed without his knowledge, consent or connivance; and

(ii) that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

PART XI
MISCELLANEOUS

Evidential provisions

129. In any proceedings in a court or of the Tribunal under this Ordinance with respect to any alleged defect in a parcel or in any common property or limited common property situated immediately, whether wholly or partly, above another parcel or any common property or limited common property, it shall be presumed, in the absence of proof to the contrary, that the defect is within that first-mentioned parcel or common property or limited common property, as the case may be, if there is any evidence of dampness, moisture or water penetration—

(a) on the ceiling that forms part of the interior of the parcel, common property or limited common property, as the case may be, immediately below the first-mentioned parcel, common property or limited common property; or

(b) on any furnishing material, including plaster, panel or gypsum board attached, glued, laid or applied to the ceiling that forms part of the interior of the parcel, common property or limited common property, as the case may be, immediately below the first-mentioned parcel, common property or limited common property.

Representation in proceedings

130.—(1) Notwithstanding any other written law—

(a) in any proceedings by or against the joint management body, management corporation or subsidiary management corporation; or

(b) in any other proceedings in which the joint management body, management corporation or subsidiary management corporation is required or permitted by the court to be represented, or to be heard, or is otherwise entitled to be represented or to be heard,

any person authorized by the joint management body, management corporation or subsidiary management corporation for that purpose may, on behalf of the joint management body, management

corporation or subsidiary management corporation, institute such proceedings or appear in such proceedings and may make all appearances and applications and do all acts in respect of the proceedings on behalf of the joint management body, management corporation or subsidiary management corporation.

(2) Where all or some of the parcel owner or subsidiary proprietors of the parcels in a development—

(a) are jointly entitled to take proceedings for or with respect to the common property in that development against any person or are liable to have such proceedings taken against them jointly, the proceedings may be taken by or against the joint management body or management corporation; or

(b) are jointly entitled to take proceedings for or with respect to any limited common property in that development against any person or are liable to have such proceedings taken against them jointly, the proceedings may be taken by the subsidiary management corporation constituted for that limited common property,

as if the joint management body, management corporation or subsidiary management corporation, as the case may be, were the parcel owners or subsidiary proprietors of the parcels concerned.

(3) Any judgment or order given or made in favour of or against the joint management body, management corporation or subsidiary management corporation, as the case may be, in any proceedings referred to in subsection (2) shall have effect as if it were a judgment or an order given or made in favour of or against the parcel owners or subsidiary proprietors as the case may be.

(4) Where a parcel owner or subsidiary proprietor is liable to make a contribution to another parcel owner or subsidiary proprietor as the case may be, in respect of a judgment debt arising under a judgment referred to in subsection (3), the amount of that contribution shall bear to the judgment debt—

(a) in the case of a judgment or an order for or against a joint management body or management corporation, the same proportion as the allocated share units or share units of the

parcel of the first-mentioned parcel owner or subsidiary proprietor bears to the aggregate share units; or

(b) in the case of a judgment or an order for or against a subsidiary management corporation, the same proportion as calculated in accordance with section 56.

Service of notice or order

131. Any notice or order required to be served on any person under this Ordinance may be served and shall be deemed to have been served on that person by serving a copy of such notice or order—

(a) personally; or

(b) by registered post addressed to the last-known address of the business, parcel or residence of the person to be served; or

(c) by attaching the notice or order at a prominent part of the last-known address of the business, parcel or residence of the person to be served.

Protection against suits and legal proceedings

132. No action, suit, prosecution or other proceedings shall lie or be brought, instituted or maintained in any court against—

(a) the Commissioner, the Deputy Commissioner or other officers appointed under section 3(1);

(b) any authorized officer referred to in section 113(2);

(c) Tribunal, a member of the Tribunal, the Secretary and an officer or staff of the Tribunal; or

(d) any person authorized to act for or on behalf of the Tribunal,

in respect of any act, neglect or default done or committed by him or it, in good faith or any omission by him or it in good faith, in such capacity and shall not be held personally liable.

Public Authorities Protection Act 1948

133. The Public Authorities Protection Act 1948 [*Act 198*], shall apply to any action, suit, prosecution or proceedings against the Commissioner, any Deputy Commissioner or other officer appointed under section 3(1), or any authorized officer referred to in section 113(2) in respect of any act, neglect or default done or committed by him in good faith or any omission omitted by him in good faith, in such capacity.

Public servant

134. The Commissioner, the Deputy Commissioners or other officer appointed under section 3(1), or any authorized officer referred to in section 113(2) while discharging his duty or performing his functions or exercising his powers under this Ordinance in such capacity shall be deemed to be public servants within the meaning of the Penal Code [*Act 574*].

Non-application of other written laws, contracts and deeds

135. On the coming into operation of this Ordinance, in a local authority area or part of a local authority area, the provisions of any written law, contracts and deeds relating to the management and maintenance of buildings and common property in as far as they are contrary to the provisions of this Ordinance shall cease to have effect within the local authority area.

Prohibition against contracting to exclude provision of the Ordinance

136.—(1) The provisions of this Ordinance shall have effect notwithstanding any stipulation to the contrary in any agreement, contract or arrangement entered into after the commencement of this Ordinance.

(2) No agreement, contract or arrangement, whether oral or wholly or partly in writing, entered into after the commencement of this Ordinance shall operate to annul, vary or exclude any of the provisions of this Ordinance.

Regulations

137.—(1) The Minister may, with the approval of the Majlis Mesyuarat Kerajaan Negeri, make such regulations as may

be expedient or necessary to carry out the purposes and provisions of this Ordinance

(2) Without prejudice to the generality of subsection (1), regulations may be made for all or any of the following purposes:

(a) prescribing any matter which is required under this Ordinance to be prescribed;

(b) providing for proper standards of management and maintenance in respect of buildings, common property or limited common property;

(c) providing for proper control on the administration and use of the subdivided building or land and the common property or limited common property;

(d) providing for the payment of deposit by any person erecting or constructing a building to ensure its proper management and maintenance and for the forfeiture of the deposit;

(e) providing procedure to control and restrict short-term letting of parcels in subdivided building or land;

(f) prescribing that any act or omission in failing to comply with any of the regulations shall be an offence and provide the penalties for the offence either by way of fine or imprisonment or both provided that any fine so provided shall not exceed fifty thousand ringgit and a term of imprisonment so provided shall not exceed three years;

(g) prescribing offences which may be compounded and the forms to be used in, and the method and procedure for, compounding such offences;

(h) providing for the collection of maintenance charge and contribution to sinking fund, and the maintenance, control and administration of the maintenance account and sinking fund account; or

(i) providing generally for the performance of the functions, the exercise of the powers and the discharge of the duties of the developer, joint management body, management

corporation or subsidiary management corporation under the provisions of this Ordinance.

Powers to exempt and liability for non-compliance

138.—(1) The Minister may, by notification published in the *Gazette*, exempt any person or building or land, or any class of persons or type of buildings or lands, from any or all of the provisions of this Ordinance, subject to such terms or conditions as may be specified in the notification.

(2) Any person who fails to comply with any term or condition under subsection (1) shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding one hundred thousand ringgit or imprisonment for a term not exceeding three years or to both.

Amendment of Schedules

139. The Minister may, with the approval of the Majlis Mesyuarat Kerajaan Negeri and by notification published in the *Gazette*, amend the Schedules.

General penalty

140. Any person who by an act or omission contravenes any provision of this Ordinance or regulations made hereunder, shall be guilty of an offence and shall, upon conviction, if no penalty is expressly provided for such offence, be punished with a fine not exceeding twenty thousand ringgit or imprisonment for a term not exceeding two years or to both.

PART XII

TRANSITIONAL AND SAVING PROVISIONS

References to repealed Ordinance and savings provision

141.—(1) All references to the repealed Strata Titles Ordinance, 1995 [*Cap. 18*], in any written law or document shall, when this Ordinance comes into operation, be construed as references to this Ordinance or the Strata (Subsidiary Titles) Ordinance, 2019 [*Cap. 75/2019*], as the case may be.

(2) Nothing in this Ordinance shall affect the validity of anything done under the repealed Strata Titles Ordinance, 1995

[Cap. 18], before the date of coming into operation of this Ordinance.

(3) Any person who, immediately before the commencement of this Ordinance, is appointed under the repealed Strata Titles Ordinance, 1995 *[Cap. 18]*, shall continue as such as if he was appointed under this Ordinance.

(4) Every accounts or funds established by the developer or any management body before the commencement of this Ordinance shall continue and be deemed to be established under this Ordinance.

(5) Any notice, order or other document prepared, issued or made under the repealed Strata Titles Ordinance, 1995 *[Cap. 18]*, shall, in so far as it is not inconsistent with the provisions of this Ordinance, continue and be deemed to have been prepared, issued or made under this Ordinance.

(6) Any decision made under the repealed Strata Titles Ordinance, 1995 *[Cap. 18]*, shall, in so far as it is not inconsistent with the provisions of this Ordinance, continue and be deemed to have been made under this Ordinance.

(7) (a) Any application or other document filed for approval under the repealed Strata Titles Ordinance, 1995 *[Cap. 18]*, before the commencement of this Ordinance and was not approved before the date shall, where applicable, be deemed to be an application or a document filed for approval under this Ordinance.

(b) Where anything has been commenced by or carried out by the Registrar, Superintendent, Director or State Planning Authority as the case may be under the repealed Strata Titles Ordinance, 1995 *[Cap. 18]*, before the commencement of this Ordinance, such thing may be carried out as if it is carried out by or under the authority of the Commissioner under this Ordinance.

FIRST SCHEDULE

DUTIES AND POWERS OF DEVELOPER DURING DEVELOPER'S
MANAGEMENT PERIOD

(Section 8(2))

Duties of developer

1. The duties of the developer during the developer's management period shall be as follows:

(a) to manage and maintain the building or land intended to be subdivided into parcels and the common property, and keep it in a state of good and serviceable repair;

(b) to determine and impose the maintenance charge to be deposited into the maintenance account;

(c) to determine and impose the contribution to the sinking fund to be deposited into the sinking fund account;

(d) to effect insurance according to this Ordinance;

(e) to comply with any notice or order given or made by the local authority or any competent public authority requiring the abatement of any nuisance on the common property, or ordering repairs or other work to be done in respect of the common property or other improvements to the common property;

(f) to prepare and maintain a register of all parcel owners of the building or land intended to be subdivided into parcels;

(g) to ensure that the maintenance account and sinking fund account are audited and to provide audited financial statements for information to all purchasers;

(h) to enforce by-laws;

(i) to comply with any direction of the Commissioner for matters connected therewith; and

(j) to do such other things as may be expedient or necessary for the management and maintenance of the building or land intended to be subdivided into parcels and the common property.

Powers of developer

2. The powers of the developer during the developer's management period shall be as follows:

(a) to collect the maintenance charge from the parcel owners in proportion to the allocated share units of their respective parcels;

(b) to collect the contribution to the sinking fund from the parcel owners;

(c) to authorize expenditure for the carrying out of management and maintenance of the building or land intended to be subdivided into parcels and the common property;

(d) to recover from any parcel owner any sum expended by the developer in respect of that parcel in complying with any such notice or order referred to in paragraph (1)(e); and

(e) to do all things reasonably necessary for the performance of its duties under this Ordinance.

SECOND SCHEDULE**PROVISIONS ON FIRST ANNUAL GENERAL MEETING OF
JOINT MANAGEMENT BODY**

(Section 17(1))

Developer to give notice

1. The developer shall give written notice of the first annual general meeting of the joint management body to all purchasers not less than twenty-one days before the meeting, and a copy of such written notice shall be displayed at a conspicuous part of the development.

Developer to prepare annual budget

2. The developer shall prepare and place before the first annual general meeting of the joint management body for approval an annual budget that sufficiently sets out the expected and estimated expenditure required to manage and maintain the building or land intended to be subdivided into parcels and the common property which shall be for a period of twelve months starting on the first day of the month following the date of the first annual general meeting.

Agenda for first annual general meeting

3. The agenda for the first annual general meeting of a joint management body shall include the following matters:

- (a) to determine the number and to elect the members of the joint management committee;
- (b) to approve the annual budget prepared by the developer under paragraph (2);
- (c) to determine the amount to be paid by a parcel owner as the maintenance charge, and contribution to the sinking fund;
- (d) to determine the rate of interest payable by a parcel owner in respect of any late payment of the maintenance charge, or contribution to the sinking fund, by the parcel owner;
- (e) to consider the audited accounts;
- (f) to confirm the taking over by the joint management body of insurances effected by the developer under this Ordinance;
- (g) to make by-laws; and
- (h) to consider any other matter connected with the management and maintenance of the common property of the building or land intended to be subdivided into parcels.

Miscellaneous

4. If within half an hour after the time appointed for the meeting no purchaser entitled to vote turns up or less than three purchasers who are eligible for election accept a nomination to be elected as members of the joint management committee, the developer or the person appointed by the Commissioner to convene the meeting shall, within seven days of the date of the meeting inform the Commissioner of the fact and the Commissioner may—

- (a) appoint a new date for the election of the joint management committee; or
- (b) appoint a property manager or managing agent under Part VI to manage and maintain the buildings or lands intended to be subdivided into parcels and the common property comprised in the development.

THIRD SCHEDULE

DUTIES AND POWERS OF JOINT MANAGEMENT BODY

(Section 19)

Duties of joint management body

- 1.—(1) The duties of the joint management body shall be as follows:
- (a) to manage and maintain the building or land intended to be subdivided into parcels and the common property, and keep it in a state of good and serviceable repair;
 - (b) to determine and impose the maintenance charge to be deposited into the maintenance account;
 - (c) to determine and impose the contribution to the sinking fund to be deposited into the sinking fund account;
 - (d) to effect insurance according to this Ordinance or to insure against such other risks as the parcel owners may by special resolution direct;
 - (e) to comply with any notice or order given or made by the local authority or any competent public authority requiring the abatement of any nuisance on the common property, or ordering repairs or other work to be done in respect of the common property or other improvements to the common property;
 - (f) to prepare and maintain a register of all parcel owners of the building or land intended to be subdivided into parcels;
 - (g) to ensure that the maintenance account and sinking fund account are audited and to provide audited financial statements for information to its members;
 - (h) to enforce by-laws;
 - (i) to comply with any direction of the Commissioner for matters connected therewith; and
 - (j) to do such other things as may be expedient or necessary for the management and maintenance of the building or land intended to be subdivided into parcels and the common property.

Powers of joint management body

2. The powers of the joint management body shall be as follows:

(a) to collect the maintenance charge from the parcel owners in proportion to the allocated share units of their respective parcels;

(b) to collect the contribution to the sinking fund from the parcel owners of an amount equivalent to ten percent of the maintenance charge or such amount determined from time to time at a general meeting of the management corporation which shall not be less than ten percent of the maintenance charge;

(c) to authorize expenditure for the carrying out of management and maintenance of the building or land intended to be subdivided into parcels and the common property;

(d) to recover from any parcel owner any sum expended by the developer in respect of that parcel in complying with any such notice or order referred to in paragraph (1)(e);

(e) to purchase, hire or otherwise acquire movable property for use by the parcel owners in connection with their enjoyment of the common property;

(f) to employ or arrange and secure the services of any person or agent to undertake the management and maintenance of the common property of the building or land intended to be subdivided into parcels;

(g) to make by-laws for the proper management and maintenance of the buildings or lands intended for subdivision into parcels and the common property; and

(h) to do all things reasonably necessary for the performance of its duties under this Ordinance.

FOURTH SCHEDULE
PROVISIONS FOR MANAGEMENT CORPORATION

(Sections 20(2), 46(2) and 52(6))

Interpretation

1.—(1) In the application of this Schedule to any management corporation—

“convenor” means, in the first annual general meeting,

(a) the developer under either section 17(1) or 47(1); or

(b) any person appointed by Commissioner under either section 17(3) or 47(3),

of this Ordinance.

“general meeting” means a general meeting of the management corporation and includes the first annual general meeting;

“immediate family member”, in relation to any person, means a spouse, child, legally adopted child, step-child, sibling or parent of that person.

Constitution of management committee

2.—(1) Subject to the provisions of this section and to any regulations or by-laws made under this Ordinance, every management corporation shall have a management committee which shall consist of such number of persons as the management corporation may determine in a general meeting, but in no case exceeding a total of fourteen natural persons (inclusive of member of the subsidiary management committee of a subsidiary management corporation appointed in section 52(4)).

(2) Notwithstanding subsection (1), where a management corporation has not more than three subsidiary proprietors, the management committee of the management corporation shall consist of all the subsidiary proprietors who are natural persons or in the case of a subsidiary proprietor which is a company, society, statutory body or any other body, its nominee.

(3) Where a management corporation has only one subsidiary proprietor, the sole subsidiary proprietor may make any decision that a duly convened management committee may make under this Ordinance, and any such decision shall be deemed to be a decision of the management committee of the management corporation.

(4) All members of the management committee shall be elected at each annual general meeting of the management corporation.

(5) There shall be a chairman, secretary and treasurer, all of whom shall be natural persons, to be elected by the management committee from among its members immediately after the conclusion of the general meeting but no chairman, secretary or treasurer shall hold office for more than two consecutive terms unless otherwise determined by a special resolution of the management corporation.

(6) All members of the management committee of a management corporation shall retire from office at the conclusion of the next annual general meeting. A retiring member of the management committee shall be eligible for re-election.

(7) No member of the management committee shall hold office for more than three consecutive terms unless otherwise determined by a special resolution of the management corporation.

(8) A person shall not be eligible for election as a member of the management committee of a management corporation unless he is an individual of at least twenty-one years of age and who—

(a) is a subsidiary proprietor or a subsidiary co-proprietor of a parcel; or

(b) is nominated for election by a subsidiary proprietor of a parcel which is a company, society, statutory body or any other body; or

(c) is not a subsidiary proprietor of a parcel but is a member of the immediate family of a subsidiary proprietor who owns two or more parcels and is nominated for election by that subsidiary proprietor.

(9) For the avoidance of doubt, a proxy appointed by a subsidiary proprietor shall not be eligible for election.

(10) Notwithstanding subparagraph (8), an individual referred to in that sub-paragraph shall not be eligible for election as a member of the management committee of a management corporation if, on the seventh day before the date of election—

(a) where he is a subsidiary proprietor or subsidiary co-proprietor of a parcel, all or any part of the Maintenance charge, or contribution to the sinking fund or any other money due and payable to the management corporation in respect of that parcel are in arrears;

(b) where he is nominated for election by a subsidiary proprietor of a parcel which is a company, society, statutory body or any other body, all or any part of the Maintenance charge, or contribution to the sinking fund or any other money due and payable to the management corporation in respect of that parcel are in arrears; or

(c) where he is a member of the immediate family of a subsidiary proprietor of a parcels and is nominated for election by that subsidiary proprietor, all or any part of the Maintenance charge, or contribution to the sinking fund or any other money due and payable to the management corporation in respect of any parcel are in arrears.

(11) Notwithstanding subparagraph (8), and without prejudice to subparagraph (10), the following persons shall also not be eligible for election as a member of the management committee:

(a) an individual who is a subsidiary co-proprietor of a parcel with another subsidiary co-proprietors, if that other subsidiary co-proprietor of that parcel has already been nominated as a candidate at that election; and

(b) an individual who is nominated for election by a subsidiary proprietor who owns two or more parcels if that subsidiary proprietor together with any of his nominees—

(i) nominated at the same election; or

(ii) elected to the management committee at the same or other election,

or that subsidiary proprietor's nominees exceeds the threshold number for that subsidiary proprietor determined in accordance with subparagraph (12).

(12) For the purposes of determining the eligibility of any individual who is nominated for election as a member of the management committee under subparagraph (11)(b), the threshold number for that subsidiary proprietor shall be—

(a) the number of management committee members that is proportional to that subsidiary proprietor's share units in relation to the aggregate share units of the development, ignoring any fraction; or

(b) forty-nine percent of the number of management committee members determined under sub-paragraph (1), ignoring any fraction,

whichever number is lower.

(13) For the purposes of subparagraph (12), the word “subsidiary proprietor” shall include the subsidiary proprietor who owns two or more parcels but the subsidiary proprietor’s number of parcels shall exclude any parcel that has been sold to any person who has yet to be duly registered as a subsidiary proprietor.

(14) An absent subsidiary proprietor shall not be nominated for election as a member of the management committee unless he has appointed a proxy and that subsidiary proprietor has given his written consent to be nominated and elected as a member of the management committee.

Nomination of candidates for election as management committee member

3.—(1) A nomination of a person for election as member of the management committee of a management corporation is of no effect if subparagraphs (2) and (3) are not complied with for that nomination.

(2) A nomination for election to be a member of the management corporation:

(a) may be oral or in writing;

(b) must—

(i) if oral, be made at the general meeting of the management corporation or subsidiary management corporation for the purposes of the election; or

(ii) if in writing, be given at least seven days before the start of the meeting to the secretary of the management corporation or subsidiary management corporation, or to the convenor of the meeting in the case of the first annual general meeting; and

(c) must state—

(i) the name of the person nominated; and

(ii) the name of the person making the nomination.

(3) A nomination whether oral or made in writing, made for the purposes of an election at a general meeting of a management corporation or subsidiary management corporation, is effective only if it is accompanied by the consent of the candidate—

(a) given in writing at least seven days before the start of the meeting to the secretary of the management corporation or subsidiary management corporation, or to the convenor of the meeting in the case of the first annual general meeting; or

(b) given orally at the meeting.

(4) Any candidate nominated for election to be a member of the management corporation may effectively withdraw only by the candidate in person before the commencement of the election at a general meeting.

Vacation of office of member of management committee

4.—(1) A person who is the chairman, secretary or treasurer or a member of a management committee shall vacate or shall be deemed to have vacated his office as such member—

- (a) if he resigns;
- (b) if he dies;
- (c) if he becomes a bankrupt;
- (d) if he is no longer a subsidiary proprietor;
- (e) if he has been convicted on a charge in respect of—
 - (i) an offence involving fraud, dishonesty or moral turpitude;
 - (ii) an offence under any law relating to corruption;
 - (iii) an offence under this Ordinance; or
 - (iv) any other offence punishable with imprisonment (in itself only or in addition to or in lieu of a fine) for more than two years;
- (f) if his conduct, whether in connection with his duties as a member of the management committee or otherwise, bring discredit on the management committee;
- (g) if he is of unsound mind or otherwise incapable of discharging his duties;
- (h) in the case of the chairman, if he absents himself from three consecutive scheduled meetings of the management committee without the leave of the management committee;
- (i) in the case of a member of the management committee other than the chairman, if he absents himself from three consecutive meetings of the management committee without the leave in writing of the chairman;

(j) in the case where the subsidiary proprietor of the parcel is a company, society, statutory body or any other body, as the case may be, if he by resolution of a company, society, statutory body or any other body as the case may be, removed as their representative;

(k) if he is in default of payment of the Maintenance charge, or contribution to the sinking fund or any other money due to the management corporation (including interest) for a continuous period of three months; or

(l) in the case of a member of the management committee, if he commits a serious breach of the by-laws and has failed to remedy the breach, if the breach is capable of being remedied within fourteen days of the date of receipt of notice from the management committee.

(2) Within fourteen days of the occurrence of any of the events in subparagraph (1) except for the event under subparagraph (1)(k), the company, society, statutory body or any other body may appoint another representative to replace the member of the management committee and to hold the office vacated.

(3) Except where the management committee consists of all the subsidiary proprietors, the management corporation may, at any time, by special resolution at an extraordinary general meeting remove any member of the management committee from office and subject to paragraph 2(9) appoint another subsidiary proprietor in his place to hold office until the next annual general meeting.

(4) A member of the management committee may resign his office at any time in writing under his hand addressed to the management corporation.

(5) Where a vacancy in the membership of the management committee occurs by operation of subparagraph (1) and in the case where subparagraph (2) shall not apply, the remaining members may, subject to paragraph 2(9), appoint another subsidiary proprietor to be a member until the next annual general meeting.

Quorum for management committee meetings

5. Except where there is only one subsidiary proprietor, a quorum at meetings of the management committee shall be —

- (a) two, where there are not more than four members;
- (b) three, where there are five or six members;
- (c) four, where there are seven or eight members;

- (d) five, where there are nine or ten members;
- (e) six, where there are eleven or twelve members; and
- (f) seven, where there are thirteen or fourteen members.

Meetings and proceedings of the management committee

6.—(1) The management committee shall meet at such times and places and at such intervals as the chairman may decide, but the chairman shall not allow more than two months to lapse between meetings.

(2) The chairman shall call for a meeting if requested to do so by the Commissioner or by at least two members of the management committee, failing which the Commissioner may appoint any member of the management committee to convene the meeting.

(3) Notice of every meeting shall be given to all members of the management committee not less than seven days before the date appointed for the meeting and such notice shall be displayed on the notice board of the management corporation.

(4) Every meeting of the management committee shall be presided over by the chairman of the management committee, and in the absence of the chairman, the members of the management committee who are present may elect one of them to chair such meeting.

(5) Questions arising at meetings shall be decided by a simple majority vote on a show of hands, and if on any question to be determined by the management committee there is equality of votes, the chairman shall have a casting vote.

(6) Subject to subparagraph (4), the management committee may regulate its own procedure at meetings.

Power to employ agents and servants

7. Without prejudice to any written law, the management committee may employ, for and on behalf of the management corporation, such agents and servants as it thinks fit on a yearly basis, in connection with or to facilitate the exercise of the powers and the performance of the duties of the management corporation.

Keeping of records and accounts of management corporation

8.—(1) The management committee shall keep minutes of all its proceedings and minutes of general meetings.

(2) The management committee shall—

(a) cause a copy of the minutes of a meeting of the management committee, which is signed by the chairman of the meeting or the secretary, to be displayed on the notice board within twenty one days after the meeting; and

(b) cause a copy of a minute of any resolution of the management committee, or of the management corporation passed in accordance with this Ordinance to be displayed on the notice board within twenty one days after it is passed.

(3) A copy of any minutes referred to in subparagraph (2) shall be kept displayed on the notice board until it is replaced by a copy of the minutes of the subsequent meeting.

(4) The Commissioner may require the management committee to give each subsidiary proprietor a copy of the minutes referred to in subparagraph (2)(a) or (b) within the period specified in that subsection.

(5) The minutes of the meeting signed by the chairman of the meeting or the secretary shall be admissible in any legal proceedings as *prima facie* evidence of the facts stated in them without further proof.

(6) The management committee shall—

(a) cause to be prepared such accounts and records of accounts as will sufficiently explain the transactions of the accounts and enable true and fair balance sheet, income and expenditure statement and profit and loss statement to be prepared; and

(b) on the application of a subsidiary proprietor or chargee of a parcel or a proprietor of a provisional block (or any person authorized in writing by him), make the books of accounts available for inspection during office hours of the management corporation, at a fee not exceeding fifty ringgit for each inspection.

(7) The management committee shall prepare for each annual general meeting, proper accounts relating to all monies of the management corporation and the management corporation's income and expenditure.

(8) The management committee shall, within twenty eight days of a general meeting, file with the Commissioner copies of—

(a) the audited accounts of the management corporation together with the auditor's report which has been presented to the general meeting;

(b) the resolutions passed at the general meeting; and

(c) the minutes of the general meeting.

and each copy of such audited account, resolution and minutes to be certified true copy by the chairman or the secretary of the management committee.

(9) The management committee shall within twenty eight days of a general meeting extend copies of the minutes of the meeting to all subsidiary proprietors or display the minutes of the meeting on the notice board of the management corporation.

(10) The accounts of the management corporation shall be audited annually by an approved company auditor appointed by the management committee.

(11) The management committee shall permit the Commissioner at all reasonable times, full and free access to accounting and other records of the management corporation, and permit the Commissioner to make copies or make extracts from any such accounting or other records.

Acts of management committee valid notwithstanding vacancy, etc.

9. Any act or proceeding of a management committee done in good faith shall, notwithstanding that the time when the act or proceeding was done, taken or commenced there was—

(a) a vacancy in the office of a member of the management committee; or

(b) any defect in the appointment, or any disqualification of any such member,

be as valid as if the vacancy, defect or disqualification did not exist and the management committee were fully and properly constituted.

Resolutions of the management committee in writing

10. A resolution is taken to have been passed at a meeting of a management committee if the resolution in writing is signed by every member of a management committee indicating agreement with the resolution, and in the absence of such agreement by every member of the management committee, a meeting has to be held.

Annual general meeting

11.—(1) The management corporation shall hold an annual general meeting for the consideration of accounts, election of the management committee and the transaction of such other matters as may arise.

(2) The first annual general meeting shall be held within one month after the expiry of the initial period and the subsequent annual general meetings shall be held once in each year, provided that not more than fifteen months shall lapse between the date of one annual general meeting and the next.

(3) The holding of any annual general meeting out of time in breach of this paragraph shall not affect the validity of the annual general meeting.

Extraordinary general meetings

12.—(1) A general meeting of the management corporation other than the annual general meeting shall be known as the extraordinary general meeting.

(2) The management committee—

(a) shall convene an extraordinary general meeting upon a request in writing made by the subsidiary proprietors who are together made up of at least one-quarter of the aggregate share units;

(b) shall convene an extraordinary general meeting upon receiving a direction in writing from the Commissioner for the transaction of such business as the Commissioner may direct; or

(c) may convene an extraordinary general meeting on such other occasion as it thinks fit.

(3) The requisition under subparagraph (2)(a) shall state the objects of the meeting and shall be signed by the requestor and deposited at the registered office of the management corporation, and may consist of several documents in like form each signed by one or more requestor.

(4) The extraordinary general meeting shall be held as soon as practicable but in any case not later than six weeks after—

(a) the requisition has been deposited at the registered office of the management corporation; or

(b) receiving a direction in writing from the Commissioner under subparagraph (2)(b).

(5) If—

(a) the Commissioner is satisfied that the management committee has not been properly constituted; or

(b) the management committee fails to convene the extraordinary general meeting within the time period stipulated in subparagraph (4),

the Commissioner may authorize in writing any person to convene an extraordinary general meeting for such purposes as may be approved by the Commissioner.

(6) In the case of a meeting convened pursuant to subparagraph (5)(b), all costs incurred by the person in convening the meeting shall first be paid by the management corporation to that person and such costs shall be recoverable as a debt due from all the members of the management committee personally to the management corporation.

Notice of general meeting

13.—(1) At least fourteen days' notice of any general meeting shall be given to every subsidiary proprietor.

(2) Every notice for a general meeting shall include but not be limited to the following:

- (a) the place, date and time for the meeting;
- (b) each proposed motion to be considered at the meeting; and
- (c) a notification to each subsidiary proprietor of his voting rights and that he may vote in person or by proxy at the meeting.

(3) In the case of an annual general meeting, the notice in subparagraph (2) shall also—

- (a) be accompanied with a copy of the minutes of the last annual general meeting;
- (b) be accompanied with a copy of the audited accounts together with the auditor's report on the accounts of the management corporation; and
- (c) specify any other matters to be considered at the meeting.

(4) No motion shall be submitted at a general meeting unless—

- (a) the notice of the motion has been given in accordance with paragraph 14; or
- (b) the motion is a motion to amend a motion of which notice has been so given.

Requisition for motions to be included on agenda for general meeting

14.—(1) Any subsidiary proprietor may, by notice in writing deposited at the registered office of the management corporation not less than seven days

before the time for holding the meeting, require inclusion of a motion as set out in such notice in the agenda of the next general meeting of the management corporation.

(2) Upon receipt of the notice under subparagraph (1), the management committee shall include the motion in the agenda of next general meeting, and the notice of the motion shall be displayed on the notice board of the management corporation.

List of names of persons entitled to vote

15. The management committee of the management corporation shall put up a list of the names of the persons who are entitled to vote at a general meeting on the notice board at least seven days before the general meeting.

Quorum at general meeting

16.—(1) One half of the subsidiary proprietors entitled to vote present, either in person or by proxy, shall constitute a quorum at a general meeting.

(2) If within half an hour after the time appointed for a general meeting, a quorum is not present, those subsidiary proprietors entitled to vote who are present shall constitute a quorum.

Chairman of general meeting

17. The chairman of the management committee elected under paragraph 2(4) and (5) shall preside at all general meeting at which he is present and if he is absent from such meeting the members of the management committee present at that meeting shall appoint one of their members to preside at that meeting.

Manner of deciding matters at general meeting

18.—(1) Any matter that requires a decision at a general meeting shall be decided on a show of hands unless a poll is demanded by a subsidiary proprietor or his proxy.

(2) Unless a poll is demanded, a declaration by the chairman that a resolution has been carried on a show of hands shall be conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against the resolution.

(3) A proxy shall be entitled to vote on a show of hands or by poll.

(4) The subsidiary proprietor or his proxy demanding the poll may withdraw such demand.

(5) Where a poll is taken, it shall be taken in such manner as the chairman thinks fit, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

(6) In the case of an equality of votes, whether on a show of hands or a poll, the chairman shall be entitled to a casting vote.

Proxy

19.—(1) An instrument appointing a proxy, who need not be a subsidiary proprietor, shall be in writing—

(a) under the hand of the subsidiary proprietor making the appointment or his attorney, and may be either general or for a particular meeting; or

(b) if the subsidiary proprietor appointing the proxy is a company, society, statutory body or any other body, either under seal or under the hand of an officer or its attorney duly authorized.

(2) An instrument appointing a proxy if made under the hand of an attorney shall be accompanied with a copy of the power of attorney.

(3) The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

(4) A person may act as proxy for only one subsidiary proprietor at any one general meeting.

(5) The instrument appointing proxy shall be deposited at the registered address of the management corporation not less than seven days before the time for holding the meeting or any adjournment of the meeting at which the person named in the instrument proposes to vote, failing which the proxy shall not be entitled to attend or vote.

Powers of proxies

20.—(1) Subject to subparagraph (2), a person duly appointed as a proxy if entitled to vote otherwise as a proxy, may also vote in his own right.

(2) For the avoidance of any doubt, a proxy cannot exercise a vote in relation to a matter if the person who appoints the proxy is exercising personally a power to vote on the matter.

Authority not to be revoked by death of principal, etc.

21. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or unsoundness of mind or liquidation of the principal, or revocation of the instrument or the authority

under which the instrument was executed, if no notice in writing of such death, unsoundness of mind, liquidation or revocation has been received by the management corporation at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used.

Voting rights of subsidiary proprietor

22.—(1) Each subsidiary proprietor who is not a subsidiary co-proprietor shall have one vote in respect of each parcel on a show of hands, and on a poll, shall have such number of votes as that corresponding with the number of share units or provisional share units attached to his parcel or provisional block.

(2) A subsidiary proprietor shall not be entitled to vote if, on the seventh day before the date of the meeting, all or any part of the Maintenance charge, or contribution to the sinking fund, or any other money due and payable to the management corporation in respect of his parcel are in arrears.

Voting rights of subsidiary co-proprietors

23.—(1) Subsidiary co-proprietors may vote by means of a proxy.

(2) In the absence of a proxy, subsidiary co-proprietors shall not be entitled to vote on a show of hands, except where a unanimous resolution is required, any one of the subsidiary co-proprietor may demand a poll.

(3) On a poll, each subsidiary co-proprietor shall be entitled to such number of the votes allocated to his parcel or provisional block proportionate to his interest in the parcel or provisional block.

Subsidiary proprietor representative

24. A subsidiary proprietor who is not a natural person may be represented in any meeting as follows—

(a) if the subsidiary proprietor is a company, by its representative duly authorized under its seal or the hand of its director, or by any duly authorized attorney or by its appointed proxy;

(b) if the subsidiary proprietor is a company where a receiver or a receiver and manager is appointed, by the receiver or the receiver and manager or a person duly authorized by the receiver or the receiver and manager or by its appointed proxy;

(c) if the subsidiary proprietor is a company which is under liquidation, by the liquidator or any person duly authorized by the liquidator or by its appointed proxy;

(d) if the subsidiary proprietor is a society, by any one of its office bearers or any person duly authorized by the society or by its appointed proxy; or

(e) if the subsidiary proprietor is a statutory body or any other body, by one of its members or such other duly authorized person or by its appointed proxy.

Common seal

25.—(1) The common seal of the management corporation shall not be used except on the authority of the management committee previously given and in the presence of at least two members of the management committee, who shall sign the instrument to which the seal is affixed.

(2) Notwithstanding sub-paragraph (1), where there is only one member of the management corporation, his presence and signature shall be sufficient.

FIFTH SCHEDULE

BY-LAWS BY JOINT MANAGEMENT BODY OR MANAGEMENT CORPORATION

(Sections 30(2) and 63(2))

1. Safety and security measures;
2. Details of any common property of which the use is restricted;
3. The keeping of pets;
4. Parking;
5. Floor coverings;
6. Refuse control;
7. Conduct;
8. Architectural and landscaping guidelines to be observed by all parcel owner; and
9. Imposition of fine not exceeding two hundred ringgit against any parcel owner, occupant or invitee who is in breach of any of the by-laws.

SIXTH SCHEDULE
PROVISIONS ON FIRST ANNUAL GENERAL MEETING OF
MANAGEMENT CORPORATION

(Section 47)

Developer to give notice

1. The developer shall give written notice of the first annual general meeting of the management corporation to all subsidiary proprietors not less than twenty one days before the meeting, and a copy of such written notice shall be displayed at a conspicuous part of the development.

Developer to prepare annual budget

2. The developer shall prepare and place before the first annual general meeting of the management corporation for consideration an annual budget that sufficiently sets out the expected and estimated expenditure required to manage and maintain the subdivided building or land and the common property which shall be for a period of twelve months starting on the first day of the month following the date of the first annual general meeting.

Agenda for first annual general meeting

3. The agenda for the first annual general meeting of a management corporation shall include the following matters:

(a) to determine the number of members and to elect the members of the management committee where there are more than three subsidiary proprietors;

(b) to consider the budget prepared by the developer under paragraph (2);

(c) to decide whether to confirm or vary any amount determined as the Maintenance charge, or contribution to the sinking fund;

(d) to determine the rate of interest payable by a subsidiary proprietor in respect of late payment maintenance charge;

(e) to consider the audited accounts of the management corporation;

(f) to decide whether to confirm, vary or extend the insurances effected by the developer for the management corporation under this Ordinance;

(g) to make by-laws; and

(h) to consider any matter connected with the management and maintenance of the common property of the subdivided building or land.

Miscellaneous

4. If within half an hour after the time appointed for the meeting no subsidiary proprietor entitled to vote turns up or less than three subsidiary proprietors who are eligible for election accept a nomination to be elected as members of the management committee, the developer or the person appointed by the Commissioner to convene the meeting shall, within seven days of the date of the meeting inform the Commissioner of the fact and the Commissioner may.

(a) appoint a new date for the election of the management committee; or

(b) appoint a property manager or managing agent under Part VI to maintain or manage the buildings or lands subdivided into parcels and the common property comprised in the development.

SEVENTH SCHEDULE

DUTIES AND POWERS OF MANAGEMENT CORPORATION

(Section 48)

Duties of management corporation

1.—(1) The duties of the management corporation shall be as follows:

(a) to manage and maintain the subdivided building or land intended to be subdivided into parcels and the common property, and keep it in a state of good and serviceable repair;

(b) to determine and impose the maintenance charge to be deposited into the maintenance account;

(c) to determine and impose the contribution to the sinking fund to be deposited into the sinking fund account or such amount determined from time to time at a general meeting of the management corporation which shall not be less than ten percent of the maintenance charge;

(d) to effect insurance according to this Ordinance and to insure against such risks as subsidiary proprietors may by special resolution direct;

(e) to comply with any notice or order given or made by the local authority or any competent public authority requiring the abatement of any nuisance on the common property, or ordering repairs or other work to be done in respect of the common property or other improvements to the common property;

(f) to prepare and maintain a subsidiary roll for the subdivided building or land, as the case may be;

(g) to ensure that the maintenance account and sinking fund account are audited and to provide audited financial statements for information to its members and the relevant authority;

(h) to enforce by-laws;

(i) to comply with any direction of the Commissioner for matters connected therewith; and

(j) to do such other things as may be expedient or necessary for the proper management and maintenance of the subdivided building or land and the common property.

Powers of management corporation

2. The powers of the management corporation shall be as follows:

(a) to collect the maintenance charge from the subsidiary proprietor in proportion to the share units or provisional share units of their respective parcels or provisional block;

(b) to collect the contribution to the sinking fund from the subsidiary proprietors;

(c) to authorize expenditure for the carrying out of management and maintenance of the subdivided building or land and the common property;

(d) to recover from any subsidiary proprietor any sum expended by the management corporation in respect of that subsidiary proprietor's parcel in complying with any such notice or order referred to in paragraph (1)(e);

(e) to purchase, hire or otherwise acquire movable property for use by the subsidiary proprietors in connection with their enjoyment of the common property;

(f) to employ or arrange and secure the services of any person or agent to undertake the management and maintenance of the common property of the subdivided building or land;

(g) to make by-laws for the proper maintenance and management of the subdivided building or land and the common property;

(h) to borrow monies required by the management corporation in the exercise of its powers or the performance of its duties;

(i) to secure the repayment of monies borrowed by it and the payment of interest thereon by negotiable instrument or by a charge of unpaid maintenance charge to the maintenance account (whether already imposed or not), or by a charge of any property vested in it or by a combination of any of those means; and

(j) to do all things reasonably necessary for the performance of its duties under this Ordinance.

EIGHTH SCHEDULE

FORM A

(Sections 33(1) and 72(1))

WARRANT OF ATTACHMENT

No.:.....

To

of

Whereas is the *subsidiary proprietor /proprietor of parcel no. *in the building no. / of provisional block no. on

(Description of land)

Registered in the name of */the management corporation by the name of

And whereas by a written notice under subsection *32(1)/71(1) of the Strata Management Ordinance, 2019 [Cap. 76/2019], served on him on the day of 20 of the said was demanded to pay to the *developer/joint management body/management corporation/subsidiary management corporation by the day of 20 the sum of the particulars of which are given below:

And whereas further *the said sum/the sum of still remain unpaid:

This is to authorize you under subsection *33(1)/72(1) of the Strata Management Ordinance, 2019 [Cap. 76/2019], in the presence of the Commissioner to attach any movable property belonging to the said sufficient to realize the sum due as aforesaid and by way of costs, which may be found in the said building or elsewhere in Sarawak and to hold the property or deal with it subject to and in accordance with the provisions of the said section *33/72.

This warrant must be returned to me on or before the day of 20 with an endorsement certifying the date when and the manner in which it was executed or the reason for not executing it.

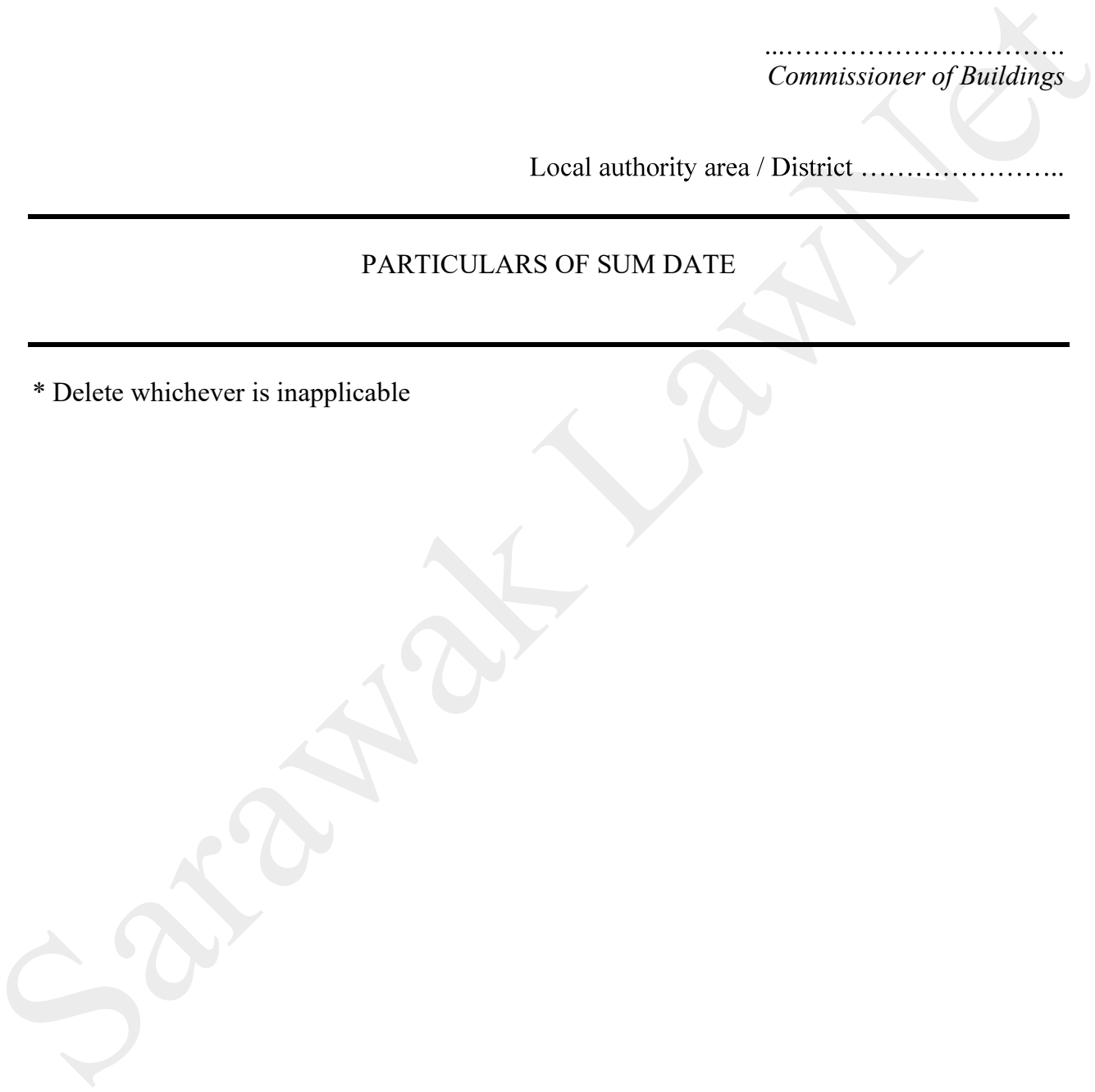
Dated this day of 20

.....
Commissioner of Buildings

Local authority area / District

PARTICULARS OF SUM DATE

* Delete whichever is inapplicable



FORM B

(Sections 33(4)(b) and 72(4)(b))

NOTICE AND INVENTORY

No.:.....

To

of

Take notice that I have this day attached the property specified in the inventory below for the sum of details of which are given below, which is owed to the *developer/joint management body/management corporation/subsidiary management corporation by the name of by the *subsidiary proprietor /proprietor of parcel no. *in the building no. /of provisional block no. on

(Description of land)

registered in the name of * /the management corporation by the name of

Take notice further that unless the amount due is paid within fourteen (14) days from the date of this notice, the property will be sold.

Dated this day of 20

.....
Commissioner of Buildings

Local authority area / District

INVENTORY

Number of Articles	Description of Property
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PARTICULARS OF SUM DUE

* Delete whichever is inapplicable

NINTH SCHEDULE

PART I

JURISDICTION OF THE TRIBUNAL

(Section 95(1))

1. A dispute or complaint concerning an exercise or the performance of, or the failure to exercise or perform, a function, duty or power conferred or imposed by this Ordinance or any subsidiary legislation made under this Ordinance, except for those specifically provided for in this Part.

2. Subject to section 43 of the Housing Development (Control and Licensing) Ordinance, 2013 [*Cap. 63*], a dispute on costs or repairs in respect of a defect in a parcel, building or land intended to be subdivided into parcels, or subdivided building or land, and its common property or limited common property.

3. A claim for the recovery of Maintenance charge, or contribution to the sinking fund, or any other money due and payable to the management corporation (including interest) or any amount which is declared by the provisions of this Ordinance as a debt.

4. A claim to compel a developer, joint management body, management corporation or subsidiary management corporation to pay any arrears on such remuneration or fees owing to the property manager or managing agent.

5. A claim for an order to convene a general meeting.

6. A claim for an order to invalidate proceedings of meeting where any provision of the Ordinance has been contravened.

7. A claim for an order to nullify a resolution where voting rights has been denied or where due notice has not been given.

8. A claim for an order to nullify a resolution passed at a general meeting.

9. A claim for an order to revoke amendment of by-laws having regards to the interests of the proprietor or all subsidiary proprietors.

10. A claim for an order to vary the rate of interest fixed by the developer, joint management body, management corporation or subsidiary management corporation as the case may be for late payment of Maintenance charge, or contribution to the sinking fund.

11. A claim for an order to vary the amount of insurance to be provided.
12. A claim for an order to pursue an insurance claim.
13. A claim for compelling a developer, joint management body, management corporation or subsidiary management corporation to supply information or documents.
14. A claim for an order to give consent to effect alterations to any common property or limited common property.
15. A claim for an order to affirm, vary or revoke the Commissioner's decision.
16. Subject to section 69, a claim for an order to appoint an administrator for the management corporation.

PART II

ORDERS OF THE TRIBUNAL

(Section 106(3))

1. The Tribunal may order a party to the proceedings to pay a sum of money to another party.
2. The Tribunal may order the price or other consideration paid by a party to be refunded to that party.
3. The Tribunal may order the payment of compensation or damages for any loss or damage suffered by a party.
4. The Tribunal may order the rectification, setting aside or variation of a contract or by-laws, wholly or in part.
5. The Tribunal may order costs to or against any party to be paid.
6. The Tribunal may order interest to be paid on any sum or monetary award at a rate not exceeding eight per centum per annum.
7. The Tribunal may dismiss a claim which it considers to be frivolous or vexatious.
8. The Tribunal may make any order of which it has the jurisdiction to make under Part 1 of Third Schedule or any other order as it deems just and expedient.
9. The Tribunal may make such ancillary or consequential orders or relief as may be necessary to give effect to any order made by the Tribunal.

Sarawak LawNet



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BAGI PIHAK DAN DENGAN KUASA PERINTAH KERAJAAN SARAWAK