2nd READING 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 beg to move, "That the Bill be now read a Second time."

Overview

2 The Building Maintenance and Strata Management Act, or BMSMA, applies to all strata-titled developments in Singapore. When the Act was introduced in 2005, there were just 170,000 strata units. Today, the number has doubled to 340,000. The number of management corporations, or MCSTs, has also increased from 2,700 in 2005 to 3,400 today.

3 Strata developments are premised on a unique concept of community-based property ownership. Subsidiary proprietors, or SPs, individually own their lots, but everything outside of those lots is shared. This entails collective ownership of common property and joint responsibility for the upkeep of shared areas. In short, SPs need to cooperate and collaborate as they self-govern and maintain their own estates. The BMSMA provides the legal framework for them to do so.

4 From time to time, there have been calls to introduce more prescriptive legislation, particularly to resolve disputes between SPs, to spell everything out in crystal clear detail, with no room for discretion. However, this is probably not the most effective way to proceed, as each development has unique characteristics, including demographic of SPs, size, age, interests, and location. It also has its own set of circumstances and concerns. It will be very difficult to have a one-size-fits-all legislation that can satisfy all stakeholders in all developments.

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5 So, the Act has been designed to empower MCSTs to manage their own affairs and make decisions relevant to their needs. Ultimately, Sir, it is about striking a balance between maintaining the flexibility that underpins self-governance, while having

sufficient oversight and structure to prevent abuse of the system. And this is the thinking that underpins our proposed amendments to the Act.

Review of the BMSMA

6 We started a comprehensive review of the BMSMA in 2012. The Building and Construction Authority (BCA) held 3 rounds of public consultations, 2 focus group discussions, and a townhall dialogue, where we received feedback from 1,700 respondents. We also took into account views given through forum letters, emails, and other channels. We have considered them and incorporated many into the amendments that are before this House today. For example, one amendment will now require SPs to give explicit consent before they can be nominated and elected into an MCST council. While this may seem so obvious as to not necessitate express legislation, we had received feedback that some SPs had been elected into office without their knowledge! So the feedback that we received was very useful in helping us to craft this Bill.

7 Broadly speaking, the amendments focus on three areas:

a) First, setting clear boundaries for good governance and transparency,

b) Second, safeguarding SP interests, and

c) Third, clarifying existing provisions to facilitate stakeholders' understanding of their roles and responsibilities.

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Sir, let me go through the key features of the Bill.

Setting up clear boundaries for good governance and transparency

8 First, we want to set clear boundaries, roles, and responsibilities to enhance governance and transparency. To begin with, we want to better define the duties and responsibilities of developers. Developers are responsible for the design and construction of projects. But their responsibilities do not end there. They are also key stakeholders during the handing over of projects and after the constitution of MCSTs.

9 So, under clause 18, we propose to require that developers not only convene the first annual general meeting (AGM), but chair it too. This is in light of feedback that some developers have devolved the duty of presiding over the first AGM to managing agents. As a result, SPs often felt that their concerns, such as workmanship defects in their units or common property, were not expeditiously brought to the attention of the developer.

10 We also want to ensure that the handover from the developer to the MCST is in order. Members may be surprised to know that there have been actual instances where developers transferred over maintenance accounts that were in deficit! So, under Clause 17, we will require developers to transfer a positive balance of funds to the MCST. This is to ensure that MCSTs should not have to take over deficits that they were not responsible for. In the light of the increasing adoption of prefabricated bathroom units, we will also require developers to hand over the manufacturer's manuals to the MCST. This is in addition to other important documents like as-built drawings and warranties. This will help SPs maintain the installations in their lots in future.

11 After the handover, the MCST becomes responsible for governance and management. A large part of this responsibility is vested in the management council, or MC. We have received examples where a single council member concurrently holds all 3 offices of Chairperson, Secretary, and Treasurer. Such a situation can lead to poor governance, inadequate checks and balances, and possible conflicts of interest. So Clauses 37 and 40 of the Bill explicitly prohibit council members from holding more than 1 of these offices concurrently.

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12 However, we recognise that smaller MCSTs face practical difficulties in getting sufficient people to fill each of these three offices. Hence, we will, under existing section 134 of the Act, exempt MCSTs with 10 or fewer lots from this requirement, provided they pass a resolution by consensus to permit the council member in question to hold more than 1 concurrent key office. This exemption will cover less than 5% of existing MCSTs. The remaining MCSTs are larger developments that should be able to find additional council members to take up key posts.

Safeguarding subsidiary proprietors' interests

13 Second, we are adding more safeguards to protect the interests of SPs'. One measure, in Clause 53, will empower the Commissioner of Buildings to place an MCST under official management when there is a failure in the management and operation. This new section 125A of the Bill stems from our experience with an actual case. There was a strata development which was seriously at risk of falling into extensive disrepair because of disputes between the council and some SPs. The Chairperson, after being ousted, refused to relinquish his position and authorise the newly elected council members as bank signatories. The bank subsequently froze the MCST's accounts so the MCST could not pay for its service providers. During this time, the development could not continue with its regular maintenance.

14 Let me emphasize that placing an MCST under official management is meant to be an interim solution, and the intent is not for the Commissioner to permanently take over the running of any strata estate. Instead, the objective is to ensure that management and routine maintenance are not impeded while internal issues are sorted out. The principle of strata living remains one of self-governance. So the bar is set high before this provision can be invoked. A prescribed number of SPs have to make a written request to the Commissioner. The latter must also be of the opinion that official management is necessary. For example, the mismanagement is so severe as to likely jeopardise the health or safety of SPs and occupiers.

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15 Separately, Members would have read in media reports about "proxy wars' at general meetings where some proxy holders garnered enough undirected proxy votes to dominate proceedings. There was a case a few years ago where 3 council members held more than 60% of the votes at a general meeting! This allowed them to effectively block attempts to remove them.

16 Clause 59 therefore limits the number of proxies one can hold and to introduce directed proxy voting. The First Schedule to the BMSMA is amended to set a cap for any one proxy holder at either 2% of the total number of lots in a strata development or 2 lots, whichever is higher. Any proxy instruments held in excess will be treated as having no effect. There was overwhelming support for this proposal during public

consultations. Many respondents felt that this would help rein in abuse and the ensuing spats. As an added safeguard, we will be prescribing an improved form of instrument to appoint a proxy. This will allow the proxy giver to explicitly direct his proxy to vote as he intended. This is an improvement from the current situation where proxy holders are essentially given 'blank cheques'.

17 We recognize that these proposals cannot totally eradicate the problem of proxy abuse. Several SPs can theoretically still come together to coordinate and exercise their proxy votes collectively. But again, it is about striking a balance. Abolishing the proxy system would mean that any SP unable to attend general meetings would be completely unrepresented. So in our view, the 2% cap is a calibrated point between tightening the system and keeping it practical.

18 On the issue of fair representation, Clause 38 (new section 53A) provides that each class of use in a mixed-use development will be given a reserved seat in the council. Different classes of uses have different needs, so it is important for each to have a 'voice'. The classes of use include residential, commercial, and single independent lot groups like hotels and serviced residences. There was feedback about a residential and retail development where the council was dominated by retail SPs. This resulted in a skewed decision by the council to lease common property cheaply to the retail shops in the development. The facility of reserved seats for each user class will go some way to address over-domination by any one user class, and put each group in a more equitable position in managing the MCST.

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19 Another amendment, at Clause 15, reframes the requirement in section 18 for developers to seek approval from the Commissioner of Buildings for the maximum rate for maintenance charges it collects. Currently, developers need to seek the Commissioner's approval for maintenance charges, but we do not mandate when approval must be obtained. Often, developers seek approval just before handing over the strata lots to purchasers. We have received feedback that some purchasers were, at the point of sale, misled into thinking that the maintenance charges would be low, only to be shocked years later that the actual charges were almost more than double! The proposed change will support amendments to the statutory forms for Option to Purchase and Sale and Purchase Agreement, which require the approved

maintenance charge rate to be reflected. This will ensure that the maximum quantum for charges will be transparent at the point of sale.

20 Next, we want to strengthen an existing provision to facilitate SPs' installation of safety equipment in their own lots. While an existing prescribed by-law states that SPs cannot be prevented from installing any structure or device that prevents harm to children, SPs are also required to seek the MCST's approval for installations which affect the appearance of the building. There have been cases of MCSTs vetoing SPs' installation of safety grilles on the basis that the designs affected the building's appearance.

21 With this amendment in Clause 26, MCSTs can no longer disallow installations of safety equipment such as grilles installed at windows or balconies. But new section 37A(2) will place the onus on SPs to ensure that their installations maintain a certain uniformity of appearance. In this regard, developers and MCSTs are encouraged to provide design guidelines for such installations upfront, to guide SPs in achieving the overall desired appearance of their estates.

Clarifying existing provisions and removing ambiguities

22 Third, we will amend some existing provisions for clarity. For example, the Bill will make clear at Clauses 2(c) and (i) that 'common property' includes shared building services like fire sprinklers and central air-conditioning systems, as well as structural elements like beams and floor slabs, even if they are physically within one lot. External walls, roofs or façades of a building will also be made part of the common property, provided they are being used or enjoyed by occupiers of 2 or more lots.

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23 The amendment will also make clear that the responsibility for maintenance and repair of such services and structural elements is on the MCST and not individual SPs, unless the individual SPs were responsible for the damage. This is because such services and elements serve more than one strata lot, notwithstanding their physical location within one lot. But I should clarify that defining floor slabs as part of common property will not change the existing presumption clause for strata developments that

the upper floor unit is responsible for inter-floor water leakage, unless it is able to prove otherwise.

24 Related to the management of common property, we will make clear what changes to common property require a special resolution. This amendment was triggered by a recent dispute over an MCST's intent to permanently remove a facility on common property. An SP challenged the MCST's mandate, as the Act currently only stipulates installation and provision of additional facilities as improvement works. The amendment in Clause 20 will clarify that improving the common property extends to replacement or removal of facilities and structures on common property, or changing the use of common property. All these will henceforth require special resolution.

25 In addition, we propose to make explicit the decisions that require ordinary resolutions. For example, the Act is currently silent on whether determining the amount of maintenance contributions, and imposing restrictions on the council can be decided via ordinary resolutions. It was previously considered unnecessary to specify since an ordinary resolution is the default mode for an MCST's decision-making. However, we recognise that providing more explicit provisions will facilitate laypersons' self-governing efforts. The Bill therefore makes several amendments to the Act to specify where ordinary resolutions are required for various decisions an MCST can make.

Going beyond legislation to strengthen self-governance

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26 Beyond enhancing the Act, we will help stakeholders to better understand their roles and responsibilities in relation to the self-governing framework. As many SPs find the BMSMA complex and technical, BCA will publish a series of Strata Management Guides covering areas where the bulk of feedback has been received. These guides will clarify the various provisions and provide references for good practices. More importantly, these guides will be presented in clear and simple terms to facilitate understanding.

27 There will also be targeted efforts to level up the competencies of council members of MCSTs and Managing Agents (MAs). First, BCA will continue to hold regular seminars for council members, especially first timers, to guide them on their

statutory duties and responsibilities under the BMSMA. Second, we will raise the bar for MAs and help MCSTs select better performing ones. To do this, we are working with the relevant industry associations to develop an accreditation framework for MA firms. This will set benchmarks for MA performance. This accreditation framework will also feature a robust competency training component to ensure that MAs can deliver quality service. We will share more details on these plans when ready.

Conclusion

28 Sir, under the BMSMA, all SPs have a say in the management of their estates. This self-governing approach helps to provide a broad and flexible framework that caters to the unique circumstances and interests of each MCST in Singapore. The strata system works well when there is cooperation and commitment from stakeholders. We hope that the proposed amendments will help SPs as they step up and get involved in their respective councils and estates.

29 Sir, I beg to move.

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