

**A STUDY ON THE IMPLEMENTATION OF THE COMMISSIONER OF BUILDING
AS AN ADJUDICATORY BODY TO RESOLVE DISPUTES AND PROTECT THE
RIGHT OF STRATA TITLE PROPERTY PURCHASERS IN MALAYSIA**

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The students/authors confirm that the work submitted is their own and that appropriate credit has been given where references has been made to the work of others

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CHAPTER ONE

INTRODUCTION

1.0 Introduction

This paper aims to examine on the implementation of the Commissioner of Building (COB) as an adjudicatory body to resolve disputes and protect the rights of purchasers in Malaysia as enshrined under the Building and Common Property Act (Maintenance and Management) 2007(BCPMMA). The structure of this paper begins with the background that explains the current function and problems arising from the establishment of the COB. Next, this paper will state the problem statement. This will be followed by the methodology of research. Where will explain the methods adopted by us in completing the proposal. We would then explain the scope, limitation and significance. Further, the literature review will be divided into three frameworks, which are conceptual framework, legal framework and theoretical framework. This will be followed by our conclusion and lastly we will list out the list of references that we used in preparing the research.

The (BCPMMA) 2007 was passed by Parliament in December 2006 and came into effect from 12th April 2007 with the aim to regulate the maintenance and management of common property in strata development.¹ Strata title is a form of ownership devised for multi level high rise building and horizontal sub division of shared areas.² Among others, the Act provides easement by providing the legal and administrative framework for the establishment of a Joint Management Body (JMB) and the appointment of a COB.³ The COB needs to act according to the BCPMMA and relevant provisions in the Strata Titles Act 1985 (STA).⁴

The BCPMMA is currently under the purview of the Ministry of Housing and Local Government Ministry as applies to buildings managed by a JMB before the inception of the

¹ Building and Common Property (Maintenance and Management) Act 2007 (Act 663).

² Oxford, "Oxford Advanced Learner's Dictionary".

³ Nicholas Chang Chen Seng, "Management Of A Strata Titled Development", The Sun, 23rd February 2007.

⁴ Sec 2 and 3(1) BCPMMA 2007.

Management Committee (MC). The MC on the other hand, is a statutory body corporation established by the STA upon the issuing of separate strata titles for individual parcel units.⁵ The responsibilities of the COB are therefore significantly substantial whereby both of the statutes require the COB to perform various roles in discharging its duties prior to the existence of the Management Corporation.⁶ The COB can be seen as a referee by being a mediator and adjudicator in facilitating dispute resolutions between purchasers and developers.⁷

Under the STA common property is defined as, in relation to development area, to include so much of the development area that is not comprised in any parcel, such as the structural elements of the building, and the facilities that serves more than one parcel, or capable of being used or enjoyed in common by all the occupiers of the building.⁸ This is where the COB's vital part will come into play whereby it is entrusted to inspect the maintenance service of high rise buildings.⁹ This is possible through the establishment of a JMB.¹⁰ In current practice, each State Authority will appoint a COB to administer and carry out the provisions of the Act. The Act also empowers the Minister to make regulations for the better implementation of the Act's provisions, although at the time no regulations have been made or came to force.¹¹ The COB is also given powers to appoint a management agent if the quality of management and maintenance services rendered by the developer or the body under the BCPMMA or the developer or management corporation under the STA is deemed unsatisfactory.¹²

⁵ Sec 39(1) and (2) Strata Titles Act 1985.

⁶ Salleh Buang, 'Law of Unfulfilled Expectations', New Straits Times, Property Section – Land Matters 21 May 2010, pg 10.

⁷ BCPMMA s 16(5); STA ss 34-37. See also Garispanduan Perbadanan Pengurusan dan Pentadbiran Skim Strata Menurut Kuatkuasa Akta Hakmilik Strata 1985 (Pindaan 2007), Edisi 1.1, Jabatan Ketua Pengarah Tanah dan Galian Malaysia at pp 17-19 (Guidelines on Management Corporation and Administration of Strata Titles Act 1985 (Amendments 2007), Edition 1.1, Department of Director General of Lands and Mines Malaysia at pp 17-29 – provisional translation)

⁸ BCPMMA, s 2(a).

⁹ Ibid, s 25(1)(a).

¹⁰ Ibid, s 7(1) and (2).

¹¹ Faizal Kamarudin, "The Commissioner Of Buildings: A Brief Comparison Of The Malaysian, Singaporean And Australian (Queensland) Legislation".

¹² BCPMMA, s 25(1)-(3); STA s 50(1) and (2).