

# **STRATA TRIBUNAL IN MALAYSIA: MAINTENANCE FEE**

*by*

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## **INTRODUCTION**

A tribunal is a quasi-judicial institution set up with the authority to judge, adjudicate on, or to determine claims or disputes. Tribunal is not to be defined as a court but as a body with limited jurisdiction. The purpose of its establishment is specified in a certain way. As Tribunal deals with matters informally, it could resolve a dispute expeditiously which the involved parties will not incur much cost. In other words, Tribunal is a justice mechanism which is almost similar with the court system especially in cases filing whereby the conducting procedure is simpler, more convenient and the issue at hand is expected to be resolved in a more expedient manner.

### **Strata Tribunal Jurisdiction and Proceedings**

In Malaysia, the main act that deals with strata properties is The Strata Management Act 2013<sup>1</sup> ("SMA 2013") which came into operation on the 1st June 2015. It is a single legislation enacted to consolidate certain provisions previously in the Strata Titles Act 1985<sup>2</sup> and the re-enacted provisions of the repealed Building and Common Property (Maintenance and Management) Act 2007<sup>3</sup>. The SMA 2013 governs the maintenance and management of residential strata properties such as condominium and apartments. The main objective of this Act is to ensure that there is a proper management and maintenance of the building and common property and is expected to be unbound by irresponsible and illegal developers in order to protect the parcel owners.

Next, in order to file a claim, it is crucial to recognize the jurisdiction of Strata Management Tribunal (SMT) in Malaysia which is divided into two categories, namely pecuniary and subject matters. The pecuniary jurisdiction is to hear and determine any claims where the total amount in respect of which an award of the SMT is sought does not exceed RM 250,000.00 or such other amount as may be prescribed to substitute the total amount<sup>4</sup>.

Next, Section 120 (1) SMA states that an award of the SMT subjected to the relevant operative provision of the SMA will be final and binds all parties to the proceedings. It will be deemed to be an order of the court and be enforced accordingly by any party to the proceedings.

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<sup>1</sup> [Act 757]

<sup>2</sup> [Act 318]

<sup>3</sup> [Act 663]

<sup>4</sup> Section 105 (1) SMA 2013.

Tribunal could also be a party in a proceeding. If the parties are discontented with the award or decision given by the tribunal, they could bring forward the matter to the court for a judicial review. The procedure for the judicial review proceedings in the High Court is contained in **Order 53 of the Rules of Court 2012**. The relief that is sought is invariably an order of *certiorari* to quash the Award. In judicial review proceedings, the High Court exercises a supervisory jurisdiction over the Tribunal to ensure that it has exercised its powers in accordance with the Act<sup>5</sup>. **Further to that, the disputing party may challenge the award at the High Court if they are not satisfied by the award given by the Tribunal on the ground of serious irregularity which causes injustice to the party.**<sup>6</sup>

**However, the Tribunal's award or decision will be registered in the Magistrate Court and will have full effect as if it is a judgment of the Magistrate's Court for the purpose of execution, where it is clearly stated under the provision of SMA 2013.<sup>7</sup> Moreover, Section 123 SMA provides that the award or decision given by the Tribunal must be complied by the disputing party and non-compliance of the award given will entitle that person to a criminal penalty which is a fine not exceeding RM 250,000 or imprisonment.**

The tribunal proceedings also provide for friendly sittings for parties who would not be represented by any advocate and solicitor at the hearings, unless in the opinion of the tribunal, the matter in question involves complex issues of law or if one party may suffer severe financial hardship that he is able to be not represented by any advocate and solicitor<sup>8</sup>. The members of the tribunal comprised of members of the judicial and legal service or persons who are admitted as advocates and solicitors under the Legal Profession Act 1976, who are of not less than seven years standing<sup>9</sup>.

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<sup>5</sup> Section 25 of the Courts of Judicature Act 1964.

<sup>6</sup> Section 121 (1) SMA 2013

<sup>7</sup> Section 120 (2) SMA 2013.

<sup>8</sup> Section 110 (2) SMA 2013.

<sup>9</sup> Section 103 (b) SMA 2013.

## Why Strata Tribunal?

In Malaysia, any person who purchases a parcel in a strata building development enters into a three-fold legal relationship; firstly, he is the individual owner of his parcel; secondly, he is a co-owner with all other owners of the common property. Thirdly, he automatically becomes a member of the parcel owner's body to whom the management and maintenance of the multi-storey building is entrusted<sup>10</sup>. Therefore, each and every parcel owner shall be responsible and accountable for the maintenance and repair of his parcel including the accessory parcel.

Consequently, it is significant for the residents of the strata building to understand the functions of strata management bodies such as the Management Corporation (MC) or the Joint Management Bodies (JMB) where the various duties and functions of the JMB and MC are set out in the Act.<sup>11</sup> Generally, these bodies are established to provide proper maintenance and management in order to administer the living community and in ensuring a more organized and comfortable environment. The details concerning the functions and powers of the developer, JMB, MC and their responsibilities in managing the common property for the benefit of all proprietors are set out in the Third Schedule of the SMA Regulations.<sup>12</sup>

With the enforcement of the SMA, the Strata Management Tribunal ("SMT") is established in accordance with Part XI of the SMA<sup>13</sup>. In theory, the establishment of the SMT will address the stratified property management disputes particularly with regards to the failure of the parcel owners to pay the maintenance fees and also issues on the election of their committee members.

Before the establishment of the Tribunal, JMB and MC had to be innovative yet creative to be able to collect the maintenance fee. Some of them had managed to appoint lawyers but some could not afford to do so.

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<sup>10</sup> Building and Common Property (Maintenance and Management) Act 2007 (Act 633) – Highlights (Part II) by National House Buyers Association published in Iproperty Magazine, 1 December 2007, p. 3.  
<https://www.hba.org.my/articles/iprop/2007-bcp-2.htm>

<sup>11</sup> Section 17 of SMA 2013.

<sup>12</sup> Strata Management (Maintenance & Management) Regulations 2015 (SMA Regulations).

<sup>13</sup> Section 102 of SMA 2013.

This creative process is applied by the management which includes raising the maintenance charges. If the collection is only from 50% of owners which is RM100.00 per parcel owner each month, then additional amount of RM100.00 will be raised to cover for the non-payment by the rest of the owners.

This will penalize those who pay and a hindrance of those who currently cannot afford to pay which ends up never be able to pay at all. All these have been considered and thereto the Strata Management Act has been gazette in which all these issues are addressed.

### **Owners Obligation - Maintenance Fee**

Owners in a strata building lives in a community and this means each owner carries collective responsibilities. What are the collective responsibilities stated under the Act?

One of them is owners have to attend AGMs or EGMs. Their attendance will ensure check and balance and frequently, the owners are oblivious to their obligations and rights.

In order for the owners to have a say in the AGM or EGM, they are obligated to promptly pay the maintenance fee up to date.

Why are the rules being drawn in this manner?

It is to guarantee that monies are sufficed to manage the Strata Building and to maintain a healthy community living. At the AGM and EGM, owners should never fail to monitor and query on the most important obligation of JMB and MC that is collection of the maintenance fee.

The purpose of monies in maintenance account that is held under JMB and MC have been clearly stated under section 23 (3) SMA such as maintaining the common property in good condition, expenses incurred for cleaning and security service, insurance, etc.

### **JMB and MC - Maintenance Fee**

Strata Management has stated how the bodies should manage the collection of maintenance.

Firstly, they should send a reminder of payment due and owing to the bodies. The reminder could be sent in a form of invoice or statement of accounts. The said reminder should provide a time limit or deadline of when the said payment should be cleared.

Secondly, failure to comply with such reminder, the bodies ought to send a notice of demand that is specified in the Form under the Strata Title Management Act, namely form 11 for JMB and form 20 for MC.

Thirdly, if the owner still fails to pay and complete the settlement, the bodies should prepare “Borang 1” under the Strata Management Act and file it to the Tribunal.

This is how the bodies should relinquish their obligations. Failure to comply with the procedures in

disposing the bodies' obligations as provided by the act is an act of defiance and ignorance of their duties under the act.

### **Community Living**

**At the Tribunal, being conducted in an informal manner, the President could guide and remind the parties of what a community living is. It is not about the obligation passed to the bodies but more of a collective spirit in fostering a livable and harmonious community.**

**If the act is being embraced in total, then the spirit of the Strata Management Act could be seen as the educating rather than punishing. The reason of having a Tribunal is that the education process could continue and to ensure the establishment of a healthy community living. Thus, it can be summarized that upon the enactment of the SMA, the establishment of the SMT will be a practical alternative for the parties in dispute to be primarily assisted rather than escalating the dispute to be resolved in the court.**

