

BCA BC BMSC/CIR/2020/16

Building Plan & Management Group

19 August 2020

Chairperson / Secretary and council members
MCST Plan No. XXXX

Dear Sir/Madam

Building Maintenance and Strata Management Act (Section 60 and Section 61)

1 I would like to bring your attention to section 60 and section 61 of the Building Maintenance and Strata Management Act (“BMSMA”), which require a member of a council of management corporation:

- *if he has any pecuniary interests in contracts (whether existing or proposed) or any matter, or holds any office or possesses any property, which create duties or interests that are in conflict with his duties or interests as a council member, to declare at a meeting of the council the fact, nature, character and extent of the conflict and not take part in the discussion and consideration of the matter; and*
- *to act honestly and use reasonable diligence in discharging their duties.*

2 Any member of a council of a management corporation who fails to comply with section 60 or section 61 of the BMSMA shall be guilty of an offence (see *Annex A* for details of provisions).

3 In a recent case investigated by the Commissioner of Buildings (“COB”), a member of a council of a management corporation was found to have contravened section 61 of the BMSMA, by using his position in council to award contracts from the management corporation to companies in which he was a director and shareholder. The person was subsequently prosecuted by COB and convicted and fined by the court.

4 We would like to remind members of councils of management corporations to comply with all the requirements as set out in section 60 and section 61 of the BMSMA. The COB will take firm action against persons who commit an offence under the BMSMA, including any contravention of section 60 or section 61 of the BMSMA.

Yours faithfully

LIM CHONG YONG
DIRECTOR
BUILDING MANAGEMENT DEPARTMENT
for COMMISSIONER OF BUILDINGS

Annex A

Disclosure of interests in contracts, property, offices, etc.

60.—(1) Subject to subsections (2) and (3), if a member of a council has a pecuniary interest, direct or indirect, in any contract, proposed contract or other matter which is before any meeting of the council or management corporation, he shall at that meeting —

- (a) declare the nature of his interest;
- (b) not take part in the consideration or discussion of, or vote on any question with respect to, that contract or proposed contract or other matter; and
- (c) if the chairman or the person presiding at that meeting so directs, withdraw from the meeting during the consideration or discussion unless asked by the council to be present to provide information.

(2) The requirements of subsection (1) shall not apply in any case where the interest of the member of a council consists only of being a member or creditor of a company which is interested in a contract or proposed contract with the management corporation if the interest of the member may properly be regarded as not being a material interest.

(3) For the purposes of subsection (1), a general notice given to the members of a council by a member to the effect that he is an officer or a member of a specified company or a member of a specified firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm shall be deemed to be a sufficient declaration of interest in relation to any contract so made if it specifies the nature and extent of his interest in that company or firm and his interest is not different in nature or greater in extent than the nature and extent so specified in the general notice at the time any contract is so made.

(4) No such notice shall be of effect unless — (a) it is given at a meeting of the council; or (b) the member takes reasonable steps to ensure that it is brought up and read at the next meeting of the council after it is given.

(5) Every member of a council who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with his duties or interests as a member of the council shall declare at a meeting of the council the fact and the nature, character and extent of the conflict.

(6) The declaration shall be made at the first meeting of the council held —

- (a) after he becomes a member of the council; or
- (b) if already a member of the council, after he commences to hold the office or to possess the property, as the case requires.

(7) The secretary of the council shall record every declaration under this section in the minutes of the meeting at which it was made.

(8) For the purposes of this section, an interest of an immediate family member of a member of the council shall be treated as an interest of the member.

(9) Except as provided in subsection (3), this section shall be in addition to and not in derogation of the operation of any rule of law restricting a member of a council from having any interest in contracts with the management corporation or from holding offices or possessing properties involving duties or interests in conflict with his duties or interests as a member of a council.

(10) Any member of a council who fails to comply with any provision of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

Duty and liability of council members and officers

61.—(1) A member of a council shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office.

(2) A member of a council, or an officer or an agent or a managing agent of a management corporation, shall not use his position as a member of the council or as an officer, an agent or a managing agent of the management corporation to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the management corporation.

(3) Any person who commits a breach of any provision of this section shall —

(a) be liable to the management corporation for any profit made by him or for any damage suffered by the management corporation as a result of the breach of any such provision; and

(b) be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

(4) This section shall be in addition to and not in derogation of any other written law or rule of law relating to the duty or liability of members of a council.

(5) In this section — “agent” includes a banker, a solicitor or an auditor of a management corporation and any person who at any time has been a banker, a solicitor or an auditor of the management corporation; “officer” includes a person who at any time has been an officer of a management corporation.