

Challenges of forming SMCs in Malaysia

Paper prepared & presented by:

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28 March 2018

Speaker Profile



Sr. Wong Kok Soo

Fellow member of the Royal Institution of Surveyors Malaysia (RISM), advisor & member of the Association of Valuers, Property Managers & Estate Agents In Private Sector (PEPS), member of the Malaysian Institute of Professional Property Managers (MIPPM), member of the Malaysian Institute of Estate Agents (MIEA) and consultant to the National Association of House Buyers (HBA). Member of the Board of Valuers, Appraisers, Estate Agents and Property Managers (BOVAEP).

Sr. Wong is the recipient of the Property Manager Award by the Board of Valuers, Appraisers and Estate Agents Malaysia in 2015; Property Manager Award by the Royal Institution of Surveyors Malaysia in 2014; and the Property Manager Award by the Board of Valuers, Appraisers and Estate Agents Malaysia in 2011.

Sr. Wong has 40 years of vast experience in the Property Industry. He was actively involved in the Drafting & Working Committees for the Malaysian Property Management Practice Standards 2011; the Strata Management Act 2013; the Standard Formulation of Allocated Share Units and Share Units; the Strata Management Regulations 2015; S.O.P. for formation of Subsidiary Management Corporations. He is a renowned authority and speaker on these subjects.

Currently Sr. Wong is the Group Managing Director of Burgess Rawson, Malaysia – a niche market professional property management and consultancy firm, having a property management stable of 30 projects in the Klang Valley with special focus on integrated mixed-use strata development areas.

Sr. Wong Kok Soo of Burgess Rawson, Malaysia provides professional consultancy and services to esteemed clients, developers, JMBs and MCs:-

- In-house training and seminar on SMA 2013 and SMR 2015;
- Facilitate and conduct AGM & EGM of JMB, MC and SMC;
- Consultancy and facilitating the establishment of subsidiary management corporations with limited common properties;
- Consultancy for formulation of suitable share units formula and equitable share units in mixed-use development areas;
- Property management of highrise buildings and strata development areas with special focus on integrated mixed-use development areas;
- Fire insurance valuations to determine insured sum of buildings;
- Property valuations for acquisitions, mergers, finance and corporate annual reports.

MC and SMCs

MC Common Property

Apartment SMC
Limited CP

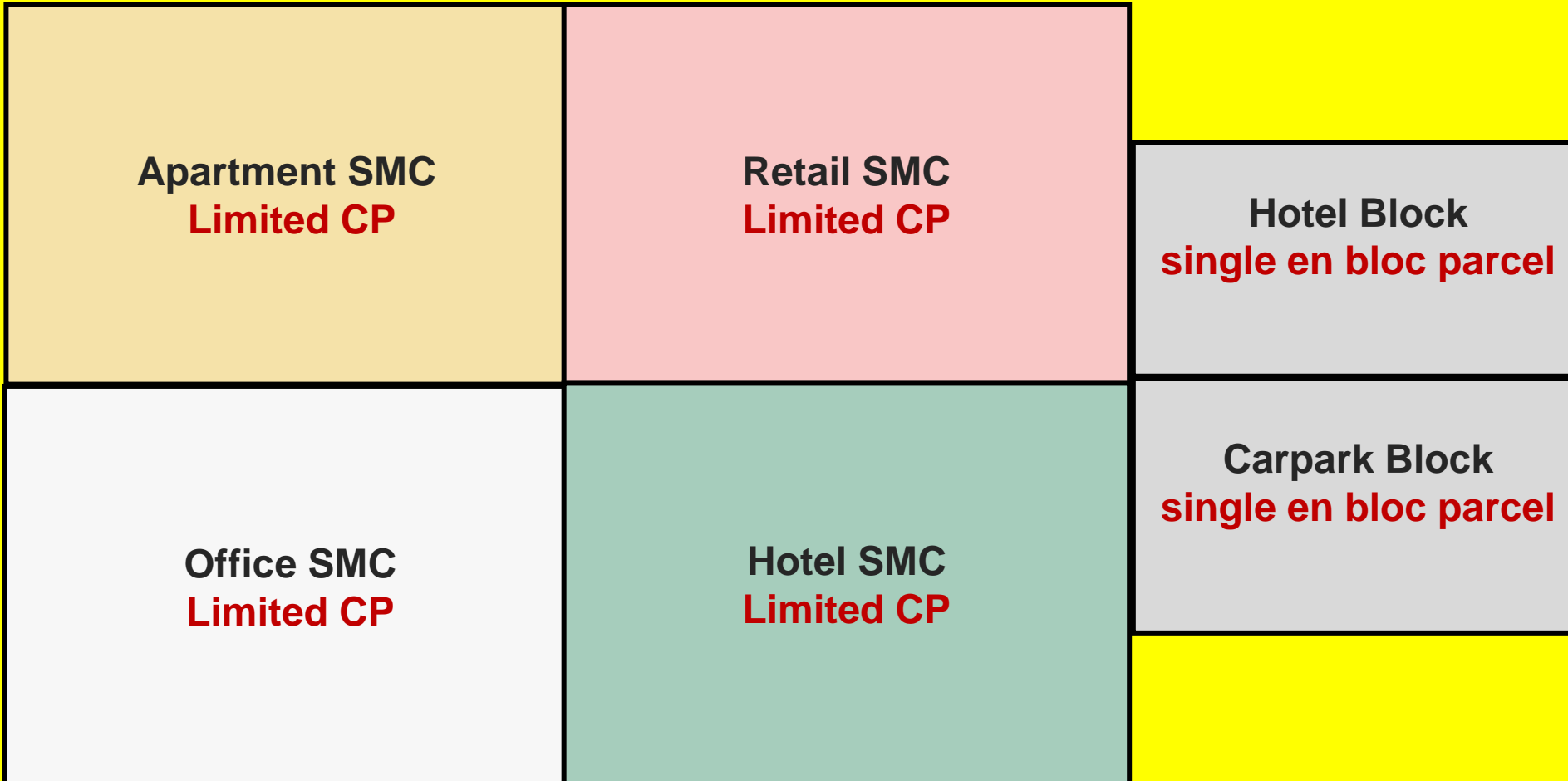
Retail SMC
Limited CP

Office SMC
Limited CP

Hotel SMC
Limited CP

MC and SMCs

MC Common Property



What are LCP and SMC?

- **Limited Common Property (LCP)** is established by **comprehensive resolution** passed by the MC in a **special plan** designating such parts of the common property for the **exclusive benefit** of the proprietors of **two or more parcels** but **not all the parcels** in the development area.
- **Subsidiary Management Corporation (SMC)** is established when a **certificate** is issued by the Director of Land and Mines Department certifying that the **subsidiary management corporation** whose parcel proprietors have the exclusive benefit of the **limited common property** has been constituted under section 17A of the Strata Titles Act 1985 (as amended).

Subsidiary Management Corporation (SMC)

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1. Established upon issuance of the **SMC Certificate** by the Director of Land and Mines Department.
2. **Body corporate** comprising **registered proprietors** having **exclusive benefit** of the **LCP**;
3. **Independent maintenance and management** of LCP.
4. **Perpetual succession** and **common seal**.
5. **May sue** and **be sued** in its name.
6. Has **no proprietary interest** of LCP.
7. Entitled to **third party income** from LCP.
8. Functions and duties are carried out by **Subsidiary Management Committee**. A member of the Subsidiary Management Committee shall sit in the Management Committee of the Management Corporation.

How to create SMCs under S17A of STA?

STA · S17A

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▶ **Special Plan by Licensed Land Surveyor**

- (1) Identifying areas & boundaries of **Limited Common Property**.
- (2) Specifying **parcels** comprised therein.

▶ **Comprehensive Resolution**

- (1) **30 days' notice** for general meeting.
- (2) At least **two-thirds of aggregate share units** by **poll** over **60 days** after the general meeting.

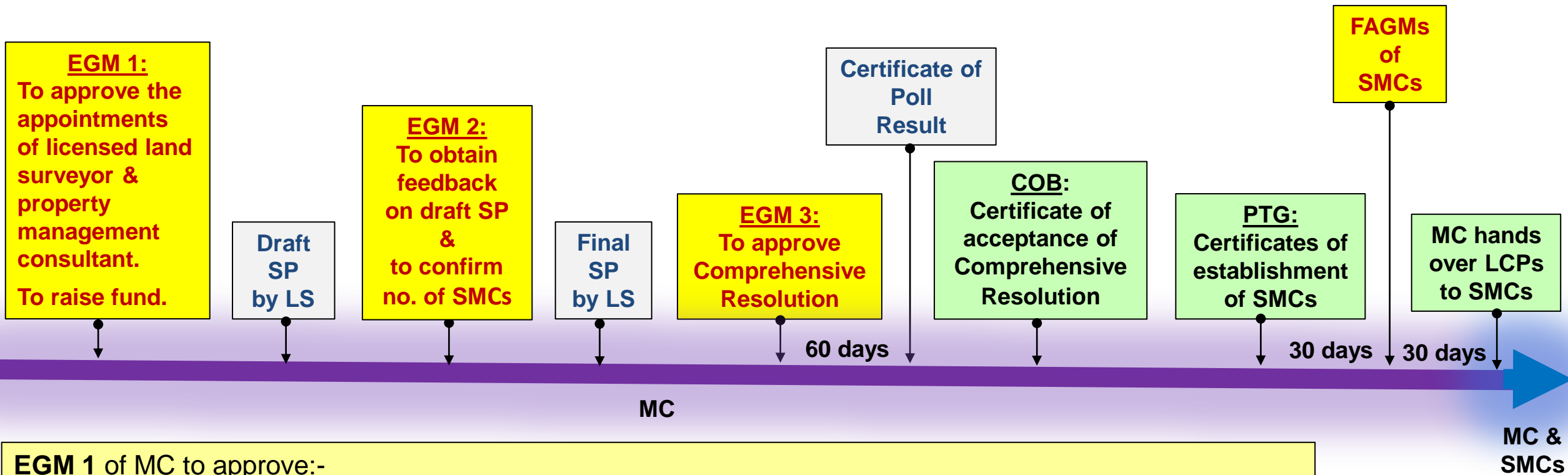
▶ **Certificate of Acceptance of Comprehensive Resolution**

Issuance of the **Acceptance Certificate of Comprehensive Resolution** by the **COB**.

▶ **Certificate of SMC**

Issuance of the **SMC Certificate** by the **Director of Land & Mines Department**.

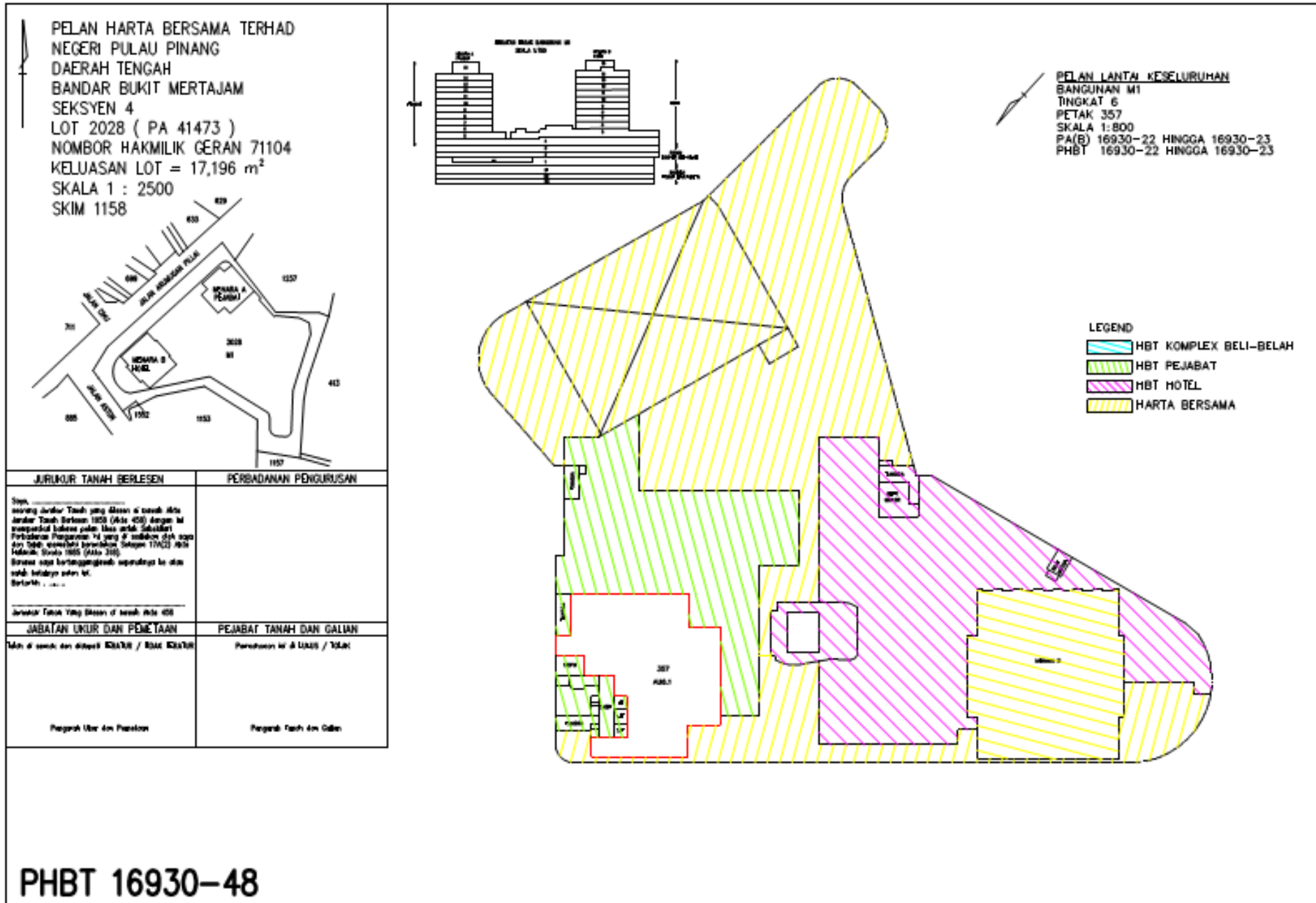
Line chart to set up SMCs



EGM 1 of MC to approve:-

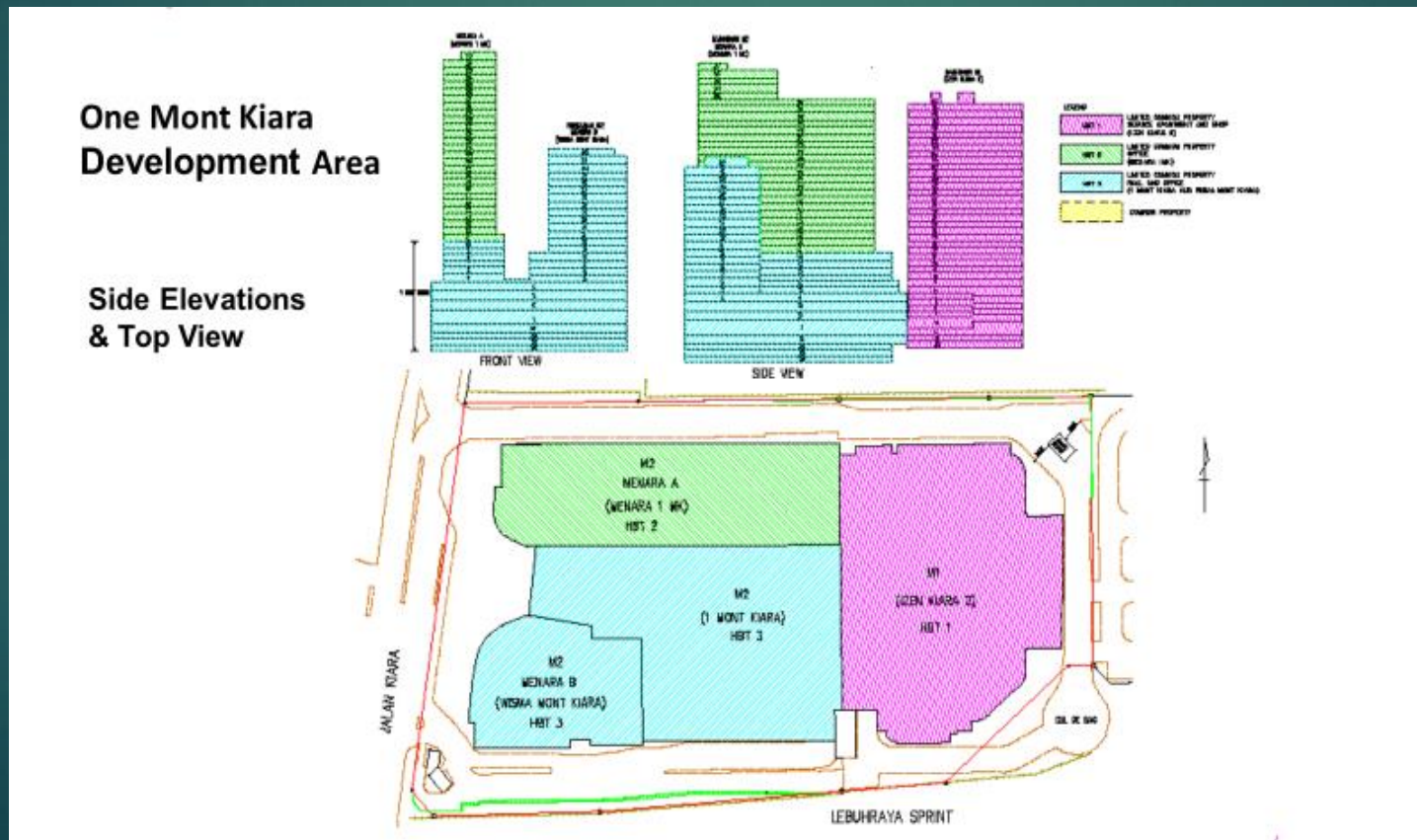
- (1) **Licensed land surveyor (LS)** to prepare **Special Plan** and to apply to PTG for **certificates of establishment of SMCs**.
- (2) **Property management consultant** to liaise with LS on the preparation of Special Plan; to prepare, convene and facilitate **EGM 2 & EGM 3**; to set **S.O.P. and conduct poll** on Comprehensive Resolution; to prepare the **certificate of poll result**; to apply for **certificate of acceptance** of Comprehensive Resolution by COB; and to conduct **FAGMs of SMCs**.
- (3) **Fund** for setting up and establishing the SMCs.

Proposed Special Plan



Subsidiary Management Corporation (SMC)

- ▶ At present, only the **MC** is allowed to form **SMC** through **delineation of limited common property (LCP)** pursuant to **section 17A of Strata Titles Act 1985 (STA)**.
- ▶ **SMC** is feasible and sustainable in a **large mixed-use strata scheme** where the component block are sufficiently big enough to be self sustained.



SMC has advantages and benefits

- ▶ SMC has **independent control, management and maintenance** of its own LCP and the services therein;
- ▶ SMC has its own **independent subsidiary management committee**.
- ▶ SMC has **full control of its own funds** under its own independent Maintenance Account and Sinking Fund Account;
- ▶ SMC has its own **independent operating budget and Capex** for its own LCP;
- ▶ SMC has its own **independent additional by-laws**;
- ▶ SMC can **independently seek redress actions** from COB or Strata Management Tribunal or court without reference to the MC;
- ▶ SMC is entitled to any **third party income** arising from its own LCP;
- ▶ SMC shall have its own **independent general meetings and committee meetings**.
- ▶ **SMC is insulated from the liabilities of the other SMCs.**

Current slow progress towards the formation of SMCs

- ▶ After **2 ½ years** since the Strata Titles (Amendment) Act 2015 [Act A1450] came into force on 1.6.2015, **no SMC has been formed**.
- ▶ Due to a **large number of unregistered proprietors**.
Insufficient votes to reach two-thirds of the aggregate share units.
- ▶ Due to a **large number of** registered proprietors who are **defaulters**.
Insufficient votes to reach two-thirds of the aggregate share units.
- ▶ The **lack of standard operation procedures** creates uncertainty and hinders the smooth establishments of SMCs.
- ▶ The **lack of standard strata roll update data** from some of the land offices hinders or obscures the voting process for comprehensive resolution which requires valid votes of at least two-thirds of the aggregate share units. For example, an irate management body mentioned that a certain land office only printed out the parcel numbers without the names of the proprietors.
- ▶ The **lack of understanding** and the **apathetic attitude** of proprietors in coming forward to cast their votes by poll over the voting period of 60 days.

Formation of SMCs by MC during MC's management period

- ▶ Under the existing **Strata Titles (Amendment) Act 2015 [Act A1450]**, only **MC** can approve a **comprehensive resolution** to demarcate the **LCPs** and form the **SMCs**.
- ▶ However, the **MC** and its **management committee** are ill equipped to handle the **demarcation of LCPs** for the formation of a **suitable number of SMCs** because it involves decisions on how the **electricity supply installation, water reticulation system, M&E plant, equipment and facilities** can or cannot be segregated and allocated for each of the proposed **LCPs of the SMCs**.
- ▶ Furthermore, it also involves the **application of the test for exclusive use** on such installation, plant, equipment and facilities and the designated parts of the common property.
- ▶ In addition to the dilemma, the MC has to fork out **substantial sum of monies** to engage a **licensed land surveyor** to prepare the **special plan**, a **property management consultant** to advise, facilitate and conduct **general meetings** for the **comprehensive resolution amongst others**.

Proposed formation of SMCs by developer at the planning and design stage of a development area

- ▶ The **developer and its project team** (licensed land surveyor, architect, C&S engineers and M&E engineers) including the **property management consultant** will be in the **best position** to come out with the **suitable LCPs and SMCs**.
- ▶ It is very much easier for the **developer** as only **one single entity** to decide upfront at the **planning and design stage** of the development area instead of many parcel proprietors of diverse interests to decide at the MC's stage.
- ▶ Furthermore, there is **saving in cost** and does **not burden the MC financially** if the SMCs are established early at the stage of the **Schedule of Parcels and SiFUS**.

Proposed formation of SMCs by developer at the planning and design stage of a development area

- ▶ The **new regime of laws** comprising **SMA** and amendments to **STA** and Housing Development (Control and Licensing) Act [**HDA**] came into force on **1.6.2015**.
- ▶ proposal to have the **establishment of the SMCs** in the early stage at the **Schedule of Parcels and SiFUS** is accepted by KPTG and KPKT, then a series of **new amendments to the laws**, namely **STA, SMA and HDA**, will have to be drafted with participation by all stakeholders.
- ▶ The proposed new amendments will need to provide for **MC to amend the LCPs & SMCs** as and when necessary via **comprehensive resolution**.
- ▶ The said amendments to the regime of laws will take time and may possibly come into force in **2020** if KPTG and KPKT jointly form a working committee on the proposal in 2018.

Challenges of forming **SMCs** in Malaysia



Thank you!

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