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ENFORCEMENTS AND OFFENCES UNDER THE STRATA MANAGEMENT ACT

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Abstract

The rise in the number of strata residential buildings calls for the need for enforcement of governance relating to the wellbeing of strata residents as well as its management. The establishment of Management Body at the stage of Joint Management Body as well as the Management Corporation are both results of the enforcement of the Strata Management Act, that requires their registration with the Commissioner of Buildings (COB) to be given the rights to collect, manage and maintain the assigned residential strata properties. The aim of this study is to identify the most common issues occur under the legislation of strata management that results in the interference and enforcement by the COB, as replicated through to the number of enforcements taken by the COB. The result of the study shows that despite the enforcement of the Strata Management Act over the years, there are still a significant number of enforcement actions by the COB against the reported offences made with regards to the rights of both the residents as well as the management bodies. The constant rate of actions taken proves that there are still rooms for improvements within the Strata Act 757 itself to reduce issues, towards a more enforceable roles, standards and rules for future reference and service quality.

Keyword: High-rise Residential, Strata Residential, Commissioner of Building, Strata Management Body

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INTRODUCTION

The increasing trend of high-rise strata living in urban Malaysian cities have further encouraged the growth of strata developments. Two Acts plays significant roles in ensuring the well-being of the purchasers, strata home owners as well as administering the developers and the management bodies, which is the Strata Title Act 1985 (Act 318) and the Strata Management Act 2013 (Act 757). Under the Act 757, with each completion of a stratified development, requires a management body to manage and maintain the building, facilities and the overall quality and sustainability of the common properties within the strata property, as well as the responsibilities of parties involved within the strata development.

Several studies have argued and concluded that the reality of the strata law that has given broad powers to the Management Bodies, but has failed to instil good governance. The law introduced does not counsel enforceable standards of good governance (Wong, 2019). Gaps were also found between the responsibilities of the management bodies and the residents' role in ensuring smooth management and maintenance works.

The objective of this paper is (i) to highlight the role of the strata management stakeholders, namely the Commissioner of Buildings (COB) and the management bodies, (ii) to analyse enforcements taken by the COB failure to comply with the Act 757 and (iii) to identify the most common issues raised based on the frequency of the enforcement taken. The outcome of this paper will identify whether the current existing Act 757 is sufficient and able to sustain the overall strata management ecosystem.

LITERATURE REVIEW

Commissioner of Building (COB)

The COB in respect of a local authority area is necessary to be appointed for the purpose of administering and carrying out the provisions of the Act 757. According to the Act 757, the COB under this act may perform the duties and powers as conferred upon. The COB's responsibilities include overlooking the registration of each Joint Management Body (JMB) and the Management Committee (MC) in fulfilling their responsibilities towards the residents and the residential strata properties. The Strata Management (Compounding of Offences) Regulations 2019 allows the Commissioner of Buildings (COB) to compound offences committed by strata owners as well as developers.

Management Bodies

The management bodies that may be in the form of a Joint Management body (JMB) or the Management Corporation (MC) varies according to different stage of strata management operation. The JMB, which consists of purchaser and tenants occupying the strata building and the strata developers is intended to

ensure self-management prior to the formation of MC (Khalid et al., 2017). The MC that comes into existence upon the expiry of the preliminary management period, post JMB period. Both the JMB and MC plays significant roles and duties in managing and maintaining strata buildings, delegated responsibilities under the provision of Act 757. Their responsibilities include the duties in relation to account, including the opening and managing the said account, the duty to convene first annual general meeting, to inform its name to Commissioner, as well as the duty and power to maintain and manage the strata buildings as registered. These duties will be the baseline of focus for this study, determining the most common and significant issues in operating a strata management body after the gazettelement of the Act 757 in 2013.

Quality Components

Based on the responsibilities of the JMB and the MC, each strata schemes are then evaluated into star-rankings by the COB, according to the components of quality management. The quality components include (i) establishment & operation of management bodies, (ii) finance, (iii) maintenance, (iv) risk security management, and (v) population well-being. The evaluated strata schemes are assessed into 5-star ratings, 5-stars being the highest quality management. Based on the published COB Annual Reports, the following Table and Figure shows the distribution of strata schemes according to their star ratings:

Table 1: Total and Distribution of Strata Schemes' Star Rating

	2016	2017	2018	2019
5 Star	1%	1%	1%	1%
4 Star	3%	9%	10%	10%
3 Star	9%	18%	20%	18%
2 Star	7%	22%	31%	25%
1 Star	19%	50%	37%	47%
No record	61%	0%	0%	0%
Total Schemes	19,886	8,275	4,364	5,739

Source: COB Annual Report (2016-2019)

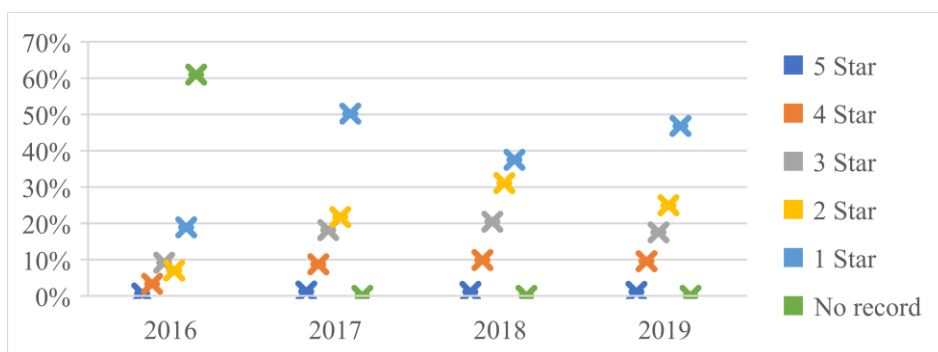


Figure 1: Strata Schemes Star Ratings
Source: COB Annual Report (2016-2019)

Each of the quality components are briefly defined as follows:

Establishment & Operation of Management Bodies

This component reflects the overall condition throughout the establishment of the JMB or MC, that typically involves the voting during the Annual General Meetings. This meeting will unanimously collect the agreement of the residents in forming the MC, or the annual report by the management bodies. This general meeting is conducted on annual basis, which would allow time for the operating management body to ensure quality management and to allow time for its operation to create significant impact to be assessed by both the residents as well as the COB. The baseline of a quality operation is the JMB or MC's ability to ensure all recordings and issues are taken care within accepted and reasonable time frame with utmost quality and assurance (KPKT, 2020).

Finance

The registered and established management bodies need to possess a stable and well audited finance statement that becomes a form of warranty that the appointed management bodies are able to conduct works related to management and maintenance without obstructed by any financial issues. Financial state includes the track record of every procurement processes conducted by the JMB or MC throughout their operation, the collection of the management fees as well as the management of the sinking funds. To ensure that the financial state of the management bodies is secured and well managed, the COB plays a huge role in conducting periodical assessment of audited management accounts. With this periodic practice, in which may be of surprise assessments, management bodies are expected to maintain and manage their bills and fund records organised throughout operation without fail.

The most common issue faced by the MC is poor collection of maintenance fee and sinking fund (Mohd Tawil et al., 2012). The actual cost to maintenance ration is a significant matter of discussion as it ensures the efficiency of the strata's management and maintenance works.

Maintenance

According to the Strata Management Handbook 2.0 (2020) by the Ministry of Housing and Local Government (Kementerian Perumahan dan Kerjaan Tempatan, KPKT), the facilities and amenities that should be managed and maintained by the JMB and MC includes leakage between levels, elevators, water tanks, and every other shared property to name a few. The procedures to reporting a maintenance or repair works was also provided in the Strata Management Handbook by KPKT. The procedure involves reporting, assessment by the JMB/MC, acknowledgement of damages and finally the repair works. However, common issues involve disagreement on the damages or maintenance claims, if such dispute occurs, the management body shall make a reference or consultation with the COB, to resolve the disagreement between both the resident and the management body. This consultation or negotiation phase may lead to a Tribunal or a mutual agreement for an actual repair works. The main goal to an efficient maintenance work is to achieve housing quality that associated with positive affect towards those living independently in the community (Evans et al., 2002). Other issues include those related to the condition of existing facilities within strata developments. According to a study done by Rabe et al., (2021), properties' that requires high maintenance and repair works includes items damaged due to vandalism, leakages of water tanks and pipes, damaged common spaces, roof leaking as well as the garbage house.

Risk Security Management

The practice of security risk management begins with a thorough and well-organized risk management. The main objective is to manage risks by harmonising the cost of protection measures with benefit (Peterson, 2010). Part of a strategic Facility Management function, it is important to establish clear objectives and statement in regard to the risk management and communicate with the organization in regards to the risk (Hashim et al., 2019).

Population Well-Being

The overall quality of living and well-being is greatly influenced by the surrounding neighbourhood, especially the neighbourhood's characteristics. The physical quality, as well as factors potentially relevant to health, this includes land use, density, street connectivity, infrastructure, access to nature and green space, public and open spaces, overall cleanliness and maintenance, air quality

and noise, including the general resources and access to public services, health care, schools, playgrounds, commercial functions (Berglund et al., 2017).

In reference to all five quality components that should be observed by management bodies, the COB has the right to take necessary actions against such failure to comply and offences. The COB's power to take action against offences committed by all parties involved in the strata management, the strata owners, management bodies as well as the developers. The 2019 Compound Regulations included 29 offences under the Act 757 and 19 offences under the Strata Management (Maintenance and Management) Regulations 2015 as listed in the First Schedule of the Regulation:

<p style="font-size: small;">P.U. (A) 116</p> <p style="font-size: x-small;">FIRST SCHEDULE [Subregulation 2(1)] COMPOUNDABLE OFFENCES</p> <p style="font-size: x-small;">The following offences are prescribed to be offences which may be compounded:</p> <p style="font-size: x-small;">(a) the offences committed under the provisions of the Strata Management Act 2013 as follows:</p> <ul style="list-style-type: none"> (i) subsection 6(6); (ii) subsection 9(5); (iii) subsection 10(7); (iv) subsection 11(7); (v) subsection 12(9); (vi) subsection 14(5); (vii) subsection 15(4); (viii) subsection 18(2); (ix) subsection 26(5); (x) subsection 27(4); (xi) subsection 29(3); (xii) subsections 30(2) and (3); (xiii) subsection 34(3); (xiv) subsection 48(4); (xv) subsection 49(3); (xvi) subsection 50(4); (xvii) subsection 51(3); (xviii) subsection 54(5); (xix) subsection 55(4); (xx) subsection 57(2); (xxi) subsection 62(5); (xxii) subsections 72(2) and (3); (xxiii) subsection 78(3); (xxiv) subsection 89(5); <p style="text-align: center; font-size: x-small;">14</p> <p style="font-size: x-small;">Copyright of the Attorney General's Chambers of Malaysia</p>	<p style="font-size: small;">P.U. (A) 116</p> <ul style="list-style-type: none"> (xxv) subsection 91(2); (xxvi) subsection 92(6); and (xxvii) subsection 151(2); and <p style="font-size: x-small;">(b) the offences committed under the provisions of the Strata Management (Maintenance and Management) Regulations 2015 [P.U. (A) 107/2015] as follows:</p> <ul style="list-style-type: none"> (i) subregulation 6(5); (ii) subregulation 7(4); (iii) subregulations 9(7) and (8); (iv) subregulation 19(2); (v) subregulation 21(5); (vi) subregulation 25(3); (vii) subregulation 30(2); (viii) subregulation 32(5); (ix) subregulation 34(2); (x) subregulation 43(5); (xi) subregulation 44(3); (xii) subregulation 63(2); and (xiii) regulation 70. <p style="text-align: center; font-size: x-small;">15</p> <p style="font-size: x-small;">Copyright of the Attorney General's Chambers of Malaysia</p>
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Figure 2: Strata Management (Compounding of Offences) Regulations 2019, First Schedule

RESEARCH METHODOLOGY

This study conducts qualitative research, a document analysis, driven by the objective formulated, an analysis over data recorded by the COB and the National Housing Department (Jabatan Perumahan Negara, JPN) between the year 2017 to 2020. This analysis aims to show whether the gazettement of the Act 757 has

the ability to improve the state of strata governance from the year it was gazetted and enforced in 2013. This data analysis discusses on the quality management with evidence provided within the available data set. The analysis is expected to show the most common and significant issues encountered through the enforcements taken by the COB according to the filed complaints and offences. The same data set will also be able to show the progressive state of management bodies throughout the years. The introduction of the Act 757 is expected to improve the overall quality, complementing its potential towards good governance.

For the data analysis, several methods including descriptive analysis by using frequency are presented in this paper. Comparison between number of enforcements should be able to reflect the current state of the strata governance. The data range taken from the post gazettement of the Act 757 (2017 to 2020), that should reflect the effectiveness as well as the flaws of the provisioned act. The result should reflect the offences made despite the gazettement and enforcement of the Act, according to the discussion drawn from the data used in the following calculation. Each analysis and discussion are based on data collected throughout the Peninsular of Malaysia including two Federal Territories (WP), the WP Kuala Lumpur and WP Labuan as reported and published by the KPKT.

ANALYSIS AND DISCUSSION

Table 2 shows the detailed offences under related sections, enforcement taken within the year 2020. From this table, it shows that the four highest number of enforcements taken, are related to the collected sums and matters of the account. Hence, the conclusion for the year 2020, matters in relation to the collection of fees and its accounts has the highest rate of non-compliance which leads to enforcements taken.

Table 2: Number of enforcements taken in the year 2020.

Section. No.	Quantity	Default by	Offence against (Section heading)
Sect. 13(3)	9	Any person	Prohibition on collection of moneys before accounts are opened
Sect. 123	284	Any person	Criminal penalty for failure to comply with (Tribunal) award
Sect. 6(6)	40	Developer	Schedule of parcels to be filed with the Commissioner before sale of any parcel
Sect. 9(5)	3	Developer	Duties and powers of developer during developer's management period
Sect. 10(7)	8	Any person / Developer	Developer to establish maintenance account
Sect. 11(7)	8	Any person / Developer	Developer to establish sinking fund account

Section. No.	Quantity	Default by	Offence against (Section heading)
Sect. 12(9)	1	Developer	Purchaser and developer to pay Charges and contribution to sinking fund
Sect. 14(5)	3	Developer	Duties of developer in relation to accounts
Sect. 15(4)	22	Developer	Handing over by developer to the joint management body
Sect. 18(2)	28	Developer	Duty of developer to convene first annual general meeting of joint management body
Sect. 25(5)(6)	500	Purchaser	Parcel Owners to pay charges and contribution to the sinking fund, to the joint MB
Sect. 26(5)	86	MB	Offence against "Duties of joint management body in relation to accounts"
Sect. 27(4)	5	JMB	Dissolution of joint management body
Sect. 29(3)	20	Developer	Duty of developer in respect of Charges for building or land intended for subdivision into parcels completed before commencement of this Act
Sect. 30(2) @ 30(3)	49	Developer / JMB	Register of parcel owners
Sect. 34(3)	1,308	Purchaser	Procedure on recovery of sums due
Sect. 48(4)	1	Developer	Duties and powers of developer to maintain and manage
Sect. 55(4)	4	Developer	Handing over of control to Management Corporation
Sect. 57(2)	23	MC	Duty of developer to convene first annual general meeting
Sect. 62(5)	131	MC	Duties of joint management body in relation to accounts
Sect. 72(2) @72(3)	10	Developer	Strata Roll
Sect. 78(3)	1,369	Purchaser	Procedure on recovery of sums due
Sect. 89(5)	6	Managing Agent	Powers and duties of managing agent
Sect. 91(2)	16	Managing Agent	Termination of Management Agreement
Sect. 92(6)	66	Developer	Developer to pay deposit to rectify defects on common property
Sect. 126(7)	1	Any Person	Search and seizure with warrant

Source: COB 2020 Data and Author's Calculation

To further analyse whether such account and collected sum matter are of a significant and re-occurring issue throughout the years, by comparison, the data set below shows the number of enforcements taken between the year 2017 until 2020 according to the local authorities' strata scheme categories, Category 1 (More than 50,000 parcels), Category 2 (10,000 parcels to 50,000 parcels), Category 3 (3,000 parcels to 10,000 parcels) and Category 4 (Less than 3,000 parcels).

Figure 3 shows the overall number of enforcements taken according to the years, 2019 with the highest number of enforcements, followed by 2017, 2018, and then 2020. Category 1 having the highest number of schemes shows the highest number of enforcements taken as well. Based on the overall number of enforcements taken, further analysis was done to determine, by ranking, the top five highest number of enforcements according to the studied years, from 2017 until 2020.

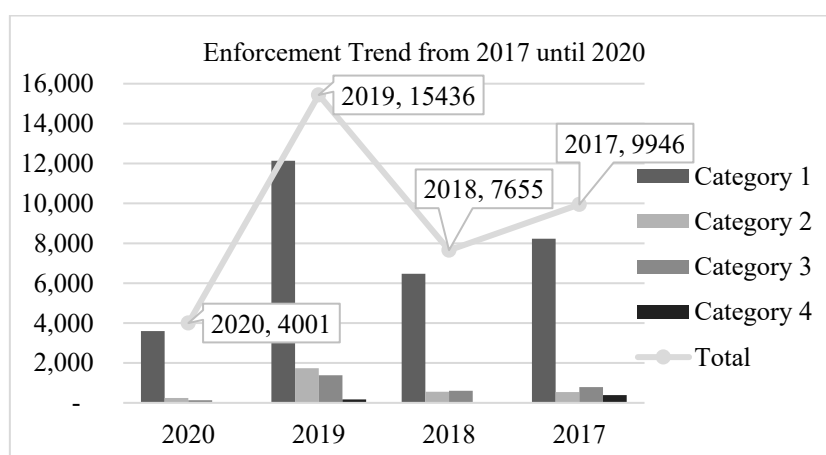


Figure 3: Enforcement Trend from 2017 until 2020

Source: KPKT (2017, 2018, 2019) Commissioner of Buildings (2020) & Author's Calculation (2021)

Based on the numbers reported and the Author's calculation, Table 3 shows the top five number of enforcements taken take up the higher percentage from the overall number of enforcements taken for each studied year. In 2020, 3,592 enforcements taken is equal to 90% from the overall recorded enforcement taken, 70% (10,869 enforcements) in 2019, 88% (6,747 enforcements) in 2018 and 91% (9,015 enforcements) in 2017.

Table 3: Highest Number of Enforcements for the year 2017 until 2020, in Ranking

Rank	2020	2019	2018	2017
1	Section 78(3) - 1,369 cases	Section 34(3) - 4,300 cases	Section 34(3) - 4,494 cases	Section 34(3) - 6,152 cases
2	Section 34(3) - 1,308 cases	Section 78(3) - 2,043 cases	Section 78(3) - 1,344 cases	Section 72(2)(3) - 1229 cases
3	Section 25(5)(6) - 500 cases	Regulation 32(5) - 1,862 cases	Section 123 - 368 cases	Section 78(3) - 639 cases
4	Section 123 - 284 cases	Regulation 21(5) - 1,817 cases	Regulation 34(2) - 366 cases	Section 9(7) - 545 cases

Rank	2020	2019	2018	2017
5	Section 62(5) – 131 cases	Regulation 34(2) - 847 cases	Section 18(2) - 175 cases	Section 48(4) - 472 cases
Total	3,592	10,869	6,747	9,015

Source: Author's Calculation

This study looks further into the description of the sections involved. Table 4 shows the calculated outcome of enforcements according to the sections under the Act 757. The result shown highlights that the three highest enforcements taken were in regards to the sum due (financial matters). that occurs during different stages in Strata Management.

Table 4: Total Number of Enforcements Taken throughout 2017 until 2020 According to the Act 757 provisions

Ranking	Section No.	Description / Offences	Number of Cases
1	Section 34(3)	Procedure on recovery of sums due – purchaser / owner fails to comply to notice	16,254 (53.7%)
2	Section 78(3)	Procedure on recovery of sums due – proprietor fails to comply to notice	5395 (17.8%)
3	Regulation 34(2)	Procedure on recovery of sums due –filed claims against purchaser / owner	1213 (4.0%)
4	Section 123	Criminal penalty for failure to comply with award	652 (2.2%)
5	Regulation 32(5)	Services of any person or agent to maintain and manage common property – Failure to comply	1,862 (6.2%)
6	Regulation 21(5)	Services of any person or agent to maintain and manage common property – Failure to comply	1,817 (6.0%)
7	Section 72(2) @72(3)	Strata Roll – Failure to comply	1,229 (4.1%)
8	Regulation 9(7)	Duties and powers of developer during developer's management period	545 (1.8%)
9	Section 25(5) @ 25(6)	Parcel owners to pay Charges and contribution to the sinking fund, to the joint management body	500 (1.7%)
10	Section 48(4)	Duties and powers of developer to maintain and manage	472 (1.6%)
11	Section 18(2)	Duty of developer to convene first annual general meeting of joint management body	175 (0.6%)
12	Section 62(5)	Duties of joint management body in relation to accounts	131 (0.4%)

Source: Author's Calculation

The top three highest number enforcements taken by the COB against offences relating to financial matters is parallel to another separate study that concluded,

the top two most challenging matter in strata management is to ensure all unit owners to pay their maintenance fee and to collect monthly maintenance fee form owners/residents (Darul Nafis Abas et al., 2021).

CONCLUSION

This study has been able to explore the roles of the strata management stakeholders, namely the Commissioner of Buildings (COB) and the management bodies under the Act 757. The quality of the current landscape of the strata management, was drawn to conclusion through the analysed data. The astounding number of offences made and failure to comply, as well as the enforcement actions taken by the COB was able to highlight and identify the most common issues occurs in Strata Management.

Thus far, the Author is able to conclude that despite the acceptance and employment of the Act 757 and its regulations, the adoption of the Act can further be amended towards a more enforceable standards, rules and rights in strata management for the improvement of the overall quality of strata management.

The analysis concludes that majority of the offences made by parties involved are provisions related to the contribution to the maintenance and management fees, strata roll as well as roles and responsibilities of the management bodies. Both the management and the strata owners have the right to report and make claims against the other party that fails to comply with the Act and its regulations. The COB, having the governance power to ensure the effectiveness of the Act including the power to enforce.

As the development of strata properties continues to increase all over the country, the COB is expected to play a stricter enforcement, ensuring compliance by all related parties regulated under the Act 757. Further study is required for future review and amendments of the Act to improve such authority, thus, to be more integrated, inclusive, and fair for all parties in line with the rapid strata development.

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