



STRATA MANAGEMENT GUIDE: 6

Managing Agent



Preamble

This series of Strata Management Guides published by the Building and Construction Authority ("**BCA**") is intended to help councils of the management corporations ("**MCs**"), subsidiary proprietors ("**SPs**"), council members and managing agents ("**MA**s") better manage their estates.

The guide will include recommended procedures and good practices to address common issues (e.g. how to conduct a general meeting and how to requisition a motion).

The guide is aimed at providing a consistent approach and standard for the strata community to facilitate better self-regulation.

Disclaimer

This guide has been prepared to provide practical information on the Building Maintenance and Strata Management Act ("**BMSMA**") and regulations made under the BMSMA ("**BM(SM) Regulations**").

This guide:

- Does not provide a legal interpretation of provisions in the BMSMA or BM (SM) Regulations; and
- Is not a substitute for independent legal advice.

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Good Practice



Example

Abbreviations

AGM	Annual General Meeting
BMSMA	Building Maintenance and Strata Management Act
BM(SM) REGULATIONS	Building Maintenance(Strata Management) Regulations 2005
MA	Managing Agent
MCST	Management Corporation Strata Title
MC	Management Corporation
SP	Subsidiary Proprietor

01

Introduction



- 1.1 An MC may employ the services of an MA to perform certain duties in respect of the management and maintenance of their strata-titled development. The MC should be aware of the MA's obligations under the BMSMA and BM(SM) Regulations and contractually requires the MA to deliver professional services that will enable the MC to comply with the BMSMA and the BM(SM) Regulations.
- 1.2 There are accreditation schemes¹ administered by industry associations, which BCA recognises. MCs may consider engaging an accredited MA, which has gone through more structured training on management of strata-titled developments.



¹ These accrediting bodies include Singapore Institute of Surveyors and Valuers (SISV), Association of Property and Facility Managers (APFM) and Association of Strata Managers (ASM).

02

Appointment of Managing Agent

(Section 66 of the BMSMA)



- 2.1 An MA can be appointed by the MC by an ordinary resolution during a general meeting or by the Council of the MC without a general meeting if authorisation to do so is given by the SPs at the last preceding general meeting of the MC.
- 2.2 An MA can be appointed for a term of up to three years. However, the MA's performance must be reviewed at every annual general meeting. SPs who have given feedback on the appointment of an MA are encouraged to express their concerns during the general meeting, or otherwise direct their concerns to the members of the MC to be raised during the general meeting.
- 2.3 The MA shall hold its appointment in the office until one of the following events occur, whichever is earlier:
 - (1) The conclusion of the 3rd AGM of the MC after the MA's appointment;
 - (2) The expiry of the term of the MA's appointment; or
 - (3) The termination at any time in accordance with the terms of the MA's appointment
 - a. If authorised by an ordinary resolution at a general meeting; or
 - b. by the Council without a general meeting if the Council is authorised by the SPs to do so at the last preceding general meeting.



Good Practice: Extending the term of appointment of an MA who retires from office

After the conclusion of the AGM, the SPs have authorised the Council of the MC to appoint an MA. The newly formed Council needs time to decide on the MA appointment.

What can MC do:



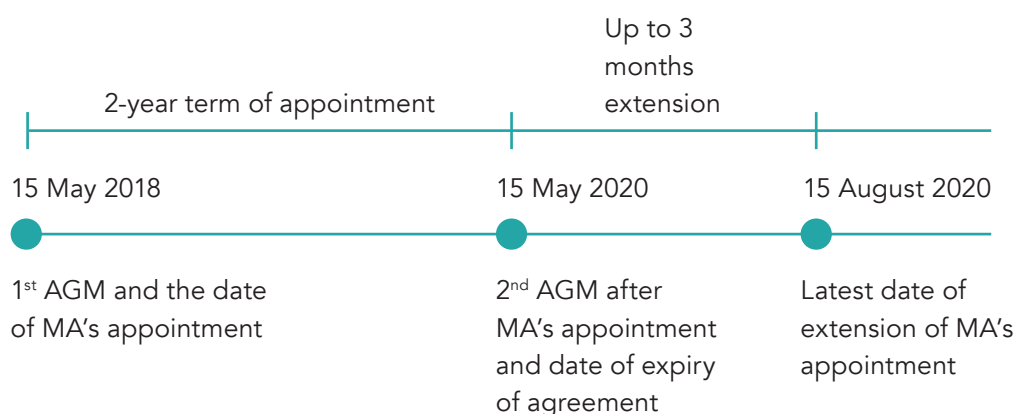
The outgoing Council should consider extending the appointment of the existing MA not past the next AGM. This facilitates the process of preparing any new agreement with regard to re-appointing the existing MA or appointing a new MA.



Alternatively, when negotiating the agreement, the MC could include an option for the MA to have their appointment automatically extend for a further 3 months.



If the Council decides not to re-appoint the existing MA, they should give the MA at least 1 month's notice of that decision before the appointment of the MA is terminated.



Case Example: MCST appointing MA for longer period

The MCST can consider appointing a MA for a term of up to 3 years under a private service agreement signed between the MC and MA. As required under section 6 of the BMSMA the MC must include in the agenda of subsequent AGMs a motion for the termination or for the continuation of the MA for the next ensuing year. The MC should table the motion with a view to allowing the general body to discuss and provide feedback on the performance of the MA. The MA should also use this session to explain and garner support from the SPs at the AGM to be reappointed for the next term of service as set out in the service agreement.

03

MA's Fees and Payment Terms



(Section 66 of the BMSMA)

- 3.1 The fees and expenses of the MA, if (a) appointed by the MC by ordinary resolution, shall be fixed in a general meeting, or (b) appointed by the Council, shall be fixed by the Council if authorised by the SPs at the last preceding general meeting. The matters to be decided include the fees to be paid to the MA, the due date of the payments and the wages of staff members stationed on site, which should be stated clearly in the agreement between the MC and the MA. This is to ensure that the MC and MA are financially accountable to each other in accordance to the terms of the agreement.



04

Duty and Liability of MA



(Section 67 of the BMSMA)

- 4.1 The MC may in writing delegate its power, duties and functions to the appointed MA, to any extent that the MC deems necessary. However, this does not include the delegation of power to the MA to make critical decisions or pass resolutions, on behalf of the MC, that only the MC is allowed to exercise².
- 4.2 Any acts and omissions of the MA are done and suffered on behalf of the MC, if the MA is acting under the delegation by the MC. Thus, any legal ramification that arises from acts and omissions done under such delegation will be applicable to both the MA and the MC.
- 4.3 Prior to the appointment, the MA must declare any direct or indirect relationships that they may have with any SP in the estate³.

² The MC, however, cannot allow the MA to sub-delegate the MA's powers, duties and functions to others; decide on any matter that can only be made by the MC pursuant to a unanimous resolution, a special resolution, a 90% resolution or a resolution by consensus at a general meeting; or decide on a restricted matter in the BMSMA section 59 that can be determined only by the MC at a general meeting.

³ Please refer to the BMSMA section 66(4).

05

Prohibited Activities for MA



(Section 68 of the BMSMA)

- 5.1 The MA shall not, whether on its own or through its employee or agent, canvass for votes by proxy or conduct any other activity for the purposes of election of Council members.
- 5.2 MAs are sometimes approached by an SP asking for the contact details of other SPs in the development to canvass for votes by proxy or for some reason which benefits the SP. MAs are not permitted to provide contact details such as contact numbers or email addresses for such purposes.



06

Accreditation Scheme for MA



- 6.1 MA can apply for accreditation under the accreditation schemes administered by either the Association of Property and Facility Managers ("**APFM**") or the Association of Strata Managers ("**ASM**"). These accreditation schemes are recognised by BCA to support the industry's efforts to raise the standards of MA in Singapore.
- 6.2 The accreditation scheme requires all individual MAs to undergo a structured training program and pass an examination conducted by either APFM or ASM, and the BCA Academy, among other requirements set by the respective associations. The training program provides the individual with knowledge on key legislative provisions, basic principles of facilities maintenance and services, as well as communications and administrative skills. These skill sets will equip MAs with the capabilities to carry out duties professionally and provide sound advice to MCs. MA firms can be accredited if they have sufficient number of staff accredited at the individual level and fulfil other accreditation criteria. The accreditation requirements includes MA firms to have professional indemnity insurance, and key management personnel who have relevant academic qualifications and working experience.

07

Criteria for Selecting an MA



- 7.1 When selecting an MA, the MC may wish to consider the following non-exhaustive list of matters:
- a. tender price submitted with respect to the MC's budget;
 - b. track record of managing similar developments;
 - c. accreditation with any industry association, if any;
 - d. head office support rendered to the site staff;
 - e. financial strength of the MA; and
 - f. MA's insurance coverage such as professional indemnity insurance.
- 7.2 MCs should interview the key management personnel of the MA, and if possible, also the persons who would be deployed to the development, to assess their capability, competency and suitability to provide satisfactory MA services.



08

Agreement for the Provision of MA Services



- 8.1 The agreement is an instrument in writing, signed between the MC and the MA, which sets out the MC's powers, duties and functions that both the MC and the MA agree should be performed by the MA. These may pertain to areas on management of the development, administration and secretarial matters, accounting and finance matters, and operation and maintenance matters etc.



- 8.2 The standard or level of service and performance expected of the MA during its term of appointment should also be stated in the agreement. Both MC and MA should discuss their expectations, which should preferably be measurable and specific. These parameters should be set out in the agreement, and may include key performance indicators and the timelines for completion of certain tasks such as preparing minutes of meeting, churning out of financial reports and responding to residents' feedback.



- 8.3 Please see Annex B for a brief description of the matters that MC should consider addressing in an agreement with the MA. MC and MA should also refer to and adapt the contract agreement templates developed by the industry associations for MCST developments.



Good Practice: Recourse to MC if MA does not meet expected service level or performance standard

The MA does not meet the MC's expected service level or performance standard as set out in the agreement.

What can MC do:



The MC should discuss beforehand with the MA and stipulate in the agreement the follow-up action or recourse which either party should take in such a situation.



The recourse may include serving a warning letter, imposing liquidated damages or terminating the agreement at a specified time.



When the situation arises, the MC can invoke the recourse stated in the agreement.

References:

BMSMA - Sections 2, 66, 67, 68
BM (SM) Regulations

Annex A

The accrediting bodies include:

Association of Strata Managers (ASM)
1 Scotts Road
#24-05 Shaw Centre
Singapore 228208
Tel: 6679 7799
Fax: 6679 7801
Website: www.asm.org.sg

Association of Property and Facility
Managers (APFM)
110 Middle Road
#09-00 Chiat Hong Building
Singapore 188968
Tel: 6372 1056
Fax: 6225 2453
Website: www.apfm.org.sg

Annex B

General Matters to be Addressed in Agreement with MA

Breakdown of Fees, Expenses and Entitlements

The fees and entitlements of the MA's employees, such as leave, basic salaries, annual wage supplements, employer's CPF contribution, medical benefits and performance bonuses should be set out in the agreement between the MC and the MA. Further, if the MA is to be paid on a reimbursement basis under the agreement with the MC, a list of reimbursable costs borne by the MC should also be provided in the agreement to facilitate any reimbursements to or claims by the MA. This will help to maintain transparency with regard to all fees, expenses and entitlements and reduce any possible disputes.

Additional Staff and Services

The rates for the provision of optional or additional staff and services, at the request of the MC, should be stated clearly in the agreement to prevent any misunderstanding on the fees and payments. The agreement should also address the procedure by which the MC may request for optional or additional staff and services, including whether the MA may reject the MC's request. For example, the MC should require in the agreement that the MA receives proper consent and written approval from the MC.

Emergency Funds

The MC should also consider whether to agree with the MA to set aside an emergency fund to cater for emergency maintenance and/or repair works, such as the bursting of underground pipes or fallen trees, and the agreement should address how the emergency fund can be used by the MA if such use occurs during hours when the MC is not available to provide written consent for the costs to be incurred.

The agreement should incorporate pre-defined limits, based on the severity of the emergency, in respect of the funds allowed to be incurred in rectifying the issue.

The process for using this emergency fund could include the following:

- Promptly inform the MC upon becoming aware of the emergency;
- Assess and determine the severity of the situation;
- Identify the corresponding limits for costs to be incurred;
- Identify rectification works needed and costs of the works.

The procedure for the MA's handling emergencies and utilisation of funds to address emergencies is extremely critical, to ensure the MA can act promptly to address emergencies that may affect the safety and health of residents and/or damage to properties within the development.

Compliance with Relevant Laws

The agreement should ensure that both MC and MA comply with relevant laws and regulations, such as the Personal Data Protection Act 2012. Since the agreement will govern actions occurring in Singapore, both parties are subject to, and need to abide by all the relevant laws in Singapore.

Non-Waiver of Rights

Any delay or non-exercise of rights should not constitute a waiver of those rights. This is to protect the rights of both MC and MA, and ensure that their rights to take particular actions, will not be revoked unreasonably and unfavourably.

Amendments to the Agreement

Variations or amendments to the agreement should be set out in writing and agreed to and signed by both the MA and MC.

Invalidation of the Terms of the Agreement

The invalidation of any portions of the agreement should not affect other portions of the agreement.



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