



LAWS OF MALAYSIA

Act 663

BUILDING AND COMMON PROPERTY (MAINTENANCE AND MANAGEMENT) ACT 2007

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LAWS OF MALAYSIA**Act 663****BUILDING AND COMMON PROPERTY
(MAINTENANCE AND MANAGEMENT) ACT 2007**

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LAWS OF MALAYSIA

Act 663

**BUILDING AND COMMON PROPERTY
(MAINTENANCE AND MANAGEMENT) ACT 2007**

An Act to provide for the proper maintenance and management of buildings and common property, and for matters incidental thereto.

[]

WHEREAS it is expedient for the purposes only of ensuring uniformity of law and policy with respect to local government to make laws relating to the maintenance and management of buildings and common property within Peninsular Malaysia and the Federal Territory of Labuan:

NOW, THEREFORE, pursuant to Clause (4) of Article 76 of the Federal Constitution, IT IS **ENACTED** by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title, application and commencement

1. (1) This Act may be cited as the Building and Common Property (Maintenance and Management) Act 2007.

(2) This Act shall apply only to Peninsular Malaysia and the Federal Territory of Labuan.

(3) This Act shall come into operation in each State on such date as may be appointed by the Minister, after consultation with the State Authority, in relation to that State by notification in the *Gazette*, and the Minister may, after consultation with the State Authority, appoint different dates—

- (a) for the coming into operation of this Act in different local authority areas or parts of local authority areas; and
- (b) for the coming into operation of different provisions of this Act in different local authority areas or parts of local authority areas.

(4) This Act shall come into operation in the Federal Territory of Kuala Lumpur, the Federal Territory of Labuan and the Federal Territory of Putrajaya on a date to be appointed by the Minister responsible for the Federal Territory of Kuala Lumpur, the Federal Territory of Labuan and the Federal Territory of Putrajaya by notification in the *Gazette*.

(5) Notwithstanding subsection (3), the State Authority may, by notification in the *Gazette*, extend any of the provisions of this Act to apply to the whole or any part of any area within the State which is not under any local authority area; and may make such modifications, amendments or variations to the provisions of this Act as may be necessary for the purpose of their application to such area.

(6) Notwithstanding subsection (3), the State Authority may, by notification in the *Gazette*, exempt any part of any local authority area from any or all of the provisions of this Act or any regulations made under this Act.

(7) The State Authority may, if in its opinion it would not be contrary to the public interest, and the interest of the purchasers to do so, suspend the operation of this Act or any provision of this Act in any local authority area or any part of any local authority area or any other area for such period as it deems fit.

(8) In this Act, references to the State Authority in relation to the Federal Territory of Kuala Lumpur, the Federal Territory of Labuan and the Federal Territory of Putrajaya shall be construed as references to the Minister responsible for the Federal Territory of Kuala Lumpur, the Federal Territory of Labuan and the Federal Territory of Putrajaya.

Interpretation

2. In this Act, unless the context otherwise requires—

“Building Maintenance Account” means the Building Maintenance Account opened and maintained under section 16;

“Body” means the Joint Management Body established under section 4;

“building” means any object erected on the development area, and includes the common property of the building;

“building or land intended for subdivision into parcels” means—

(a) any building or buildings having two or more storeys in a development area and intended to be subdivided into parcels; and any land on the same lot intended to be subdivided into parcels to be held under a separate strata title or for which an application for subdivision has been made under the Strata Titles Act 1985 [*Act 318*]; or

(b) any development area having two or more buildings intended to be subdivided into land parcels as defined in the Strata Titles Act 1985;

“Central Bank” means the Central Bank of Malaysia established under the Central Bank of Malaysia Act 1958 [*Act 519*];

“charges” means any money collected by the owner, developer, Body or managing agent from the purchaser for the maintenance and management of a building or land intended for subdivision into parcels and common property;

“managing agent” means any person appointed by the Commissioner of Buildings under section 25;

“property” means any land on the development area, and includes any building or part of a building that has been erected or is being erected on the land, and also includes a building or land intended for subdivision into parcels;

“common property”, in relation to a development area, means so much of the development area as is not comprised in any parcel, such as the structural elements of the building, stairs, stairways, fire escapes, entrances and exits, corridors, lobbies, fixtures and fittings, lifts, refuse chutes, refuse bins, compounds, drains, water tanks, sewers, pipes, wires, cables and ducts that serve more than one parcel, the exterior of all common parts of the building, playing fields and recreational areas, driveways, car parks and parking areas, open spaces, landscape areas, walls and fences, and all other facilities and installations and any part of the land used or capable of being used or enjoyed in common by all the occupiers of the building;

“Committee” means the Joint Management Committee established under section 11;

“development area” means any alienated land held as one lot under final title (whether Registry or Land Office title) on which building or land intended for subdivision into parcels is constructed or is in the course of construction;

“local authority area” means any area in a State that has been declared by the State Authority to be a local authority in accordance with section 3 of the Local Government Act 1976 [*Act 171*];

“sinking fund” means a special fund opened and maintained under section 24;

“Building Maintenance Fund” means the Building Maintenance Fund that the Body is required by section 22 to maintain;

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

“replacement value” means the value to replace the building in the case of fire or damage;

“developer” means any person or body of persons (by whatever name described), who develops any land for the purpose of accommodation including accommodation for commercial and industrial use and includes the executors, administrators and successors in title or permitted assigns of such person or body of persons;

“purchaser” means the purchaser of a parcel;

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

“management corporation” means the management corporation established under the Strata Titles Act 1985;

“Commissioner” means the Commissioner of Buildings appointed under section 3;

“parcel”, in relation to—

(a) a building intended for subdivision, means one of the individual units comprised in the building which (except in the case of an accessory parcel) is held or to be held under a separate strata title; and

(b) a land intended for subdivision, means one of the individual units of land parcel;

“accessory parcel” means any parcel shown in a strata plan as an accessory parcel which is used or intended to be used in conjunction with a parcel;

“local authority” includes any person or body of persons appointed under any written law to exercise and perform the powers and duties which are conferred and imposed on a local authority under any written law;

“allocated share units” means the share units to be assigned to each parcel by a developer’s licensed land surveyor.

PART II

ADMINISTRATION OF THE ACT

Appointment of Commissioner of Buildings and other officers

3. (1) The State Authority may, in respect of a local authority area or any other area, appoint an officer to be known as the Commissioner of Buildings and such other officers as may be necessary for the purposes of administering and carrying out the provisions of this Act.

(2) The Commissioner, subject to any general or special direction of the State Authority, shall have charge of the administration of this Act and Parts VI and VII of the Strata Titles Act 1985 and shall perform such other duties as are imposed and may exercise such powers as are conferred upon him by the Strata Titles Act 1985.

(3) Subject to any general or special direction of the Commissioner, the powers conferred and the duties imposed upon the Commissioner by this Act or any regulations made under this Act may be exercised or performed by any other officer appointed under subsection (1).

PART III

MANAGEMENT OF BUILDING OR LAND INTENDED FOR SUBDIVISION INTO PARCELS

Establishment of a Joint Management Body

4. (1) Where a building or land intended for subdivision into parcels has been completed—

- (a) before the commencement of this Act and vacant possession of the parcels has been delivered by the developer to purchasers but the management corporation has not come into existence, a Joint Management Body shall be established consisting of the developer and the purchasers upon the convening of the first meeting not later than twelve months from the commencement of this Act; and
- (b) on or after the commencement of this Act, a Joint Management Body shall be established consisting of the developer and the purchasers upon the convening of the first meeting not later than twelve months from the date of delivery of vacant possession of the parcels to the purchasers.

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

(3) The Body may sue and be sued in its name.

(4) The Body shall comprise the developer and the purchasers.

Duty of developer to convene meeting

5. (1) It shall be the duty of the developer to convene the first meeting of all purchasers.

(2) The developer shall give a written notice of the first meeting to all purchasers not less than fourteen days before the meeting.

(3) Without prejudice to subsection (1), if the developer fails to convene the first meeting within the specified period, the Commissioner may appoint a person to convene the first meeting of the Body within such time as may be specified by the Commissioner.

(4) The developer shall, until the establishment of the Body and subject to the provisions of this Act, be responsible for the maintenance and management of the property.

(5) Any developer who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding three months or to both.

First meeting of Joint Management Body

6. (1) The agenda for the first meeting of the Body shall include the following matters:

- (a) the election of the office bearers of the Committee as provided for in subsection 11(2);
- (b) to confirm the taking over by the Body of insurances effected by the developer;
- (c) subject to subsection 23(2), to determine the amount to be paid by the purchasers to the Building Maintenance Fund for the maintenance and management of the common property of the building;
- (d) the determination of the rate of interest payable by a purchaser in respect of late payment of charges; and
- (e) any matter connected with the maintenance and management of the common property of the building.

(2) The quorum at the first meeting of the Body shall be one-quarter of the purchasers who have paid maintenance charges in respect of their parcels to the Building Maintenance Account (“members entitled to vote”) of the developer.

(3) If within half an hour after the time appointed for the meeting, a quorum is not present, the members entitled to vote who are present shall constitute a quorum.

(4) All resolutions at the first meeting of the Body shall be decided by a show of hands.

(5) Notwithstanding subsection (4), joint purchasers shall not be entitled to vote except by way of a jointly appointed proxy.

(6) In the event of an equality of votes, the chairman shall have a casting vote.

(7) Where an hour after the time appointed for the meeting, no member entitled to vote turns up or all the members present, for any reason, refuse to be the office bearers of the Committee, the developer 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 first meeting of the Body; or

(b) appoint a managing agent under subsection 25(1) to maintain the common property of the building.

Duty of Body to inform Commissioner of name of Body

7. (1) The Body shall inform and register with the Commissioner the name of the Body within twenty-eight days of the first meeting.

(2) The Commissioner may, upon an application by the Body, issue a certificate certifying that the Body has been duly constituted under this Act on the day specified in the certificate.

(3) The constitution of the Body under this Act shall not be affected in the event the first meeting is subsequently invalidated, the provision of subsection 6(1) is not complied with or a situation under subsection 6(7) occurs.

Duties and powers of Joint Management Body

8. (1) The duties of the Body include the following:

- (a) to properly maintain the common property and keep it in a state of good and serviceable repair;
- (b) to determine and impose charges that are necessary for the repair and proper maintenance of the common property;
- (c) to insure and keep insured the building to the replacement value of the building against fire and such other risks as may be determined by the Body;
- (d) to apply insurance moneys received by the Body in respect of damage to the building for the rebuilding and reinstatement of that building;
- (e) to comply with any notices or orders 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 property;
- (f) to prepare and maintain a register of all purchasers of the building;
- (g) to ensure that the Building Maintenance Fund is audited and to provide audited financial statements for the information to the purchasers;
- (h) to enforce house rules for the proper maintenance and management of the building; and
- (i) to do such other things as may be expedient or necessary for the proper maintenance and management of the building.

(2) The powers of the Body shall include the following:

- (a) to collect from purchasers maintenance and management charges in proportion to the allocated share units of their respective parcels;
- (b) to authorize expenditure for the carrying out of the maintenance and management of the common property;

- (c) to recover from any purchaser any sum expended by the Body in respect of that parcel in complying with any such notices or orders as are referred to under paragraph (1)(e);
- (d) to purchase, hire or otherwise acquire movable or immovable property for use by the purchasers in connection with their enjoyment of the common property;
- (e) to arrange and secure the services of any person or agent to undertake the maintenance and management of the common property of the building;
- (f) to make house rules for the proper maintenance and management of the building; and
- (g) to do all things reasonably necessary for the performance of its duties under this Act.

(3) The Body shall be deemed—

- (a) for the purposes of effecting any insurance under paragraph (1)(c), to have an insurable interest in the building equal to its replacement value or any value as determined by the Body; and
- (b) for the purposes of effecting any insurance under paragraph (1)(d), to have an insurable interest in the subject matter of the insurance.

(4) Where the Body incurs any expenditure or performs any repair, work or act that it is required or authorized by or under this Part to do or consequent upon the service on the Body of any notice or order by any local authority or under any other written law, and the expenditure or the repairs, work or act were or 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-laws by, any purchaser or his tenant, lessee, licensee or invitee, the amount of that expenditure expended by the Body in performing the repairs, work or act shall be recoverable by the Body from that purchaser.

(5) The generality of this section shall not be prejudiced by any other provision in this Part conferring a power or imposing a duty on the Body.

Annual general meeting

9. (1) An annual general meeting of the Body shall be held to consider the Building Maintenance Fund and to transact such other business as may arise.

(2) The annual general meetings shall be held once in each year and not more than fifteen months shall elapse between the date of one annual general meeting and the next.

Extraordinary general meeting

10. (1) A general meeting other than the annual general meeting shall be known as an extraordinary general meeting.

(2) The Body—

(a) shall convene an extraordinary general meeting upon a requisition in writing made by the purchasers who are together entitled to at least one-quarter of the total number of parcels registered under section 12;

(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; and

(c) may convene an extraordinary general meeting on such other occasion as the Body thinks fit.

(3) Where the Commissioner is satisfied that the Body has not been properly constituted, he may authorize in writing any purchaser to convene an extraordinary general meeting for such purposes as may be approved by the Commissioner.

Joint Management Committee

11. (1) The Body shall elect a Joint Management Committee who, subject to any restriction imposed or direction given by the Body at a general meeting, may perform the Body's duties and conduct the Body's business on its behalf, and may for that purpose exercise any of the Body's powers.

(2) The Committee shall consist of the developer and not less than five and not more than twelve purchasers, who shall be elected at the annual general meeting of the Body and shall hold office for a period not exceeding three years or until the dissolution of the Body in accordance with section 15, whichever is earlier.

(3) From among the members of the Committee elected under subsection (2), there shall be elected a chairman, a secretary and a treasurer.

(4) The provisions of the First Schedule shall apply to the Committee.

(5) The State Authority may amend the First Schedule by order published in the *Gazette*.

Register of purchasers

12. The developer or Body, as the case may be, shall maintain a register in such form as the Commissioner may require, containing the following particulars in respect of all the parcels in the development area:

- (a) the allocated share unit to be assigned to each parcel filed with the Commissioner;
- (b) the floor area of the parcel referred to in paragraph (a);
- (c) the name and address of every purchaser and if the purchaser is not a resident of Malaysia, the address in Malaysia at which notices may be served on the purchaser;
- (d) the name and address of the solicitor acting for the purchaser in the sale and purchase of the parcel; and
- (e) the number of parcels which are unsold.

Right of purchaser

13. On application by or on behalf of a person who is a purchaser, or by or on behalf of a person who is a prospective purchaser, the Body shall issue to that person a certificate certifying—

- (a) the amount of charges payable by a purchaser;
- (b) the time and manner of payment of the amount of charges;
- (c) the extent, if any, to which the charges have been paid;

- (d) the amount, if any, then recoverable by the Body in respect of the parcel;
- (e) the sum standing to the credit of the Building Maintenance Fund and the sum in the account that has been committed or reserved for expenses already incurred by the Body;
- (f) the nature of the repairs and estimated expenditure, if any, where the Body has incurred any expenditure or is about to perform any repairs, work or act in respect of which a liability is likely to be incurred by the purchaser of the parcel under any provision of this Act; and
- (g) the amount paid and to be paid by the developer for unsold parcels.

House rules

14. (1) The Body shall—

- (a) keep a record of the house-rules in force from time to time;
- (b) on receipt of an application in writing made by a purchaser or by a person duly authorized to apply on behalf of a purchaser for a copy of the house rules in force, supply to such purchaser or the person duly authorized by him, at a reasonable cost, a copy of the house rules; and
- (c) on the application of any person who satisfies the Body that he has a proper interest in so applying, make such house rules available for inspection.

(2) A copy of any house rules made by the Body and any amendment of any house rules for the time being in force, certified as a true copy under the seal of the Body, shall be lodged by the Body with the Commissioner within fourteen days of the passing of the resolution by the Body approving the house rules.

Dissolution of Joint Management Body

15. (1) The Body shall be deemed to be dissolved three months from the date of the first meeting of the management corporation for the building.

(2) The Body shall—

(a) not later than one month from the date of the first meeting of the management corporation, hand over to the management corporation—

(i) the house rules;

(ii) the audited accounts of the Building Maintenance Fund or, if such accounts have not been audited, the unaudited accounts;

(iii) all the assets and liabilities of the Body; and

(iv) records related to and necessary for the maintenance of the building and its common property; and

(b) if only unaudited accounts have been handed over under subparagraph (a)(ii); not later than three months from the date of the first meeting of the management corporation, hand over to the management corporation the audited accounts of the Body.

(3) If the Body fails to comply with this section, every member of the Body commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and shall also be liable to a further fine not exceeding one thousand ringgit for every day during which the offence is continued after conviction.

(4) Where an offence under this section has been committed by the Body, every member of the Body shall be deemed to have also committed that offence unless, having regard to all the circumstances, he proves—

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

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

PART IV

BUILDING MAINTENANCE ACCOUNT

Developer to open and maintain Building Maintenance Account

16. (1) The developer of any building or land intended for subdivision into parcels shall, before the delivery of vacant possession, open, in respect of the development area on which the building is erected, a Building Maintenance Account in the name of the development area with a bank or financial institution licensed under the Banking and Financial Institutions Act 1989 [*Act 372*] or regulated by the Central Bank under any other written law.

(2) One Building Maintenance Account shall be opened for each development area.

(3) Each Building Maintenance Account shall be maintained by the developer until the establishment of the Body for the building.

(4) The developer shall not open and maintain a Building Maintenance Account together with any other building outside the development area.

(5) Where any dispute arises in respect of a Building Maintenance Account, the Commissioner may resolve the dispute as he deems fit and just.

Duties of developer as to Building Maintenance Account

17. (1) A developer shall deposit into the Building Maintenance Account—

(a) all charges received by him from the purchasers in the development area for the maintenance and management of the common property of the development area; and

(b) all charges for the maintenance and management of the common property to be paid by the developer in respect of those parcels in the development area which have not been sold, being a sum equivalent to the maintenance charges payable by the purchasers to the developer had the parcels been sold.

(2) The developer shall—

- (a) cause proper accounts of the Building Maintenance Account to be kept in respect of all sums of money received from and all payments made out of the Building Maintenance Account;
- (b) appoint a professional auditor to audit the Building Maintenance Account annually or in the case of where money is to be transferred under subsection 19(3), one month before the date of actual transfer;
- (c) file with the Commissioner a copy of the statement of accounts certified by the auditors and a copy of 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 accounting and other records of the Building Maintenance Account and to make copies or extracts of those accounting or other records.

(3) The Commissioner shall have the right to appoint an approved company auditor to investigate the books, accounts and transactions of a Building Maintenance Account and the developer shall pay all the expenses incurred for that purpose.

(4) The developer shall, upon the completion of a building and until the Body is established, insure and keep insured the building against any loss of the building and against fire and other risks.

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

(6) The returns, reports, accounts and information shall be in such form as the Commissioner or Minister may, from time to time, specify.

(7) A developer who fails to comply with this section commits an offence and shall, on conviction, be liable to a fine of not less than ten thousand ringgit but not more than one hundred thousand ringgit and shall also be liable to a fine not exceeding one thousand ringgit for every day during which the offence is continued after conviction.

Moneys to be deposited into Building Maintenance Account

18. The developer shall deposit all moneys received from the purchasers for the purpose of the maintenance and management of a building into the Building Maintenance Account within two working days of receiving the moneys.

Moneys not to form part of the property of developer

19. (1) All moneys in the Building Maintenance Account, notwithstanding any other written law to the contrary, shall not be deemed to form part of the property of the developer in the event—

- (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 a company, goes into voluntary or compulsory liquidation.

(2) Upon the happening of any of the events referred to in subsection (1)—

- (a) the moneys in the Building Maintenance Account shall vest in the administrator, the 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 Building Maintenance Account are authorized to be applied by this Act; and
- (b) any money remaining in the Building Maintenance Account, after all payments have been made pursuant to paragraph (a), shall be held by the administrator.

(3) Any balance of money referred to in paragraph (2)(b) shall be transferred into an account in the name of the Body.

Prohibition on collection of charges

20. (1) No person shall at any time collect any charges from any purchaser for the maintenance or management of any building or land intended for subdivision into parcels and common property unless—

- (a) a Building Maintenance Account has been opened in the name of the development area; and
- (b) vacant possession of the parcel purchased by the purchaser has been delivered to the purchaser.

(2) Notwithstanding subsection (1), any developer of a development area which has been completed on or before the commencement of this Act and has, immediately before that date, been collecting charges for the maintenance and management of a building from the purchasers comprised in the development area may continue to do so until the Body has been established.

(3) Any person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Duty of developer in respect of charges for building completed before commencement of this Part

21. (1) Any developer of a development area which has been completed before or on the commencement of this Act but for which a management corporation has not been established shall, not later than six months following the commencement of this Act submit to the Commissioner an account audited by a professional auditor of all moneys collected and expended for the purposes of maintenance and management of the common property and sinking fund, if any, prior to the commencement of this Act.

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

(3) Any person who contravenes this section commits an offence and shall, on conviction, be liable to a fine of not less than ten thousand ringgit but not more than one hundred thousand ringgit or to imprisonment for a term not exceeding one year or to both.

PART V

BUILDING MAINTENANCE FUND AND SINKING FUND

Building Maintenance Fund

22. (1) Any surplus moneys in the Building Maintenance Account after payment of all the expenditure which have been properly charged to the Building Maintenance Account shall be transferred to the Body by the developer not later than one month from the date of establishment of the Body, and such moneys shall constitute a fund to be known as the “Building Maintenance Fund” which shall be maintained by the Body.

(2) The Building Maintenance Fund shall be administered and controlled by the Body and shall consist of—

- (a) all or any part of the maintenance charges for the building imposed by or payable to the Body under this Act;
- (b) all moneys 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 Body;
- (c) all other moneys and property which may in any manner become payable to or vested in the Body in respect of any matter incidental to its functions and powers; and
- (d) all other moneys lawfully received by the Body, including interest, donation and trust.

(3) The Building Maintenance Fund shall be used solely for the purposes of—

- (a) ensuring that the common property of the building is in a state of good repair and maintaining the common property;
- (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 of the building against damage by fire and other risks;
- (d) carrying out periodical inspection on the safety of the building in the manner as specified in and under the Street, Drainage and Building Act 1974 [*Act 133*];
- (e) cleaning premises including white-washing, colour washing or painting of the common property;
- (f) carrying out inspection of all electrical wiring systems of the common property and replacing any faulty wiring systems, if any;
- (g) carrying out inspection, maintenance and repair of the main water tank;
- (h) paying rent and rates, if any;
- (i) paying any fee incurred for the auditing of the Building Maintenance Fund;
- (j) paying all charges reasonably incurred for the administration of the Building Maintenance Fund as may be determined by the Commissioner;
- (k) paying the remuneration or fees of the managing agent appointed under section 25;
- (l) paying any expenditure lawfully incurred by the Body;
- (m) paying for the allowances and other expenses of the members of the Body and members of the Committee according to such rates as may be approved by the Commissioner;
- (n) paying any expenses, costs or expenditure in relation to the procurement of goods or services, including but not limited to the engagement of consultants, legal fees or costs and other fees and costs, properly incurred or accepted by the Body in the performance of the Body's functions and the exercise of its powers under this Act;

- (o) purchasing or hiring equipment, machinery and any other material, acquiring land and any assets, and erecting buildings, and carrying out any other works and undertakings in the performance of the Body's functions and the exercise of its powers under this Act;
- (p) paying any expenses for carrying into effect the provisions of this Act; and
- (q) doing generally all things necessary for the maintenance and management of the common property.

(4) For the purpose of this section, if the Body has not been established, references to the "Body" shall be construed as references to the "developer".

Purchaser to pay maintenance charges

23. (1) The purchaser shall pay the charges for the maintenance and management of the common property.

(2) The apportionment of the charges to be paid by the purchasers shall be determined by the Body in proportion to the allocated share units.

(3) Any written notice served on the purchaser requesting for the payment of the charges shall be supported by a statement of the charges issued by the developer or Body, as the case may be, stating in detail the categories of expenditure in respect of which charges are to be paid.

(4) The purchaser shall, within fourteen days of receiving a notice under subsection (3), pay the charges requested for.

(5) If the charges remain unpaid by the purchaser at the expiration of the period of fourteen days specified in subsection (4), the purchaser shall pay interest at the rate to be determined by the Body under paragraph 6(1)(d) but such interest shall not exceed 10 percent per annum.

Joint Management Body to open and maintain sinking fund

24. The Body shall open and maintain a sinking fund into which shall be paid such portion of the contribution to the Building Maintenance Fund as may, from time to time, be determined by the Body for the purposes of meeting its actual or expected liabilities 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; or
- (d) any other expenditure as the Committee deems necessary.

PART VI**MANAGING AGENT****Appointment of managing agent**

25. (1) Where—

- (a) a situation under subsection 6(7) occurs; or
- (b) the Commissioner is satisfied, after due inquiry has been carried out by him or a person appointed by him, that the maintenance and management of a building is not carried out satisfactorily by the developer or the Body, as the case may be,

the Commissioner may appoint, by a written notification, one or more persons to act as managing agent to maintain and manage the building for a period to be specified by the Commissioner.

(2) A managing agent appointed under this Part shall enter into a management agreement with the developer or Body to carry out the duties and powers of the developer or Body as provided for under this Act.

(3) The managing agent shall be entitled to be paid such remuneration or fees as may be agreed upon between the managing agent and the developer or Body with the concurrence of the Commissioner, and such remuneration or fees shall be charged to the Building Maintenance Account or Building Maintenance Fund, as the case may be.

Independence of managing agent

26. (1) A person shall not be appointed as a managing agent if the person has a professional or pecuniary interest in any building or land intended for subdivision into parcels.

(2) A person is regarded as having a professional or pecuniary interest in any building or land if—

- (a) he has been responsible for the design or construction of the building;
- (b) he or any of his nominees, officers or employees has any material interest in the building or land or any part of the 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 or any part of the building or land; or
- (d) he or his family holds any interest in the building or land or part of the building or land whether directly, as a trustee or otherwise.

Managing agent to lodge bond

27. A person shall not act as managing agent unless he has lodged with the Commissioner a bond in the form approved by the Commissioner and for the specified amount 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.

Powers and duties of managing agent

28. (1) Where a managing agent has been appointed under section 25, the managing agent shall have control over the moneys in the Building Maintenance Account or Building Maintenance Fund.

(2) Subject to the general direction of the Commissioner, the managing agent appointed shall perform the duties and exercise the powers with regard to the maintenance and management of the building as if he was acting as the developer or the Body.

(3) It shall be the duty of a managing agent to pay all moneys received by him in his capacity as managing agent into the Building Maintenance Account or Building Maintenance Fund of that building within two working days of receiving the moneys.

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

- (a) the moneys standing to the credit of the Building Maintenance Account or Building Maintenance Fund;
- (b) the amounts due and owing by the purchasers which are due to be paid to the Building Maintenance Account or Building Maintenance Fund;
- (c) any income derived from the common property of the building which is due to be paid to the Building Maintenance Account or Building Maintenance Fund;
- (d) any sum accrued for the maintenance and management of the building, which is authorized to be paid out of the Building Maintenance Account or Building Maintenance Fund; and which remains unpaid.

(5) A managing agent who contravenes subsection (3) or (4) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

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

29. The appointment of a managing agent shall not relieve the developer of his obligation—

- (a) towards the purchasers in his development area to carry out repairs to the common property, 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 plans approved by the competent authority.

Termination of management agreement

30. (1) Upon the termination of a management agreement entered into under subsection 25(2), the managing agent shall—

- (a) not later than one month from such termination, prepare and submit to the Commissioner the unaudited accounts of the Building Maintenance Account or Building Maintenance Fund, as the case may be, and hand over to the Commissioner a complete list of the assets and liabilities of the Building Maintenance Fund or Building Maintenance Account and records related to and necessary for the maintenance and management of the building; and
- (b) not later than three months from such termination, submit to the Commissioner the audited accounts of the Building Maintenance Fund or Building Maintenance Account.

(2) Any person who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding one month or to both.

(3) In the event of the termination of the management agreement, the Commissioner may appoint another managing agent to maintain and manage the building for a period to be specified by the Commissioner.

PART VII

DEPOSIT AND RECOVERY OF CHARGES

Developer to pay deposit to rectify defects on common property

31. (1) The developer of a building shall deposit in cash or bank guarantee with the Commissioner such sum as may be prescribed by the State Authority for the purpose of carrying out any work to rectify any defects in the common property of the development area after its completion.

(2) The deposit referred to in subsection (1) shall be paid to the Commissioner upon the handing over of vacant possession.

(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 area.

(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 area.

(6) Any developer who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit and shall also be liable to a further fine not exceeding fifty ringgit for every day during which the offence is continued after the conviction.

Recovery of charges by Joint Management Body

32. (1) Where maintenance charges become recoverable by the Body from a purchaser by virtue of section 23, the Body may serve on the purchaser a written notice requesting payment of the sum due within such period, which shall not be less than fourteen days from the date of service of the notice, as may be specified in the notice.

(2) If at the end of the period specified in the notice under subsection (1) the sum or part of the sum due remains unpaid, the Body may serve on the purchaser a further written notice demanding payment of the sum due within fourteen days from the date of service of the notice; and if upon the expiry of the said period, the sum due still remains unpaid, the Body may institute proceedings in any court of competent jurisdiction for the recovery of the said sum or, in addition or as an alternative to recovery under this section, resort to recovery under section 33.

(3) Where a managing agent has been appointed by the Commissioner under section 25 to maintain and manage a development area, a notice sent by the managing agent shall be deemed to have been sent by the developer or Body.

Recovery of arrears of charges

33. (1) Where the amount of charges payable is in arrears for six months, the Commissioner may, at the request of the developer or Body, issue a warrant of attachment in Form B of the Second Schedule authorizing the attachment of any movable property belonging to the purchaser which may be found in the parcel or elsewhere within the local authority area.

(2) No warrant of attachment shall be issued by the Commissioner unless the Commissioner has served a notice in Form A of the Second Schedule on the purchaser or any one of the purchasers of the parcel, if more than one, requesting him to pay the arrears within fourteen days of the service by posting or delivery.

(3) The warrant shall be executed by an officer from the office of the Commissioner who shall make an inventory of the property attached and at the same time give notice in Form C of the Second Schedule to the person who at the time of attachment appears to be the person in possession of the property.

(4) Such officer may, in the daytime, effect forcible entry into any parcel or building or any part of the parcel or building for the purpose of effecting the attachment.

(5) Unless the arrears and the collection charges are paid within seven days of the attachment of the property, the property attached shall be sold by public auction.

(6) Where any amount is recovered by the Commissioner under this section, the Commissioner may deduct from such amount collection charges of such amount as may be prescribed by the Minister, with the concurrence of the State Authority.

(7) Any amount recovered by the Commissioner, after the deduction of the collection charges, shall be deposited into the Building Maintenance Fund as soon as practicable.

(8) Any surplus, after the deduction of any amount by the Commissioner under subsection (6), shall be paid to the person who, at the time of the attachment was or appeared to be in possession of the property.

Failure or refusal to pay charges

34. Any person who, without any reasonable excuse, fails or refuses to pay maintenance and management charges commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit and shall also be liable to a further fine not exceeding fifty ringgit for every day during which the offence is continued after the conviction.

PART VIII

MISCELLANEOUS

Representation in civil proceedings

35. Notwithstanding any other written law—

- (a) in any civil proceedings by or against the Body; or
- (b) in any other civil proceedings in which the Body 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 Body for that purpose may, on behalf of the Body, 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 Body.

Liability of directors, etc.

36. Where an offence under this Act or any regulations made under this Act has been committed by a body corporate, any person who, at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate or was purporting to act in such capacity shall, as well as such body corporate, be deemed to have committed that offence unless he proves that the offence was committed without his knowledge or connivance or that he took all reasonable precautions or that he had exercised due diligence to prevent the commission of the offence.

Service of notice or order

37. Any notice or order required to be served on any person under this Act 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;
- (b) by registered post addressed to the last known address of 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 business, parcel or residence of the person to be served.

Power of entry

38. (1) The Commissioner or any authorized person may, at all reasonable times, after notice has been given, enter, any building, land or premises for the purpose of—

- (a) carrying out an inspection or investigation to determine whether any offence under this Act has been committed and may seize under this Act any books, accounts or documents; and
- (b) executing any work required to be executed by the local authority in respect of which a notice has been issued under this Act and there has been a default in complying with that notice.

(2) No building or premises which are not vacant shall be entered under this section unless the occupier or a representative of the occupier is present during the entry.

(3) No private dwelling shall be entered by virtue of this section except with the consent of the purchaser or after giving twenty-four hours notice to the occupier.

(4) Notwithstanding subsections (1), (2) and (3), the Commissioner or any authorized person may, at all reasonable times, enter any building, land or premises for the purpose of executing any urgent repair or work to the building, land or premises.

(5) Any person who assaults, obstructs, hinders or delays the Commissioner or any authorized person in effecting any entry which he is entitled to effect under this Act, or in the execution of any duty imposed or power conferred by this Act commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred ringgit or to imprisonment for a term not exceeding one month or to both.

(6) For the purposes of this section and section 39, “authorized person” means any person authorized in writing by the Commissioner.

Examination of person acquainted with case

39. (1) The Commissioner or authorized person, when exercising the power of investigation under section 38, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) The person examined by the Commissioner or any authorized person shall be legally bound to answer all questions relating to the case put to him by the Commissioner or authorized person, 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 questions.

(4) The Commissioner or authorized person examining a person under this section shall first inform that person of the provisions of subsections (2) and (3).

(5) A statement made by a person under this section shall, whenever possible, be reduced into writing and signed by the person making it or affixed with his thumb print after it has been read to him in the language in which he made it and he has been given an opportunity to make any corrections he may wish.

Power to compound

40. (1) The Commissioner may compound any offence against this Act or any regulations made under this Act by collecting from the person reasonably suspected of having committed the offence a sum of money not exceeding the maximum fine prescribed for that offence.

(2) Where an offence has been compounded under subsection (1), no prosecution shall thereafter be instituted in respect of the compounded offence.

(3) Any moneys paid to the Commissioner under this section shall be paid into and form part of the Consolidated Fund.

Appeals to the State Authority

41. Any person or body aggrieved by any act or decision of the Commissioner under this Act may, within fourteen days after having been notified of the action or decision, appeal against that action or decision to the State Authority; and the decision of the State Authority shall be final and shall not be questioned in any court.

Regulations

42. (1) The Minister may, with the concurrence of the State Authority, make such regulations as may be expedient or necessary for the better carrying out of the provisions of this Act.

(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 Act to be prescribed;
- (b) providing for proper standards of maintenance and management in respect of buildings and common property;
- (c) providing for the payment of deposit by any person erecting or constructing a building to ensure its proper maintenance and management and for the forfeiture of the deposit;
- (d) providing for collection charges by the Commissioner;

- (e) prescribing offences which may be compounded and the forms to be used in and the method and the procedure for compounding such offences;
 - (f) providing generally for the performance of the functions, the exercise of the powers and the discharge of the duties of the Body under the provisions of this Act.
- (3) Regulations under this section—
- (a) may provide for different provisions for different types of buildings and common property; or
 - (b) may provide for any other matter which is expedient or necessary for the purposes of this Act.

Prosecution

43. No prosecution in respect of an offence under this Act shall be instituted except by or with the written consent of the Public Prosecutor.

Non-application of other written laws, contracts and deeds

44. On the coming into operation of this Act, in a local authority area or part of a local authority area or in any other area, the provisions of any written law, contracts and deeds relating to the maintenance and management of buildings and common property in as far as they are contrary to the provisions of this Act shall cease to have effect within the local authority area or that other area.

Contracting out prohibited

45. (1) The provisions of this Act shall have effect notwithstanding any stipulation to the contrary in any agreement, contract or arrangement entered into after the commencement of this Act.

(2) No agreement, contract or arrangement, whether oral or wholly or partly in writing, entered into after the commencement of this Act shall operate to annul, vary or exclude any of the provisions of this Act.

Public Authorities Protection Act 1948

46. The Public Authorities Protection Act 1948 [*Act 198*] shall apply to any action, suit, prosecution or proceedings against the Commissioner or against any officer or agent of the Commissioner 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.

FIRST SCHEDULE

[Subsection 11(4)]

Times and places of meetings

1. (1) The Committee is to hold as many meetings as are necessary for the efficient performance of its functions and such meetings are to be held at such places and times 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 in writing by the Commissioner or by at least two members of the Committee.

Continuation of office

2. (1) A person shall continue to be a member of the Committee until that person—

- (a) resigns;
- (b) dies;
- (c) becomes a bankrupt; or
- (d) is no longer a purchaser.

(2) Where any vacancy occurs in the Committee, the remaining members shall appoint another purchaser to be a member until the next annual general meeting of the Body.

Quorum

3. The chairman and at least half of the number of members of the Committee shall form a quorum at any meeting of the Committee.

Casting vote

4. If on any question to be determined by the Committee there is an equality of votes, the chairman shall have a casting vote in addition to his deliberative vote.

Committee may invite others to meetings

5. (1) The Committee may invite any person to attend any meeting or deliberation of the Committee for the purpose of advising or assisting the Committee on any matter under discussion, but any person so attending shall have no right to vote at the meeting or deliberation.

(2) A person invited under subparagraph (1) shall be paid such allowances as may be determined by the Body.

Resolutions of the Committee

6. A resolution is taken to have been passed at a meeting of the Committee if—

- (a) all members of the Committee have been informed of the proposed resolution in writing, or reasonable efforts have been made to inform all members of the Committee of the proposed resolution; and
- (b) the resolution in writing is signed by every member of the Committee indicating agreement with the resolution,

and in the absence of such agreement by every member of the Committee, a meeting has to be held.

Minutes

7. (1) The secretary of the Committee shall cause minutes of all their meetings to be maintained and kept in a proper form.

(2) Minutes of meetings of the Committee, if duly signed, shall be admissible in any legal proceedings as prima facie evidence of the facts stated in them without further proof.

(3) Every meeting of the Committee in respect of the proceedings of which minutes have been so made shall be deemed to have been duly convened and held and all members at the meeting to have been duly qualified to act.

(4) A Committee shall cause copies of the minutes of all its meetings to be submitted to the Commissioner as soon as practicable.

Procedure

8. The Committee may regulate its own procedure.

Disclosure of interest

9. (1) A member of the Committee having any interest in any matter under discussion by the Committee shall disclose to the Committee the facts of his interest and its nature.

(2) A disclosure under subparagraph (1) shall be recorded in the minutes of the Committee and, after the disclosure, the member having an interest in the matter shall not take part nor be present in any deliberation or decision of the Committee.

Validity of acts and proceedings

10. No act done or proceeding taken under this Act shall be questioned on the ground of—

- (a) any vacancy in the membership of, or any defect in the constitution of, the Committee;
- (b) contravention by any member of the Committee of the provisions of paragraph 8; or
- (c) any omission, defect or irregularity not affecting the merits of the case.

Members to devote time to business of Committee

11. The members of the Committee shall devote such time to the business of the Committee as is necessary to discharge their duties effectively.

SECOND SCHEDULE

BUILDING AND COMMON PROPERTY
(MAINTENANCE AND MANAGEMENT) ACT 2007

FORM A

[Subsection 33(2)]

NOTICE TO PAY ARREARS OF CHARGES

No.....

To:
.....
.....
.....

Take notice that you are hereby required to pay the arrears of charges due for the period ending..... amounting to RM.....together with interest amounting to

*Building and Common Property
(Maintenance and Management)*

This is to command you to attach the movable property of the purchaser wherever the movable property may be found within the Council of.....and also any movable property, regardless of whoever it belongs to which is found in the parcel..... (describe the parcel) and unless the said sum of RM..... together with RM....., the costs of this attachment, be paid, to hold the movable property until further orders.

You are further commanded to return this Warrant on or before the.....day of..... 20.....with an endorsement certifying the date when and manner in which it has been executed or why it has not been executed.

Given under my hand this.....day of.....20.....

.....
Commissioner of Buildings

PARTICULARS OF ARREARS AND COLLECTION CHARGES

	RM	sen
Arrears for the months, viz.....20.....to ... 20		
Interest Fee		
Collection Charges		
Total	_____	_____

**BUILDING AND COMMON PROPERTY
(MAINTENANCE AND MANAGEMENT) ACT 2007**

FORM C

[Subsection 33(3)]

NOTICE AND INVENTORY

To:

.....of.....

Parcel No.

(or other identifiable description).

Take notice that I have this day attached the property specified in the inventory below for the sum of RM.....being arrears and collection charges recoverable under the Building and Common Property (Maintenance and Management) Act 2007 detailed below and that unless you pay to the officer of the.....Council of..... the amount due together with the costs of this attachment within 7 days of the date of this notice the property will be sold.

Dated this.....day of.....20.....

.....
Signature

INVENTORY

	RM	sen
Current rates for 20		
Arrears for the months, viz. ... 20.... to 20....		
Collection Charges		
 Total		