2nd READING ROUND-UP SPEECH BY MR DESMOND LEE, MINISTER FOR SOCIAL AND FAMILY DEVELOPMENT AND SECOND MINISTER FOR NATIONAL DEVELOPMENT, ON THE BUILDING MAINTENANCE AND STRATA MANAGEMENT (AMENDMENT) BILL 2017

Mr Speaker sir, I thank the Members for their comments. Let me address some of their questions.

MANAGEMENT AND GOVERNANCE

2 Ms Cheryl Chan asked if the revised proxy system is applicable for all decisions that need to be passed by the MCST. The answer is "yes". The revised proxy system is applicable for all decisions made at the general meeting, and not just AGMs.

3 Ms Chan also asked how to ensure that the tightened proxy system is not circumvented. She raised the possibility of a council forming sub-committees to approve and oversee certain projects, thereby making decisions without the general body's involvement. There is a natural check against this happening. While a council can establish sub-committees to oversee projects, the allocation of the overall annual budget is a decision that only the general body can take at the AGM.

4 Ms Joan Pereira suggested restricting the number of terms for the Chairperson, Secretary, and Treasurer. For clarity, the Treasurer has always been limited to 2 consecutive terms given the financial nature of the post. This is not the case for the Chairperson and Secretary whose duties are more administrative. I agree that a regular renewal of Council Members, especially the leadership positions, is ideal. But the reality is that many MCSTs face challenges in getting sufficient SPs to step forward. So we need to find a balance between wanting to encourage participation and not creating a larger problem of MCSTs being unable to form a council. Let me also underline that any SP who wants to serve on a council has an opportunity to stand for election. This is because the Act requires all council offices to be relinquished for re-election at every AGM.

5 Mr Dennis Tan asked about the situation where there are small councils with two or three lots. Sir, in my earlier speech, I mentioned that MND recognises that the smaller MCSTs will face practical difficulties in getting sufficient people to fill each of the three offices. So we will make use of Section 134 of the Act to exempt MCSTs with ten or fewer lots from this requirement, provided they pass a resolution by consensus to permit the council member in question to hold more than one concurrent key office. This should cover less than 5% of existing MCSTs; these are the small ones.

6 In such situations, it will encourage these MCSTs to put in place the necessary governance measures catering to situations where some of these officeholders wear more than one hat and possibly for prolonged durations of time.

7 Assoc Prof (AP) Fatimah Lateef asked if there are more innovative ways to balance the needs of different stakeholders in mixed-use developments. She felt that the allocation of one seat for each user group on the council may be inadequate because it may not account for the proportion of share values held by each user group. The new amendment reserves a seat so that each user group is represented in the council. But AP Fatimah is correct that it does not ensure that each user group is represented in the exact same proportion as their share value they hold. This would be quite a prescriptive method to ensure that everyone has a “voice” in the Council. And this is not to say that SPs of specific user groups cannot step forward in AGMs to make their views known clearly and directly.

8 Developers are encouraged to design their mixed-use developments under a 2-tier management corporation (MC) scheme. This scheme has a main MC for the entire development at the first tier, and subsidiary management corporations of the individual user groups at the second tier. The sub-MCs can then manage their own needs. For example, they can make their own by-laws and effect improvements to the limited common property which is for the exclusive use and enjoyment of that user group. Each sub-MC will also have a reserved seat in the main council to have a say where common property is shared with the main MC.

9 Ms Pereira, Mr Gan Thiam Poh and Mr Yee Chia Hsing touched on the issue of conflict of interest, particularly in the appointment of service providers by MCST

councils. Ms Pereira noted that there have been instances where council members would bulldoze certain decisions through meetings for their own benefit. Mr Gan commented that all council members should be asked to disclose their interests. Mr Yee emphasised the need for checks and balances to ensure that service providers are appointed on their own merits, rather than by affiliation to any council member. These are all important points about good governance.

10 There are existing safeguards in the Act. Under sections 60 and 61, all council members are expected to act honestly and exercise reasonable diligence in the discharge of their duties. Where there is a potential conflict of interest, a council member must declare the nature of his interest. The council member must also recuse himself from the discussion and voting on the matter, if pecuniary interest is involved.

11 MCSTs can also ensure that their contractual agreements with service providers contain expected levels of performance and/or service quality to facilitate greater transparency and tighter financial governance. MCSTs can also implement internal controls and procedures when selecting and appointing service providers. This could include requiring a minimum number of quotes to be solicited as part of the procurement procedure. To guide MCSTs, BCA's strata management guides will highlight such good practices for reference.

12 Ms Chan suggested that we consider the need for MAs to comply with some basic service standards, staff qualifications, and audits of procurement processes. Service standards can be subjective and they also tend to vary according to the needs and preferences of different MCSTs. Hence, our sense is that it is better for MCSTs to specify their expected service standards in their contractual agreements with the MAs instead.

13 But we recognise the importance of having competent MAs. As I mentioned earlier, we are working with industry associations to implement a voluntary accreditation system with the aim of improving the level of competency and professionalism of MAs. The BCA Academy also offers courses covering the strata management framework and the relevant rules and regulations. We encourage MAs to make use of these training opportunities.

14 Er Dr Lee Bee Wah suggested that there should be an option for MCSTs to appoint MAs for shorter terms – shorter than three years. Let me clarify that this is already possible. The Act allows MAs to be appointed for terms of up to three years. So MCSTs already have the option of varying the term of appointment. Of course, both parties would have to agree to the terms. In any case, the MA's performance must be reviewed at every AGM.

15 Ms Chan asked how the Commissioner assesses proposed maintenance charge rates to ensure that they are justifiable, considering that the facilities have yet to be built. While the Commissioner will have a broad sense of what comparable projects are charging, the onus is on developers to provide realistic estimates of the maintenance budget needed. Developers will need to take into account the costs for essential services like cleaning, security, utilities, insurances and maintenance of lifts and other common property. They should project these costs in relation to the development size, amenities provided, and the construction timeframe to factor in possible inflation. Developers can tap on their past experience in building and managing other properties to come up with reasonable estimates.

16 Developers will also need to submit supporting documents like quotations from service providers and consultants' estimates to the Commissioner to substantiate their proposed rates. The Commissioner will review the documents and compare the proposed maintenance charges with those of developments of similar size and facilities in the same vicinity. The Commissioner may also require developers to submit additional information to justify the proposal.

17 Mr Gan suggested that developers should be required to transfer at least 3 to 6 months' worth of maintenance funds to the MCSTs. Ms Chan and Mr Louis Ng also asked related questions of what happens when the approved maintenance charges are subsequently found to be excessive or insufficient for the development as the case may be.

18 Let me address Mr Gan's point first. The funds to be transferred are the balance of the maintenance charges which the developer has collected from SPs after handing over keys to the units. The handover period from the developer to the MCST is typically about a year, so accumulating a balance of 3 to 6 months will be quite a challenge.

19 On Ms Chan's and Mr Ng's queries, what the Commissioner approves is actually the maximum rate of the maintenance charge. I shared earlier that this approved rate will be reflected in the prescribed Option to Purchase, as well as the Sale and Purchase Agreement forms. This arrangement is the most flexible in meeting both the needs of developers and SPs. If the rates are found to be too high, developers have the option of revising the rate downwards without the need for the Commissioner's approval. If the charges are too low, developers have the flexibility of revising the rate upwards, but this comes with conditions. For example, the developer will need to obtain the consent of all purchasers and seek the Commissioner's approval again on the revised rate. To assess the validity of the developer's proposed revision, the Commissioner can ask for supporting documents like revised quotations from service providers and proof of purchasers' consent. After the MCSTs are formed, SPs can review and revise the maintenance charges at any general meeting.

20 Er Dr Lee also spoke about the amendment to make maintenance charges known upfront to purchasers. She suggested taking the amendment a step further by making known the maintenance charge rate/s for the first three years as well as the estimated time and expenses involved for the first replacements of lifts, pumps and water tanks. The maximum rate proposed by developers would already reflect what SPs need to pay on average for the initial years.

21 It may not be easy for developers to provide very accurate estimates of what it might cost to replace major equipment as the replacement schedule would depend on several factors including usage, maintenance, and alternatives. But it is not that it cannot be done. These kinds of capital expenses are financed by sinking fund contributions so MCSTs should conduct annual budget reviews to ensure that their sinking funds are adequate for the expected replacements.

22 Mr Gan and Mr Melvin Yong spoke about placing a cap on the utilisation of management funds, while Mr Dennis Tan spoke about the fact that the use, or setting aside of budget or the expenditure by MCs out of maintenance funds for social, educational, supporting as well as legal matters is already quite common, he felt that it would be an encumbrance to require a general meeting and EOGM to set a cap on these budgets and for the MCs to go back to the general meeting to get approval.

23 Maintenance charges, as the name goes, are intended for maintenance. There are, of course, MCSTs that would use some of these funds from time to time to organise events like festivals and celebrations which bring all the SPs together for bonding. But from time to time, we also hear cases where SPs complain why maintenance charges are being used for things other than maintenance. In fact, this amendment takes a step forward in regularising and facilitating some of these activities that are already happening, and which help to foster within developments a sense of activity and for people to come together. Having said that, I think it is a good first step to ensure that there is some safeguard on the use and extent of use of these funds, and it is up to the MC, together with the general meeting and the caucus of the general meeting, to agree on how the budget will be set.

24 In keeping with the spirit of self-governance, we believe that MCSTs should decide how their common funds are used. Therefore, our proposal requires the general body to decide, by way of passing an ordinary resolution at the AGM, if they wish to allow funds to be utilised for such activities. As an additional safeguard, MCSTs can also introduce caps on related expenditure to minimise over-spending.

25 Er Dr Lee suggested that the rental fees for the leasing of common property to commercial entities should be channelled into the MCST's management fund, by way of a special resolution. Let me clarify that the BMSMA already requires income derived from the rental of common property to be deposited into the management fund. There are also existing provisions to seek approval from the general body prior to the renting out of common property. The specific level of approval needed depends on the duration of the lease. For instance, 90% resolution is required for the MCST to lease out common property for more than 3 years. Hence, there is no further need to authorize the MCST to do so by way of a special resolution.

26 Mr Louis Ng and Mr Dennis Tan asked how the threshold for invoking the provisions to place an MCST under official management was derived. Mr Ng also asked about the rationale for introducing new sections 126A and 126B, if motions can already be passed at general meetings to resolve disputes. Let me address these points raised.

27 First, the 20% aggregate share value threshold is pegged to the existing threshold criteria for SPs to ask for an extraordinary general meeting (EOGM).

28 Second, while the preference is for MCSTs to resolve their differences at general meetings, this is not always possible even if there is a quorum present. Hence, the new provisions empower the Commissioner to exercise the power to intervene, but only as a last resort.

29 Third, the Commissioner may decide to appoint an Official Manager (OM) if he deems that the disputes have resulted in a lack of maintenance and threatened the health or safety of people living in the development. For example, health concerns might result from the accumulation of refuse if not cleared. Safety concerns could also arise from disrepair to buildings when maintenance has not been done.

30 Now to address the concerns of both Mr Ng and Mr Tan as to the way in which it is crafted and the manner in which the Commissioner will exercise his power and when he will do so and invoke the power to introduce an OM, I think it is important to bear in mind that in keeping with the self-regulating principle of the BMSMA, we believe that the Commissioner should only intervene at the behest of SPs of the MCST, and as a last resort. Furthermore, there are costs to be borne by the MCST if an Official Manager is appointed. Hence, the decision should remain in the hands of the SPs. At the same time, we are mindful not to be drawn into disputes and to allow the Commissioner and the OM to be used as tools to facilitate the resolution of disputes between different factions of MCSTs or different factions of SPs. And so, the Commissioner will exercise his power sparingly and look at each fact on its own circumstances and determine whether the health and safety of the SPs of the estate are indeed threatened before they invoke this measure.

OPERATIONAL ISSUES ON THE GROUND

31 Ms Cheryl Chan asked about BCA's plans to address the issue of developments with insufficient members to form a functional management council. We recognize that some councils face challenges in identifying enough SPs to serve. That said, most MCSTs do not face this issue because SPs generally recognise that it is in their interests to be active in managing their estates' affairs.

32 in cases where no one is willing to be nominated to form a council, SPs will be collectively responsible for the running of the estate. Alternatively, any SP can apply to the Strata Titles Boards (STB) for an order to appoint a MA to assist with the running of the estate. The MA will report to the general body, or general meeting.

33 On a related note, Mr Yong asked if there was a need to specify the composition of the council. Our sense is that we should leave the composition and makeup of the council to individual MCSTs and the SPs. Any MCST council is made up of owners who wish to volunteer their time to make the estate a better place. Every SP who steps forward wishes to contribute in some way or other. If SPs are concerned about how representative their council is of the SPs in the estate, then they should be prepared to step forward, serve and be counted.

34 Mr Yee suggested setting a more stringent requirement for the 'half-hour rule' which allows general meetings to commence if there is no quorum by the appointed meeting time. While we appreciate the intention behind this suggestion, there is a practical issue, of course, to consider. The problem is that some MCSTs experience poor attendance. Raising the bar for the application of 'half-hour' rule may pose practical difficulties for these MCSTs to proceed with their general meetings. This may be detrimental if there are critical decisions relating to safety or maintenance that need to be made. We are also mindful that any adjournment of the meetings will incur additional costs for the MCSTs. Having said that, it is open, of course, to MCSTs at the general meeting – members – to decide whether they wish to carry on after invoking this rule or to postpone it to another day when more SPs can attend.

35 Mr Yee also suggested putting on hold all decisions made at general meetings where the 30% quorum was not met. SPs would then have a 30-day period to challenge these decisions. We are concerned that such a move might be counter-productive as it will open many decisions to review and essentially lengthen the process of decision-making. It could also lead to prolonged discord. All SPs have a stake in the management and maintenance of their developments so we hope that they make the effort to attend general meetings or at least appoint a proxy. This also addresses the query by Mr Melvin Yong on why AGMs can be allowed to commence without a quorum. It is about striking a practical balance.

36 Mr Yong sought clarification on what constitutes 'safety' in the context of 'safety equipment' which SPs can install without the MCSTs' approval. This will depend on the purpose of the equipment. For example, grilles when installed at a balcony will be deemed safety equipment as they serve the purpose of preventing fall from height.

37 Er Dr Lee asked for the definition of 'safety equipment' to be extended to cover other items. The proposed definition will cover a host of other items including balustrades, railings, fences, screens and lock or security mechanisms.

38 Ms Joan Pereira asked if SPs, particularly the elderly and handicapped, could be empowered to seek assistance from government agencies directly for matters relating to safety, security, hygiene and barrier-free-access. There are already existing regulatory requirements on matters concerning building safety, environmental health, and barrier-free accessibility. For such issues, MCST can always approach the relevant government agencies for assistance. If SPs and MCSTs still cannot see eye to eye, the Act has set out procedures for the resolution of certain disputes such as by going to the STB.

39 Mr Dennis Tan also asked about the definition of 'common property' which is being amended by this Bill, and his concern about the possibility of engendering further disputes between MCs as well as SPs on what amounts to common property and whether they can proceed with their own renovations. Let me say that the aim of this amendment is in fact to clarify and to make more clear and explicit the definition of

common property, though I would agree lawyer-to-lawyer that the more definitions you put in has never dissuaded lawyers from helping to create more disputes. But always, we rely on good sense of SPs and MCSTs to determine and resolve the disputes amongst themselves and to resort to dispute resolution including alternative dispute resolution or to go to the STB if these things stand in the way of resolution.

40 Mr Yong asked if MND had plans to help subsidise lift installations in old private apartments without lifts. There is no specific plan to do so. But these types of MCSTs can tap on BCA's Accessibility Fund if they meet the eligibility criteria. The Fund provides up to 80% co-funding for accessibility upgrading, which could include lift installations. There is an overall funding cap of $300,000 per development.

DISPUTE RESOLUTION

41 Mr Gan, Mr Yong and Ms Chan asked for dispute resolution platforms to address disputes through mediation, rather than legal action. Specifically, Mr Gan asked if we could set up a mediation centre with industry experts and legal professionals to look into claims and disputes between new home-owners and developers. I am happy to say that existing mediation platforms such as the Singapore Mediation Centre and REDAS Conciliation Panel are already able to provide this service.

42 Mr Yong suggested having a mediation board to resolve common disputes in MCSTs. For that, we have the Strata Titles Boards (STB) to hear and resolve a list of MCST disputes. The list includes disputes on costs or repairs and rectifying a complaint in respect of a defect in a lot or common property. Alternatively, SPs may approach the Community Mediation Centre when the disputes are between neighbours or with neighbouring developments. If mediation fails, SPs may seek legal advice.

43 Ms Chan asked about the available recourse if there are disputes hampering efforts to replace or repair common facilities for safety reasons. Public safety is crucial. Hence, for safety critical situations involving structural defects in the building or common property, or any health hazard to the development, or if a Notice or Order has

been served by any public authority on the MCST to undertake certain works, the MCST must comply. It has powers under the Act to carry out the required works.

44 Mr Dennis Tan also asked about the situation where MCSTs take action against SPs in the situation where modifications had been made by previous SPs – which are unauthorised changes made through their lots. If the contract for the sale and purchase between the SPs follows the terms in the conditions of sale from the Law Society of Singapore, then the new SP has the recourse of referring to adjudication under the Fourth Schedule of the Conveyancing and Law of Property Rules 2011. This is because the ex-SP, who is the vendor to the contract, had undertaken that he had not carried out any unauthorised additions or alterations to the property – so depends on the form of contract.

45 Of course, MCSTs may initiate action against the former SP under common law if it wishes to do so for any breach of duty and care in relation to duties set out under Sections 37(3) and 37(4) of the Act.

46 Building defects are a common subject of disputes. Mr Yee asked if the Defects Liability Period (DLP) could be extended until 12 months after the first AGM. The concern here seems to be with interim MAs being ineffective in helping SPs pursue defect rectification with developers.

47 But, extending the DLP on its own will not address the root problem of poor quality by some developers and contractors. This is something that MND is looking into. Specifically, we are looking at providing home-buyers with more information about the track record of developers and contractors with regard to design and construction quality. This will help home-buyers make more informed choices. It will also put some pressure on developers and contractors to ensure that they deliver good quality.

48 AP Fatimah Lateef spoke on the issue of water leakage and asked if there could be guidelines to advise SPs on handling such issues. To begin with, the statutory presumption clause – which assumes that the responsibility for inter-floor leakage is with the owner of the unit above – does not apply to cases of lateral seepage.

49 In cases of inter-floor leakage, the premise is that the floor finishing and/or the underlayment above the floor slab has been damaged, which then leads to water seeping through the slab and into the lot below. While the slab is deemed as common property, its definition explicitly excludes any layer that is the floor finishing or underlayment. Taken together, the leakage is deemed to originate from the strata lot above. Hence, it is the responsibility of the owner of the lot above to either prove otherwise or repair the defect.

50 In cases of lateral seepage, the party responsible for repairing the defect would depend on whether the leak originates from the interior of a strata lot or from common property. For example, if rainwater seeps in through an external building wall which is common property, the MCST will be responsible for any necessary repairs.

51 For good neighbourliness, relevant parties should first explore an amicable solution by co-operating to investigate and repair the leak. Parties could appoint a Building Surveyor to assist with the determination of the source and cause of the leak. Alternatively, parties may seek recourse through mediation channels like the Strata Titles Boards and the Community Mediation Centre.

CONCLUSION

52 Mr Speaker Sir, I would like to conclude by thanking the Members once again for their many thoughtful suggestions, and to members of the public and to industry who have given us many useful ideas and views that have helped us to shape and craft the Bill that you see before Members today. The proposed amendments to the BMSMA were meant to balance between the necessary regulatory oversight to safeguard the interests of SPs, and an architecture that is flexible and gives latitude to make self-governance possible for MCSTs. These amendments are the result of many rounds of consultation with stakeholders over the last few years. We hope that the proposed amendments will help SPs as they step up and get involved in their respective councils and estates.

53 Mr Speaker sir, I beg to move.

. . . . .