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RATIONALISATION OF STRATA MANAGEMENT ACT 2013, ACT 757 AND PRACTICES IN STRATA RESIDENTIAL BUILDINGS

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Abstract

Housing is the main contributor in property sector in Malaysia. A house is one of the basic physiological needs. The best house is the one that can cater human issues in several aspects depending on the condition and size of the family. Types of house include single-family housing, multi-family housing or mobile homes. In current scenario some countries have difficulties in providing housing due to scarcity of land and higher land value at certain area especially in central city area such as Kuala Lumpur, New York, Hong Kong and Singapore. Residential housing development in these countries focus on high-rise residential for the market. Over the years, development of high-rise residential buildings increase significantly. Living in high-rise building has become a trend in many countries today especially among city dwellers which marks the start of the development of Strata Title Act that is applicable to stratified subdivision building. Malaysia recently has introduced the new Strata Management Act 2013, Act 757 to replace the previous Building and Common Property (Management and Maintenance) Act 2007. The new Act was introduced throughout the country with a lot of improvement in a hope to ease the management of strata building for the benefit of all especially proprietor, management body, management agent and occupants. Objectives of this research are to compare and contrast the elements of Strata Title legislation, Act 318 and Act 757 and investigate the significant implementation of Strata Management Act, Act 757 in Malaysia.

INTRODUCTION

Legislation Act means the making of laws or body of actual prospective laws (Longman Guide to English Usage, 1988) while regulation is a rules made by administrative body or agency under legislative authorization, many of the regulation have the force of laws (Legal Dictionary by ILBS, 1996). In high rise residential, the most applicable legislative is Strata Title Act.

The strata title is defined as a title issue under section 16, a title to be prepared by the Registrar in respect of any parcel or provisional block which consists of stratified strata plan (Strata Title Act, Act 318). The Act is first

developed in New South Wales (NSW) in the 1960s. The strata title is applied in the context of high-rise, concentrated development. The NSW government in their article, defines the concept of strata title, where people own and have title to individual lots i.e. units or apartments within buildings or complexes. The laws applying to strata schemes have been updated many times over the years to keep up with the increasing complexity and sophistication of strata developments. Under the Torrens System for each parcel of real property, or lot, there is only one document of the title called the Registration Document of Title in Malaysia while in NSW it is called the Certificate of Title. The title document contains all the essential legal information about it. The first strata title legislation was the transfer of land (Stratum Estate) Act 1960 of Victoria. The Act provide the explanation on the subdivision of the building into “stratum estate” and for service company to be formed to hold all the common parts of the building upon which it is erected. The purchaser of all apartments or parcel receive share of the parcel from the service company attached to the stratum estate (Denise, 1994).

Nationwide Scenario

To date there are few countries applying the strata title Act namely Singapore, Indonesia, India, Malaysia, Philippines, etc. The history of Strata Title Act originally started long ago when it was first introduced in 1961 when NSW Parliament passed the Conveyancing (Strata Titles) Act. The first community titles legislation was enacted when the Community Land Development Act 1989 and the Community Land Management Act 1989 were passed by the same Parliament. Beginning in 1961 all other Australian states and territories has passed strata titles legislation. There are two different principal in Australian jurisdictions; NSW and Queensland. Both of those states have "third generation" legislation. NSW replaced its strata Act in 1961 and 1973 then was substantially changed in 1996. Queensland's first strata titles legislation however was passed in 1965 and replaced in 1980. The legislation was subsequently replaced in 1997.

Other countries that have adopted the Australian system of high-rise residential ownership including South Africa, Malaysia, Indonesia, Canada, India, Abu Dhabi and Philippines. Fig 1. shows the establishment of strata title Act in 7 countries with reference to New South Wales Act. The figure revealed that South Africa is the first to implement the Act in 1971 followed by Malaysia and Indonesia in 1985, Canada in 1998, India in 2005, Dubai/Abu Dhabi in 2007 and lastly Philippines in 2009. Other countries legislation is based on similar principles but with different definitions and using different mechanisms in their administration depending on countries need and preferences to suit the culture. Singapore has followed the strata Act earlier compare to other countries as it started in 1967 while for Dubai/ Abu Dhabi as the Act was established in 2007 not all district of the country implement the same Act. They are still struggling to solve similar law to deal with the ownership of units within a multi-level building or master community. The latest country which has introduced the strata Act is Philippines where it was first introduced in 2009. Now as it reach it forth years there still improvement being done to strengthen its benefit to the industry.

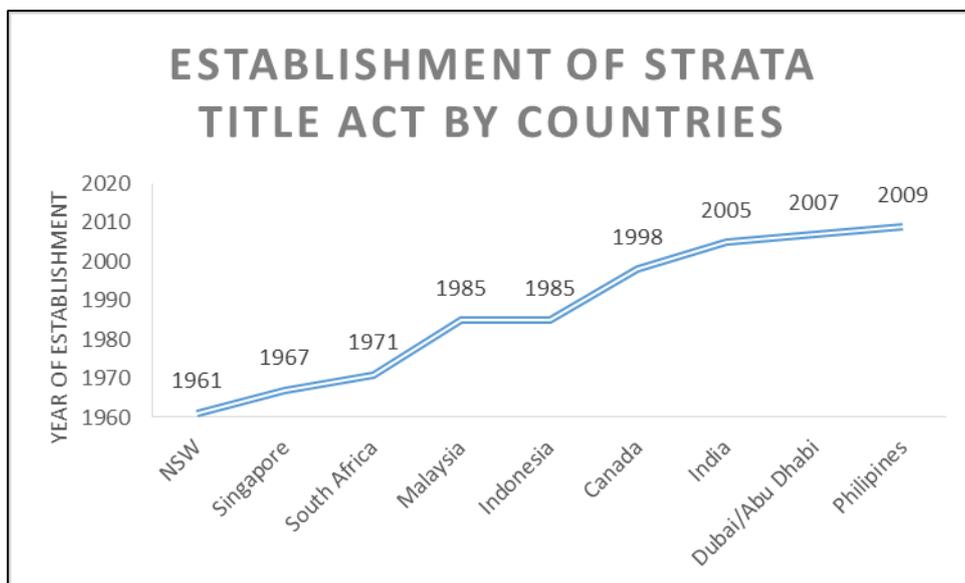


Fig 1. Establishment of Strata Title Act by Countries

(Sources: Strata Titles Act 1985, Act 318, Building Maintenance and Building Management Act, Singapore 1997, Strata Schemes (Leasehold Development) NSW Act 1986 No 219, Introduction of Strata Title Act in Indonesia by Dewi Smaragdina Pramudji, Law & Regulation 2007, Land Department, Government of Dubai,

The South African Sectional Titles Act compared with the Singapore Land Titles (Strata) Act by Van der Merwe, Strata Property Act SBC 1998, British Columbia Canada, Wikipedia)

Significance of Strata Title Ownership and Management

The concept of sub-division was introduced in Peninsular Malaysia on Jan 1st, 1966 via the National Land Code 1965. Since then, the Strata Titles Act 1985 (STA 1985), which facilitates the sub-division of a building into parcels, together with other numerous amendments, have been enacted. The main focus in developing a high-rise residence is the design of a building and the management after the development (Noorsidi, 2011). In Strata Title the power of the Management Corporation (MC) is stated in the Strata Title Act, Act 318 it does not provide any indication of how the enforcement is to be applied. There is no support given by the relevant authorities to the MC to enforce the regulations and by-laws as stated in the Act. For a purchaser, Act 318 picks up where Building, Management and Maintenance Act, Act 663 leaves off. Act 663 is another Act to covers the maintenance and management of the building(s) and common property in a condominium, allowing the purchasers and the developer who both forms the Joint Management Body (JMB) to manage their own building and common property before the strata titles are issued and MC is formed.

Management of Strata Residential Buildings

In Malaysia before commencement of Strata Management Act, Act 757 the management and maintenance of high-rise residential building can be divided into two stages. The first stage is before the issuance of Strata Title where the property is under the responsibility of developer until a JMB is formed while the second stage is after the issuance of Strata Title, where the property will be in responsibility of the MC as stated in the Strata Title Act 318. Initially the concept of strata title ownership patterned along the Australian NSW Conveyancing (Strata Title) Act 1961 by National Land Code 1965. Formation of MC is automatic after one third of the titles has been transferred to the unit owners and after given mandate to do responsible and power to manage the building. Upon dissolution of JMB, MC will take over the responsibility to manage and maintain after the JMB relinquishes its obligations. Once the MC takes over the responsibility to manage and maintain the building(s) and common property, the practice will immediately refers to Act 318 for all the regulations govern by MC. The brief structure of the formation of strata management is as follows;

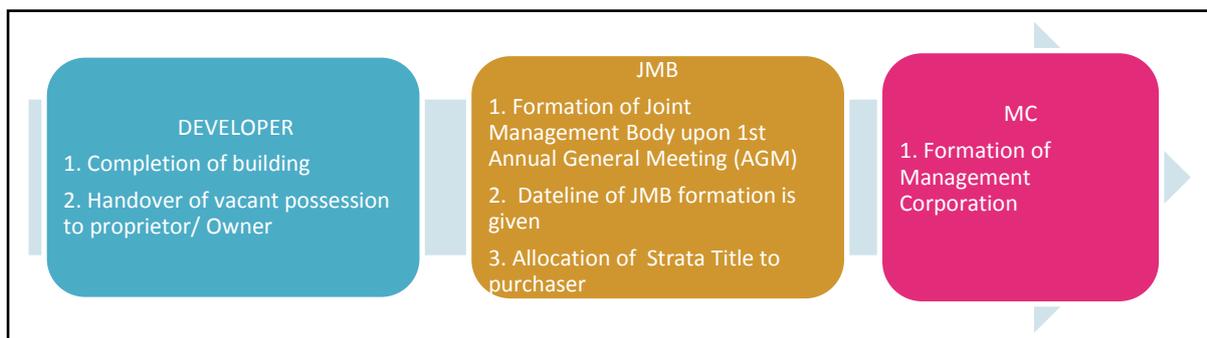


Fig 2. Stages in Formation of Strata Management in Malaysia

Since the first implementation, The Strata Title Act has been amended on several occasions since Strata Titles Amendment Act 1996 and Strata Title Amendment Act 2001 (Teo, 2009). The various amendments introduced by the 1990 Amendment Act were aimed at further improving the procedures and processing of applications for the subdivision of buildings, to further safeguard the interests of purchaser who buy into the strata scheme, to improve on certain aspects of the management of the strata scheme, to remove ambiguities in the provision themselves and to do away with provisions which are anomalous when view in the context of the general legislative framework of the strata title as a whole. The new Strata Management Act 2013 has just enacted recently in Parliament where the Act amends the Strata Titles Act 1985 which includes the insertion of a new Sixth Schedule to enable the implementation of the Electronic Land Administration System for Strata Titles in Peninsular Malaysia. The Act harmonizes the provisions of the principal Act and its relationship with the provisions of the National Land Code (NLC) 1965 as the principal Act is construed as part of the NLC. The latest Act 757 update will bring innovative changes to the landscape of strata developments and common property management comes in the form of one Act. Unlike Act 663, Act 318 and Act 757 should be read together with NLC as if it forms part of the land Act and is under the jurisdiction of the Urban Well-being, Housing and Local Government Ministry and Natural Resources and Environment Ministry.

Comparative Studies of Strata Title Elements

In Malaysia, the introduction of the Act started as early in 1985. During its implementation it has undergone many amendments and improvement to ensure the system cater for the needs and requirements of residents and society over time. The legislation is administered by the Commissioner of Buildings (COB). The concept of sub-division was introduced in Peninsular Malaysia on Jan 1, 1966 via the NLC 1965. Since then, the Strata Titles Act 1985 (STA 1985), which facilitates the sub-division of a building into parcels, together with numerous other amendments, has been enacted. The Act 318 consists of 10 elements while the new act, Act 757 consist of 11 elements. The comprehensive changes will give better impact and benefit for all. Table 1 shows the elements and matrix of comparative analysis between both Acts 318 and Act 757. Elements presented in each Act will be marked with (√) while elements not presented with (X).

Element no 1, the appointment of officer, is only presenting in Act 757. The element refers to the appointment of any general or special directions of the Minister, Commissioner of Building (COB) who charge of the administration of the Act and may perform such other duties as are imposed and may exercise such powers as are conferred upon him.

Element no 2, maintenance of building is present in both Act 318 and Act 757 showing the importance of building maintenance. Every aspect of the maintenance is to be carried out by developer, council or the unit owners. The sub elements included under the topic are deposit to carry out repair work, exterior feature and appeal to repair by the developer.

Element no 3, dealing with strata sub-divided building there are 7 sub elements.

Element no 4; disputes and strata board, it has divided the element into two (2) sub elements. They are Strata title Board, Types of Order and Stage Development Contract.

Element no 5, corporate offender the new Act, Act 757 has learned from both Singapore and NSW.

Element no 6, general meeting for MC and subsidiary corporation is present in both Acts, Act 318 and Act 757 which listed the procedure on handling the first meeting for Management Corporation, entitlement to vote, quorum, motion of order, appointment of office barrier, proxy and power of proxy, etc.

Element no 7, council and executive committee is also present in both Acts. This element is important as it will help to make decision in formation of office barrier, council and executive committee. In running the business, it is important to keep the councils record, preparing notice of the meeting and resolution writing.

The Amendment of Strata Title Act, Act A1450

As discussed earlier, Act 318 that had been enforced in Peninsular Malaysia since 1st June 1985, allows an alienated land to have separate titles for multi-layer ownership. The new amendment to Strata Title Act via the Strata Titles Act (Amendment) 2013 [Act A1450] is complementary to Act 318, it has introduced a new concept of issuance of strata titles with simultaneous Vacant Possession (VP). With the introduction of the new concept, the duration process of issuance of strata titles will be shortened and owners of strata units will be able to receive their strata titles sooner. Furthermore, the basis of the amendment under Act A1450 is to insist on the need to make the strata titles’ management focus on interest of proprietors and aim at improving the delivery system of land administration in management and issuance of strata titles. The Act 757 however strengthen the management of strata building.

**TABLE 1
COMPARATIVE STUDY ON THE ELEMENTS OF STRATA TITLE ACT**

NO	ELEMENTS	SUB-ELEMENTS	ACT 318	ACT 757	REMARKS
1	Appointment of officer	Appointment of Commissioner of Building (COB)	X	√	The appointment of COB is clearly stated in Act 757 as to administer and carrying out the provision of the Act.
2	Maintenance of building	Carry out repairing work, deposit matter, exterior feature	√	√	Both Acts have stated the aspect of maintenance of strata residential building. However few improvement have been in Act 757 as to cater issues such as internal floor leakage and damage to party wall.

3	Dealing in strata subdivided building	Manage by owner developer before Management Corporation (MC)	X	√	The new Act 757 has combined provision of both stages before and after the issuance of Strata Title while the Act 318 only limited to stage of management and maintenance of strata building after the issuance of Strata Title.
		Management Corporation (MC) and common property	√	√	Discussing on role and duties of MC and the power towards common property.
		Council members	√	√	Both Act 318 and 757 have discussed the sub-element of council members. However few improvement has been done in Act 757 where they have clearly stated specific provision and requirement to become the committee members.
		Managing agent	√	√	Both have stated the function and responsibilities of managing agent whose appointed to manage and maintain the strata building on behalf of JMB or MC.
		Insurance	√	√	Both Acts stated the duty to insured building, amount to be insured, insurable interest, etc.
		Subsidiary management corporation and limited common property	X	√	Act 757 has include the duty and powers of subsidiary management corporation under the Act together with the rule to form the committee and maintenance account with charges, contribution and sinking funds.
		Dispute and strata management tribunal	X	√	Act 757 has stated the element of disputes and establishment of tribunal, members, jurisdiction of the tribunal, conduct of proceeding, award of the tribunal and criminal penalty for the failure and offence.
4	Disputes and strata board	Strata title board	√	√	Both Acts stated the Strata Title board.
		Types of order by board	√	√	Both Acts stated the types of order.
5	General : Corporate offender	Misleading information by commissioner, penalty, court, jurisdiction	X	√	Act 757 clearly states any director, committee members, subsidiary committee members or officer of corporate body is responsible to her or her of the action of the offence.
6	General Meeting	General meeting by management corporation and subsidiary corporation	√	√	Both Act listed the procedure on handling the first or Annual General Meeting for Management Corporation, entitlement to vote, quorum, motion of order, appointment of office barrier, proxy and power of proxy, etc.
7	Council and Executive Committee	Proceeding of council and executive committee	√	√	Both Acts includes this as it help in making decision in formation of office barrier, council and executive committee in running the business.

METHODOLOGY

This research is a quantitative research where primary data and secondary data are used for data collection. For primary data, questionnaires survey was carried out among 100 respondents while most relevant articles on strata title management and practice was selected for secondary data collection. There are two (2) objectives to be achieved in this study:

- i. To compare and contrast the elements of Strata Title legislation of Act 318 and Act 757
- ii. To investigate the significant implementation of Strata Management Act, Act 757 in Malaysia.

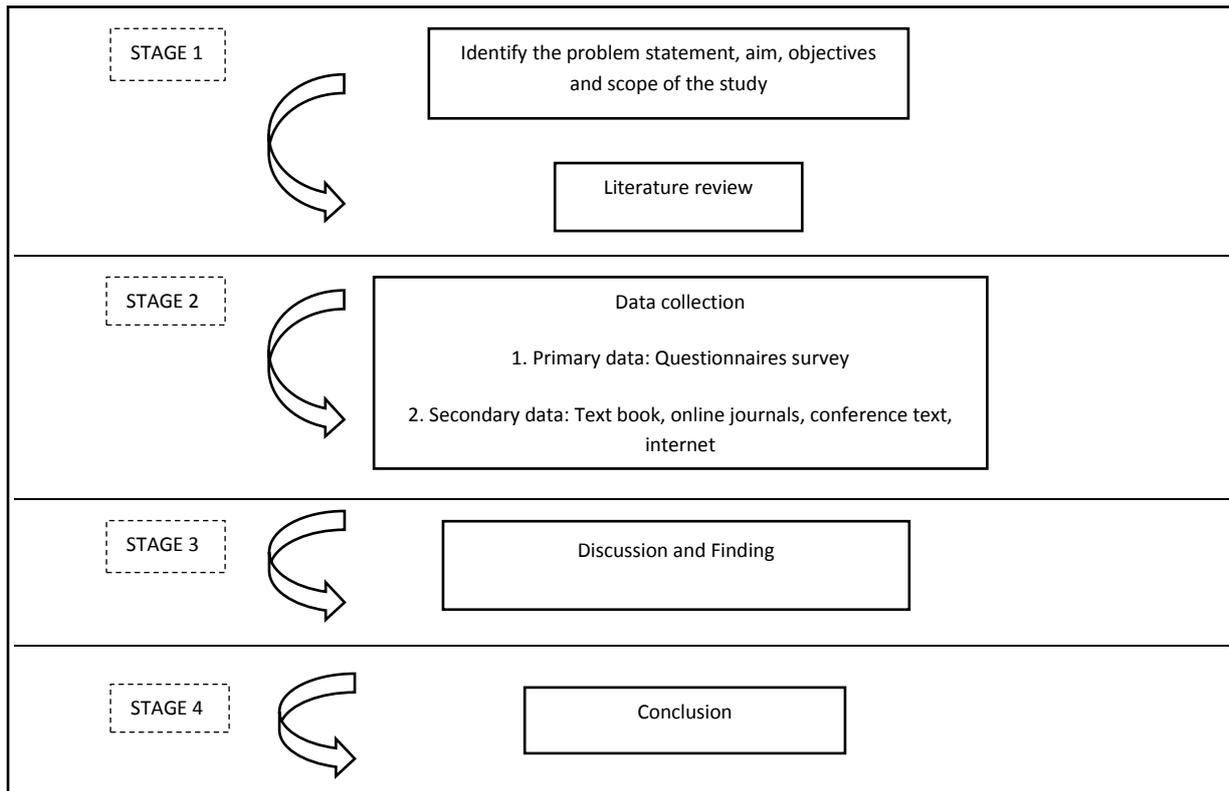


Fig. 3. Research Methodology

Questionnaire Design

The questionnaire survey has been carried out for data collection. 100 respondents was chosen from the targeted group which focus on professional who involves either directly or indirectly in managing residential strata building i.e. property manager, assistant property manager and property executive. These respondents are chosen base on their knowledge in property industry and clearly understand and able to give the best response for all the questions.

Data Analysis

Data analysis is a data preparation involved in converting information from questionnaire. The data analysis was carried out using Statistical Package for Social Science (SPSS) and Excel format. The result was then presented in the form of line and bar chart.

FINDINGS

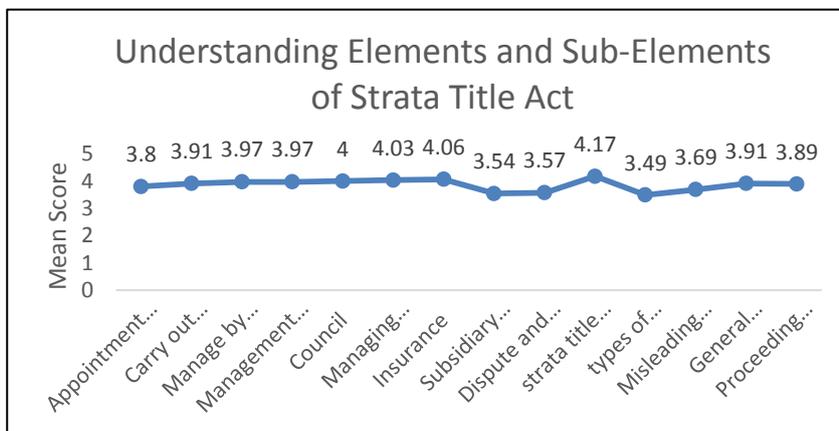


Fig. 4. Response on Elements and Sub-elements of Strata Title Act in Malaysia

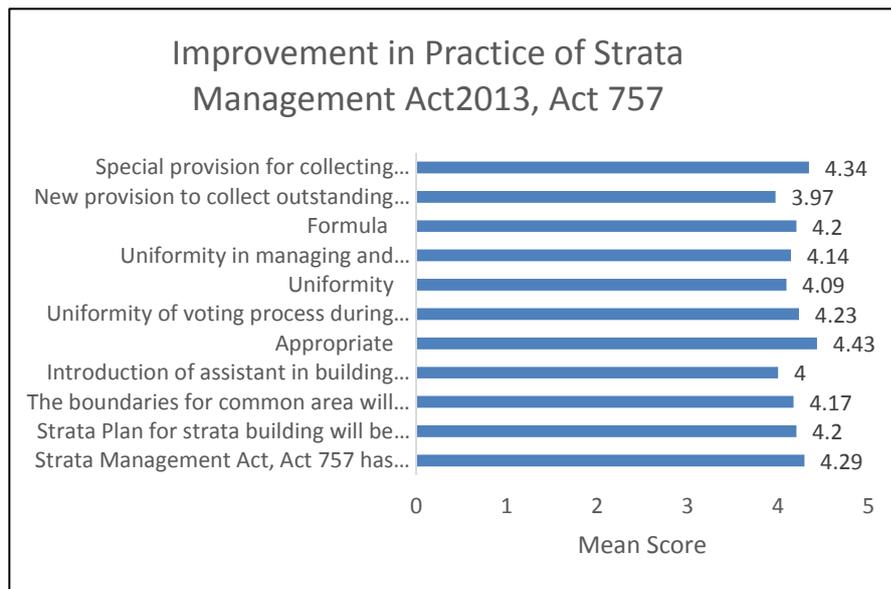


Fig. 5. Response on Improvement of Strata Management Act 2013, Act 757

Based on the above finding, Fig. 4. shows the understanding of elements of Strata Title Act implemented in Malaysia. From the respondents' feedback, it shows that the awareness of the Act is high among respondents as they involve in management of high-rise residential building. The score mean shows number of respondents agreed on the elements. The highest relevant element in Strata Act voted by respondents is insurance (4.06) for strata residential building while the lowest is types of order by board which is less understanding.

Fig. 5. shows the respondents' feedback on the latest improvement of Strata Management Act 2013, Act 757. Based on the above plotted graph, most of the improvement elements in the new Act managed to get the above average score mean. The highest score plotted on appropriate increment in the penalty due to omission or fault by developer, managing agent etc (4.43) while the most irrelevant element disagreed by respondents is new provision is to collect outstanding maintenance fees from tenant of the unit which shows the lowest score mean at (3.97). Most of respondents agreed that the improve elements have made management practices more easier and practical as they have highlighted on important issues such as formulating share unit, limitation of boundaries of common area etc. The new emphasis would help to solve issues and disputes in strata residential building.

CONCLUSION

In conclusion, it was found out that the Strata Title Act in Malaysia was left unattended for more than 20 years. There were few adjustment made to suit the time and condition of the environment, however some elements are lacking in the Act that need immediate attention by the government, house association and property buyers. Nowadays, many high-rise residential was built in the market as a result from demand and supply by developer and house buyers. It is not a new landscape where you can see a lot of high-rise building constructed especially in urban city area i.e. Kuala Lumpur, Georgetown, Johor Bahru, etc. This has change the thinking and need of the owners and investors as to seek for better living lifestyle to protect their interest. The new Act, Act 757 shows rationale in Malaysia Strata Title Act and embark a new hope which started to benefit most of industry players and proprietors as it is a comprehensive Act to bind both strata management before and after existence of MC. Meanwhile, the new amendment of Strata Title Act via the Strata Titles Act (Amendment) 2013 [Act A1450] still in use where it introduced a new concept of issuance of strata titles with simultaneous VP. As the high-rise residential building occupied by a lot of people as the residents, they cannot deny the fact that there will be a lot of conflicts and issues arise day and night. Managing strata residential building is a tough commitment for the property executive and manager. The latest improvement in Act 757 which include few elements listed in this research such as appointment of commissioner of building (COB), manage by owner developer before management corporation (MC), subsidiary management corporation and limited common property, dispute and strata management tribunal and misleading information by commissioner, penalty, court, jurisdiction will help the building management and managing agent to implement and execute the best work especially in implementation of the elements as to achieve the ultimate objective of the community to live together in harmony.

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