

# 25<sup>th</sup> National Real Estate Convention

## Effect of the New Strata Management Act 2013 on Upcoming Strata Developments

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## Background of Act 757

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Act 757 provides a more comprehensive scope of regulatory procedures and policies in the maintenance and management of strata titled properties.

The Date Of Royal Assent was on 05/02/2013 and the Date Of Gazette was on 08/02/2013.

It combines 3 acts into one, namely

1. the Building And Common Property (Maintenance and Management) Act 2007 (Act 663),
2. The Strata Titles Act 1985 (Act 318)
3. Part Of The Housing Development (Control and Licensing) Act 1966 (Act 118) relating to sub-divided buildings.

It is divided into 11 parts and 153 sections with 4 schedules attachment. Parts 4, 5 and 9 are further divided into several chapters.

It aims to clear all ambiguities, prevent abuses by the developer and major parcel owners, gives more enforcement powers to the authorities and create a better living environment for all.

Came into force on 1 June 2015.



# Importance of New Legislations

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Today there are more than 15,000 strata development schemes in Malaysia and increasing.

5.9 million occupants occupy approximately 1,500,000 parcel units.

About 80% of all the stratified projects are managed by Joint Management Bodies and Management Corporations.

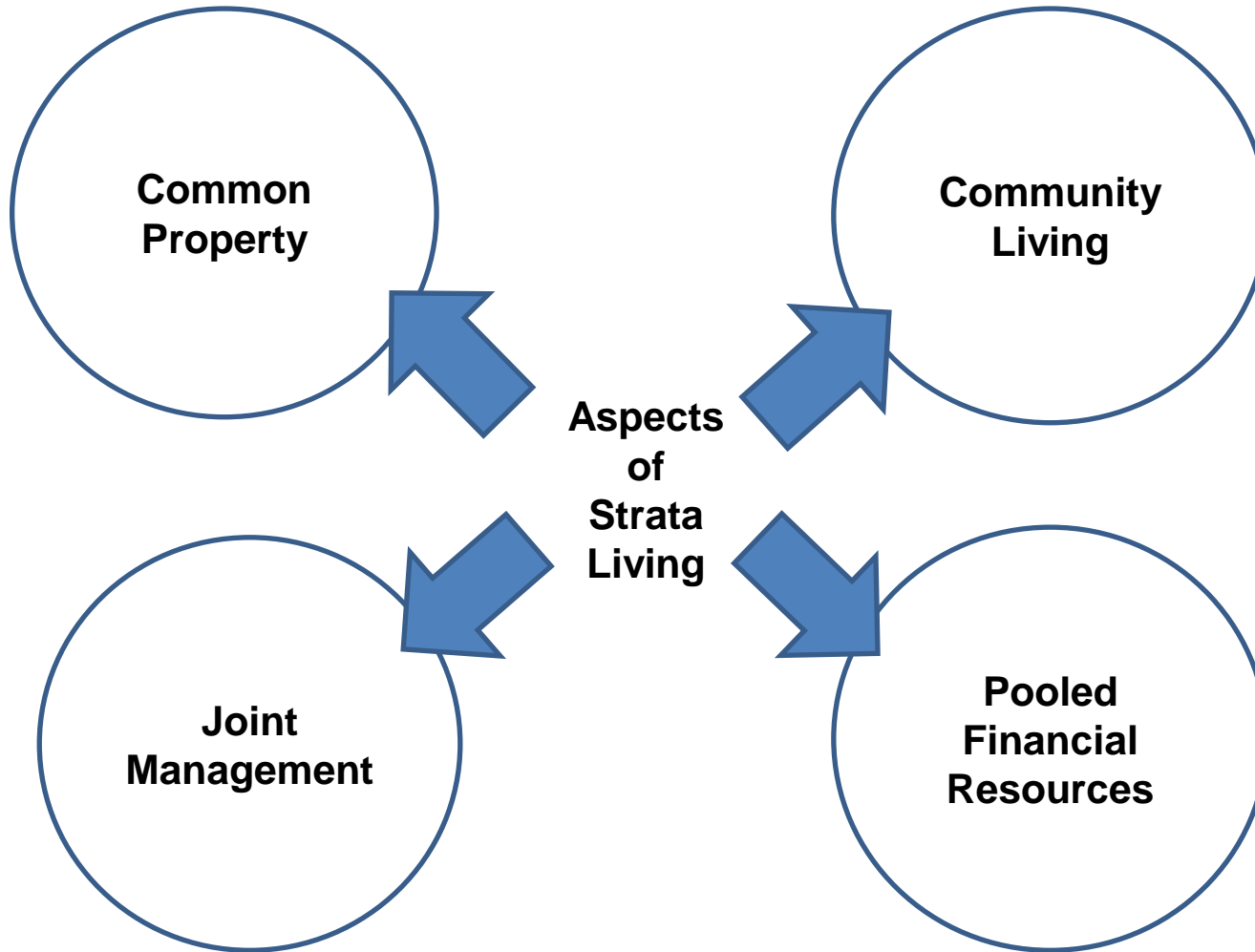
Strata living is now a way of life.





## Strata development as a way of life

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## New Legislations affecting Strata Property

### Strata Management Act 2013 (Act 757) and Regulations 2015

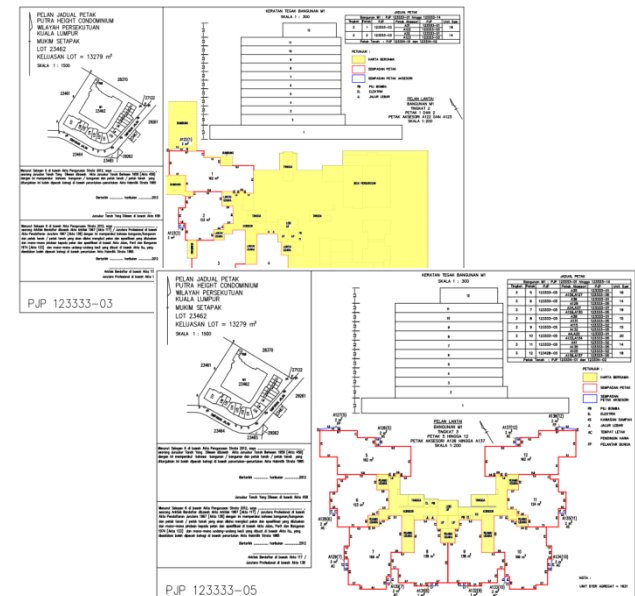
A comprehensive act governing strata property management.

### Proposed amendment to Schedule H & J of the Housing Development (Control and Licensing) Regulations 1989 under Housing Development (Control and Licensing Act 1966 (Act 118)

Common Facilities and Services  
Strata title upon vacant possession.

### Strata Title Act 1985 (Amendment 2013) (Act A1450)

Application and Registration.  
Application for Limited Common Property.





## Background of New Ruling affecting developers

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A developer of any building or land intended for subdivision into parcels in a development area **shall not sell** any parcel or proposed parcel unless –

- (a) a schedule of parcels showing the **proposed share units** of each parcel or proposed parcel and the total share units of all the parcels has been filed with the commissioner; and
- (b) in the case of any phased development, the schedule of parcels filed with the commissioner shows the **proposed quantum of provisional share units** for each provisional block.

In the case of any phased development, the developer shall also not sell any parcel or proposed parcel in any provisional block unless the developer has filed with the commissioner an amended schedule of parcels showing the **proposed allocation of the provisional share units** among the new parcels in the provisional block.



## Schedule of Parcels

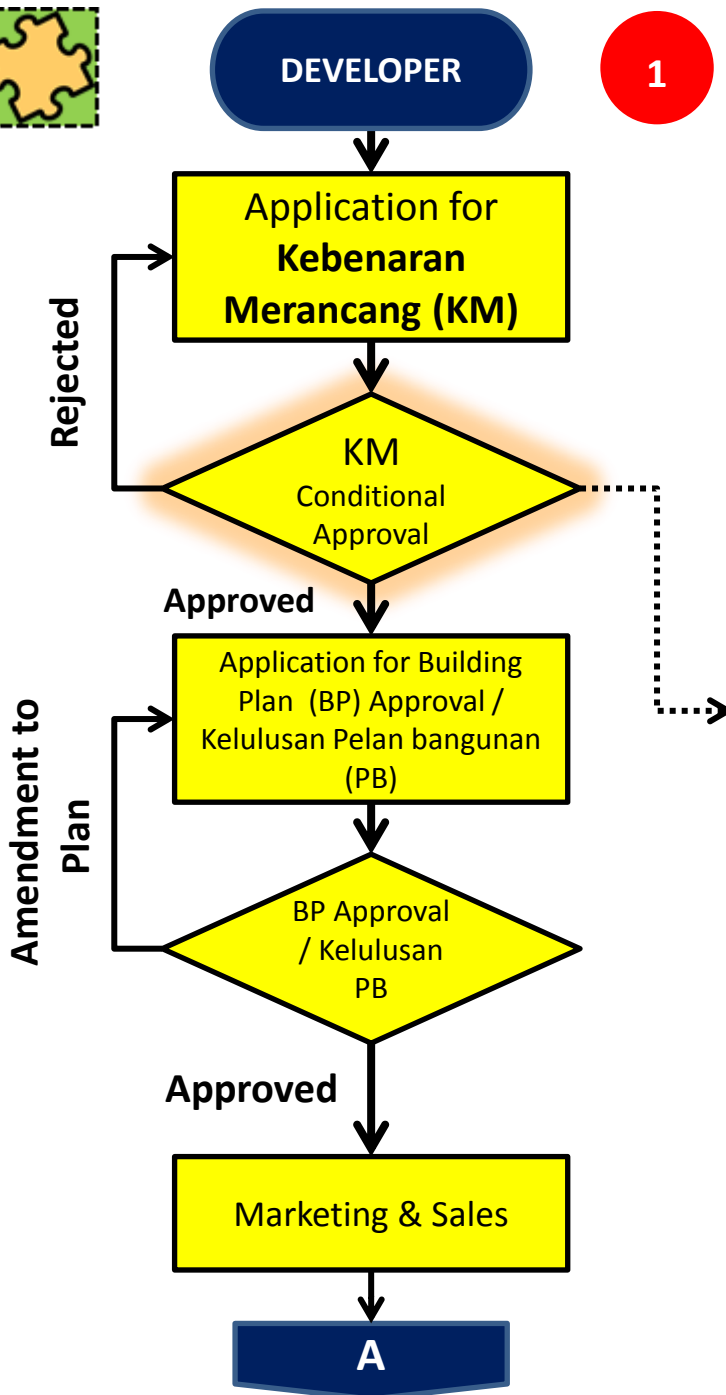
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A **Schedule of Parcels** filed shall –

- (a) comprise a **location plan, storey plan and delineation plan** as specified in **section 8A of the Strata Titles Act 1985**;
- (b) show a **legend of all parcels, all common properties and all accessory parcels**, and in the case of **accessory parcels, specify in the legend the parcels** they are made appurtenant to;

Certified by a **Licensed Land Surveyor** together with **the Architect** as a development that is capable of being subdivided for the purpose of issuance of strata titles

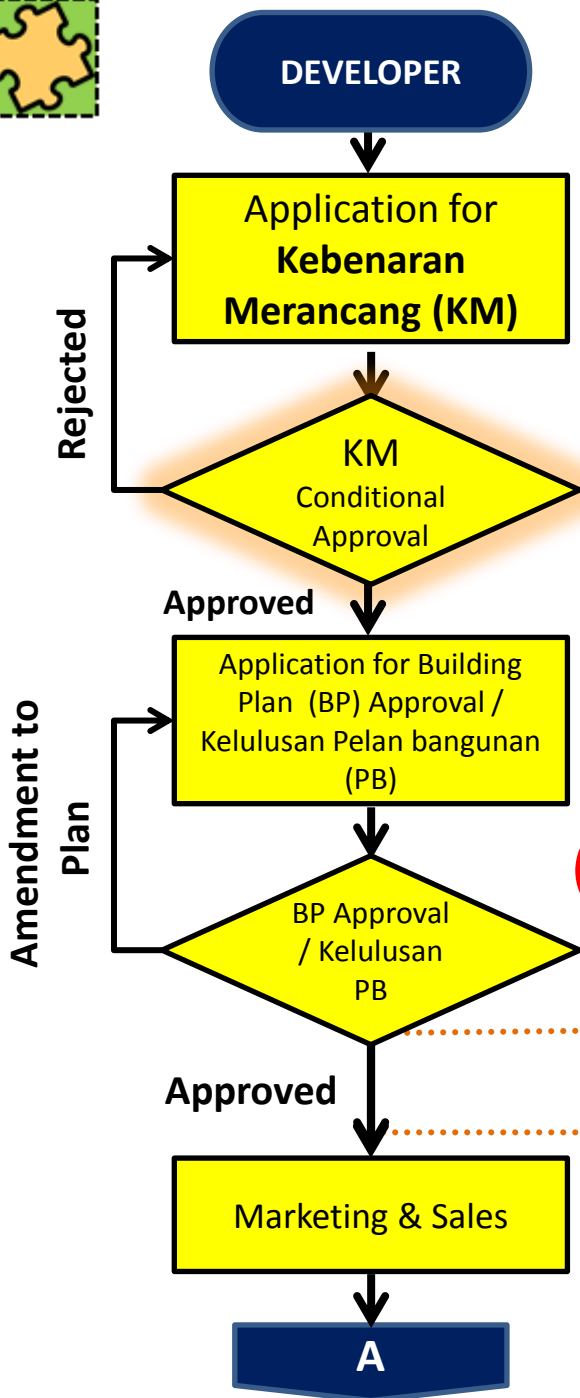
**Exhibited at all times** in a conspicuous position in any office and branch office of the developer and at such place where sale of a parcel is conducted



## The following will be imposed in the KM :

- i. All developments to be subdivided and issued with strata titles must apply for “**Sijil Formula Unit Syer**” (**SiFUS**) to the State Authority before selling the parcels or before applying to JUPEM for **Sijil Cadangan Pelan Strata (CPSP)** whichever is first.
- ii. Schedule of parcels must also be filed with **Pesuruhjaya Bangunan (COB)** before selling the parcels or before applying to JUPEM for **Sijil Cadangan Pelan Strata (CPSP)** whichever is first.
- iii. Composite Licence and Sales Permit will only be issued by Bahagian Pelesenan Pemajuan Perumahan Jabatan Perumahan Negara (JPN) after conditions for SiFUS dan Schedule of Parcels are fulfilled.
- iv. The developer must submit a copy of the certification that the construction has reached super structure stage two (2) weeks after reaching the said stage.



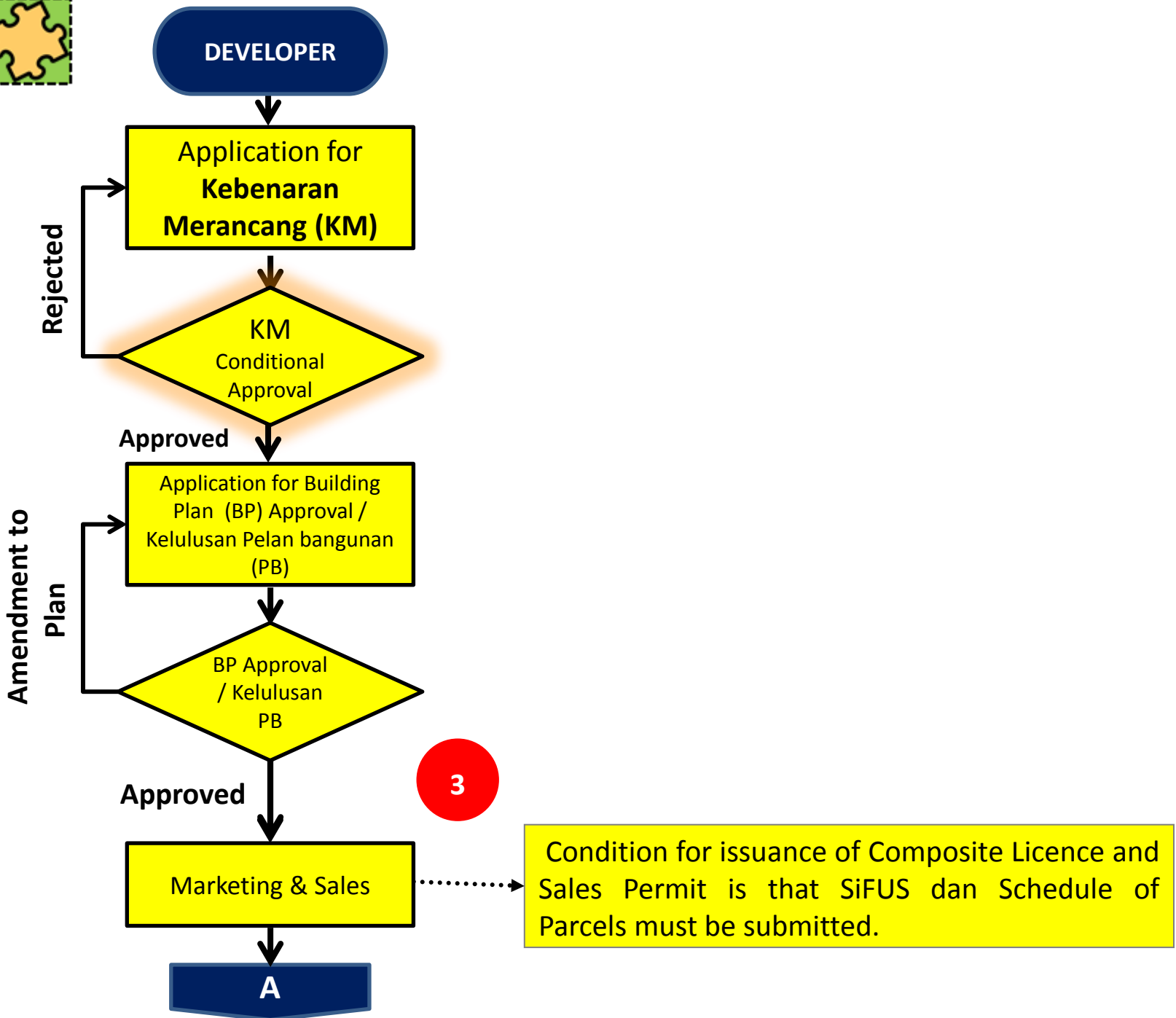


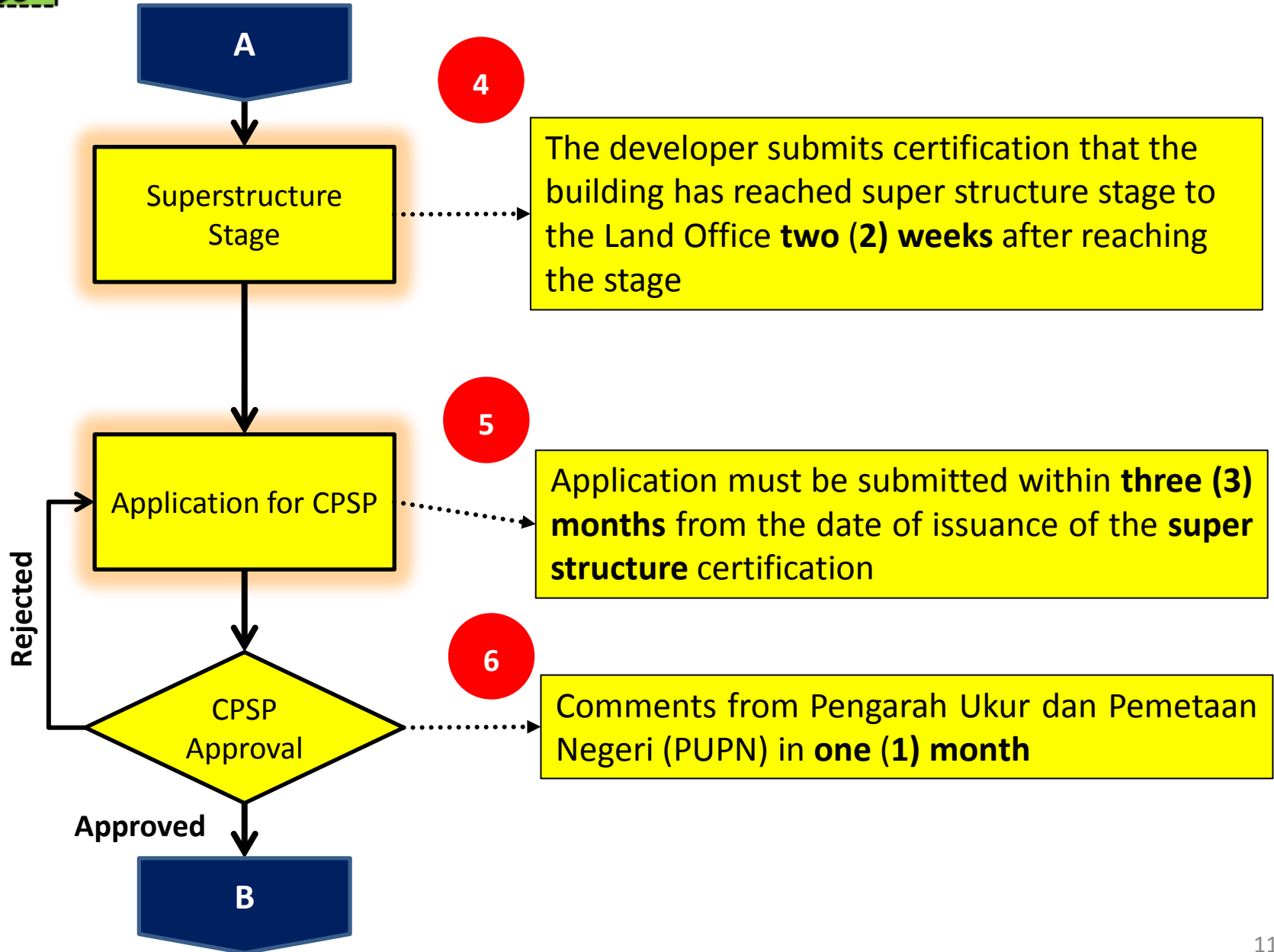
### Conditions of Approval for SiFUS

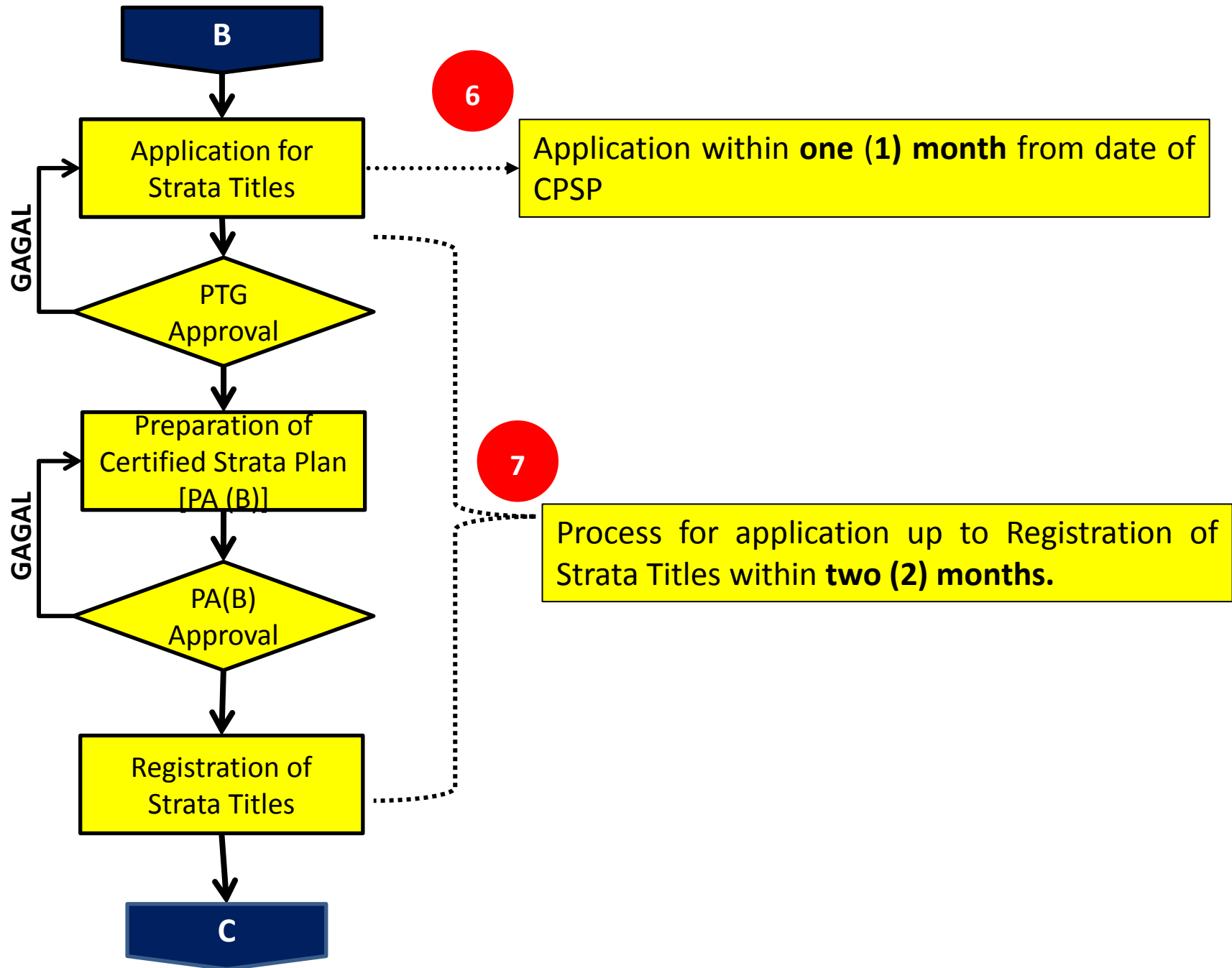
- i. Land matters resolved
- ii. Licensed Land surveyor appointed
- iii. Survey fees deposit receipt issued
- iv. Share Unit calculation formula
- v. Schedule of Parcels certified by Licensed Land and Architect/Engineer
- vi. Building Plan approved

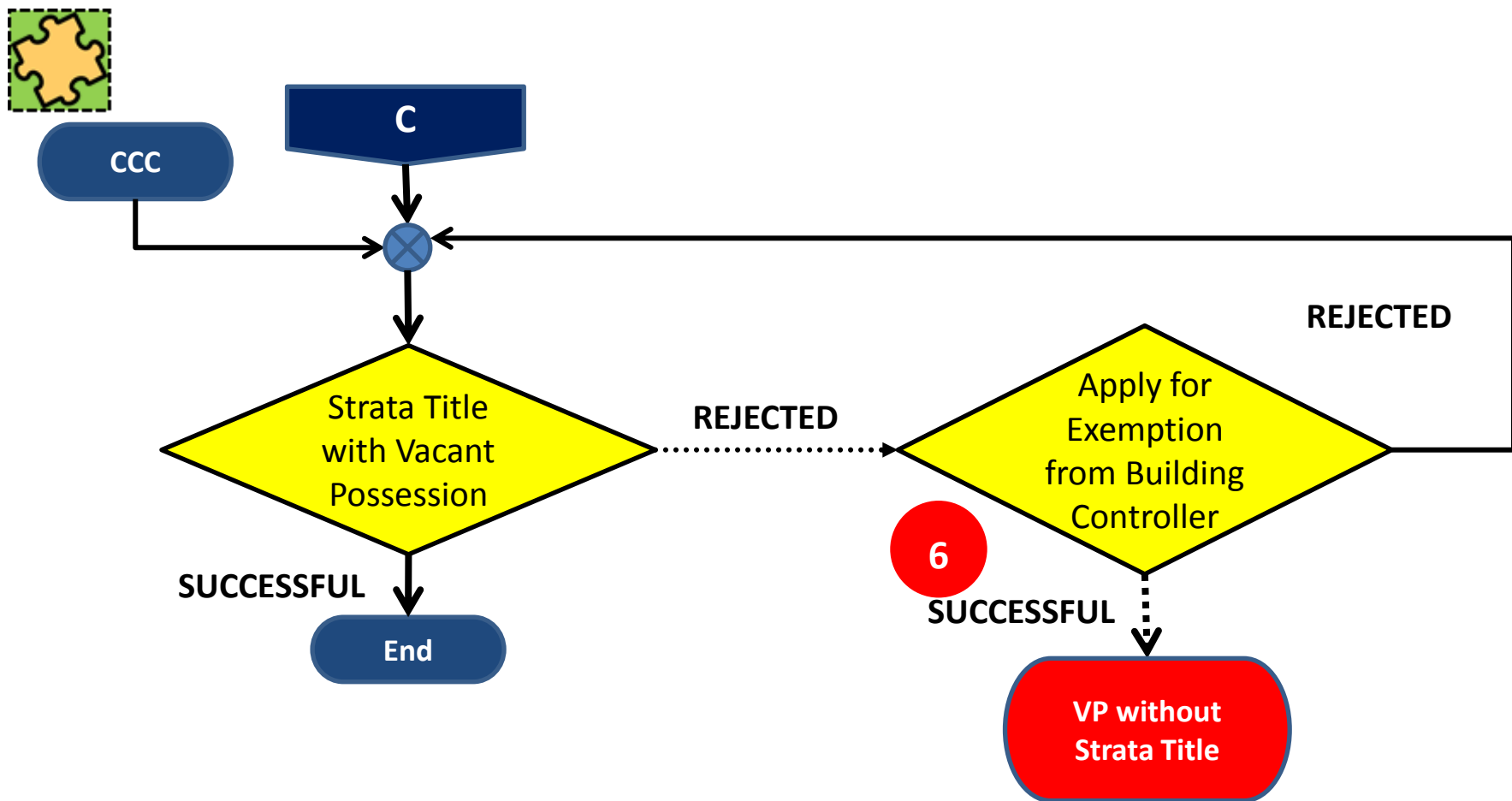
**Application for SiFUS to Land Office by Developer**

**Filing of Schedule of Parcels to COB**









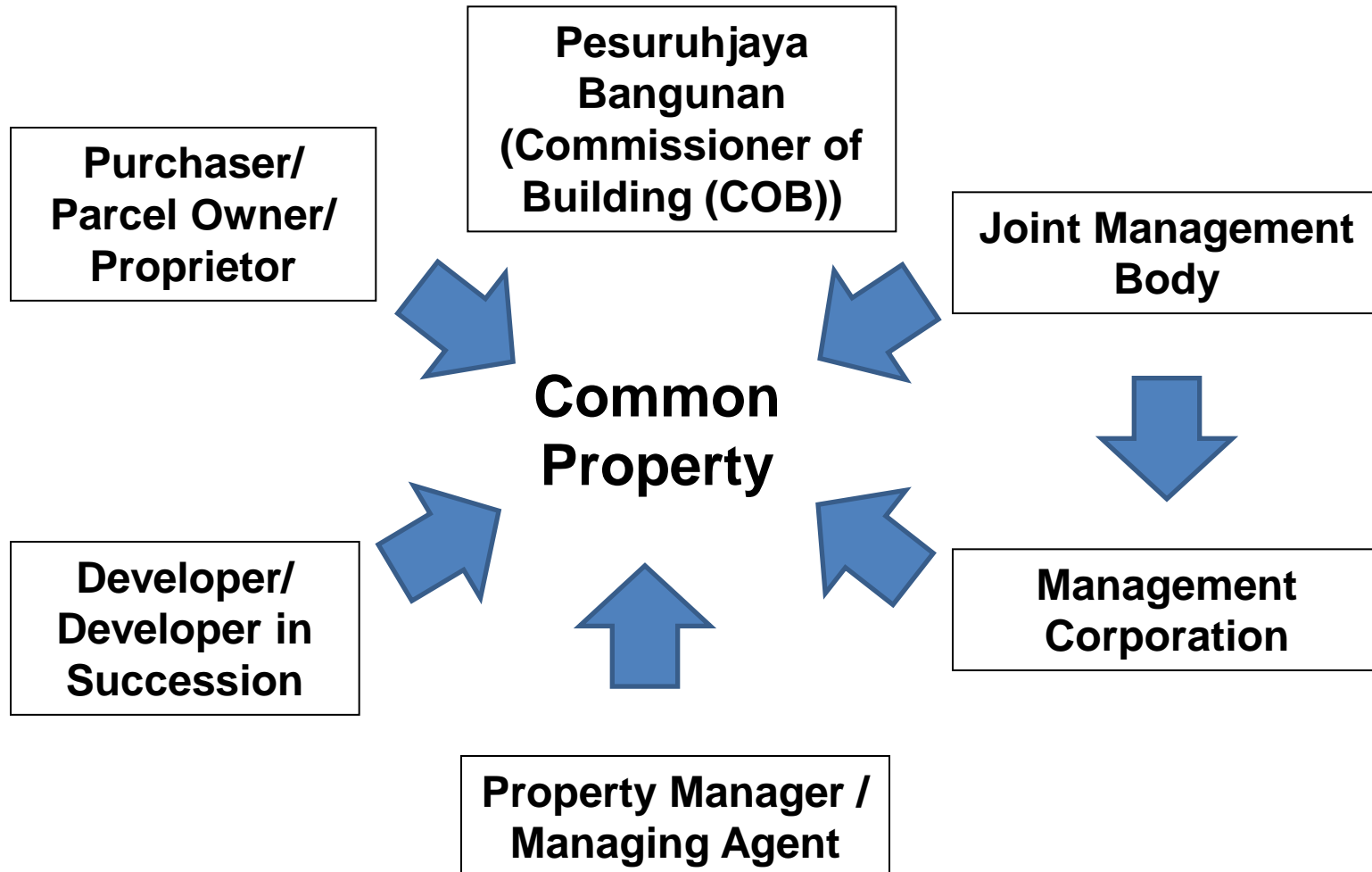
**Para 28, Schedule H, Act 118**

**i. Guidelines for considering exemption on VP delivery without strata title subject to the following:**

- ✓ CPSP issued
- ✓ Strata Title application submitted to PTG <100 working days prior to VP for first parcel
- ✓ Comments given in 2 weeks
- ✓ Application made prior to the date of delivery of VP for first parcel.



## Relationship between Stakeholders





## Key Changes in Act 757

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1. Share units and Weightage Factor.
2. Common Property
3. Management Committee/Council Members.
4. Transition Period
5. Rights and Responsibilities of the Developer, Parcel Owner, JMB and MC.
6. Responsibilities of the Commissioner of Building (COB).
7. Proxy appointment and voting rights.
8. Subsidiary MC and Limited Common Property.
9. Bylaws.
10. Insurance.
11. Recovery of Debt.
12. Managing Agent.
13. Strata Management Tribunal.



## Key Definitions – Share Units and Parcel

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Share Unit	Parcel
<p>Section 4 of Strata Titles Act 1985</p>	<p>Parcel :</p> <p>One of the individual units comprised in a building or land parcels which is to be held under a separate strata title</p> <p>Accessory Parcel:</p> <p>Section 4 of Strata Titles Act 1985</p> <p>Land Parcel:</p> <p>Section 4 of Strata Titles Act 1985</p>





## Share Units Formula

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### First Schedule

Share unit or value shall determine voting rights, undivided share in common property and amount to be paid for service and other charges.

Calculation is based on area of parcel is in square metres, type of user, services provided, whether it is whole floor or part of a floor and whether or not it has accessory parcel.

The formula is :

$(\text{area} \times WF_1 \times WF_2) + (\text{area of accessory parcel} \times WF_3)$ .

$WF_1$  is weightage factor for type of parcel,  $WF_2$  is weightage factor for whole floor parcel and  $WF_3$  is weightage factor for accessory parcel.

Share units are assigned by Licensed Land Surveyors or any person or body responsible to maintain and manage the building and Common Property.

Must be approved by Director of Lands and mines.



## Key Definitions – Common Property

<b>Act 663</b>	<b>Act 757</b>
Everything except parcel and accessory parcel such as staircase, roof, park, etc	Section 2 – not comprised in parcels, accessory parcel and provisional blocks used or capable of being used by occupiers of two or more parcels
<b>Act A1450</b>	
Common Property - Section 4 Strata Title Act (Amended) 2013 (Act A1450) : so much of the lot as is not comprised in any parcel (including any accessory parcel), or any provisional block as shown in a certified strata plan	Limited Common Property – Section 17A Strata Title Act (Amended) 2013 (Act A1450) : any part in a lot specifically for exclusive benefit and certified by Pengarah Ukur.



## Management Committee

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### **Second Schedule**

Elected at AGM >3 and <14 persons.

Must have election (or re-election) at every AGM (<3 year term).

Chairman, Secretary and Treasurer to be elected from among the Committee immediately after AGM and cannot hold office for more than 2 consecutive years.

Term of office is from date of election until conclusion of next AGM. Any Committee member can be re-elected but cannot hold office more than 3 consecutive terms.

Persons eligible for election must be at least 21 years of age, proprietor or co-proprietor and immediate family member who is not a proprietor.

Proxy not eligible for election.



## Management Committee

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### Second Schedule

In case of proprietor who owns a major share, there is a threshold limit as to the number of committee members he can nominate and be elected into the committee. The limit is proportional to his share units against the total share units (ignoring any fraction) or not more than 49% of the number of Committee Members elected whichever is lower.

Therefore where a proprietor owns more than 50% of the property, he can have only 49% representation in the Committee.

If a Chairman is absent from 3 consecutive meetings without leave of the Committee, he shall vacate his post.

If a Committee Member is absent for 3 consecutive meetings without leave of the Chairman in writing, he shall vacate as committee member.

If a member is continuous defaulter for 3 months, he shall be removed.

If any member commits breach of by-laws and does not rectify, he shall be removed.



## Transition Period

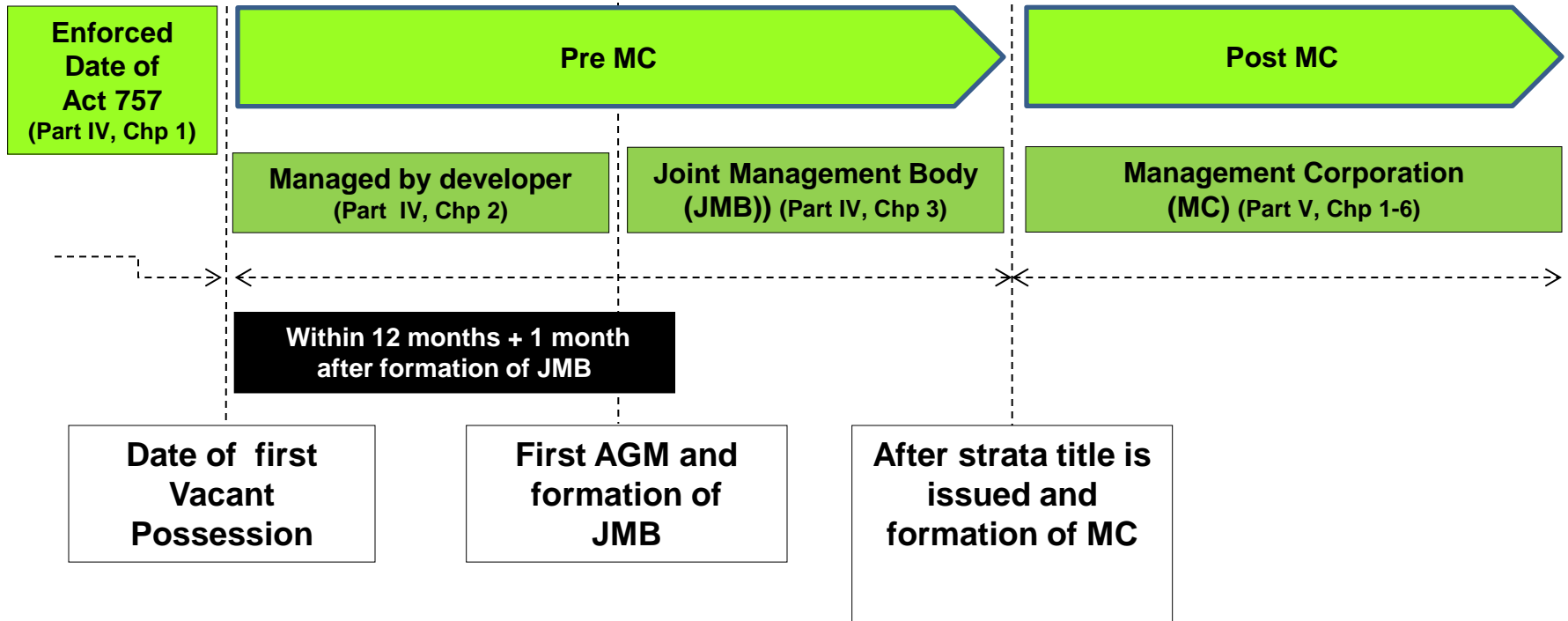
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### **Transition Period between Developer and JMB and thereafter to MC**

- Clear provisions for pre-MC for developer and JMB on responsibilities and guidelines (Part IV Section 7 – 36).
- Provisions for transition and exemption due to repeal of Act 663 (Section 37-45).
- Comprehensive list of documents to be handed over by developer to JMB (Section 15) and MC (Section 55). Penalty if convicted <RM250k or <3 years jail or both.



# Transition Period





## Developer's responsibilities

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### Developer's responsibilities (Section 9 - 15):

- Depositing of collection into account
- Purchase fire insurance (Part VIII, Section 93 - 100)
- Preparing audited accounts
- Enforce bylaws
- Provide administration office space
- Cannot enter into any contract for any period after the developer's management period
- Handover of documents



## Purchaser's Rights & Responsibilities

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### **Rights of Proprietor or Prospective Proprietor (Part V, Section 73) :**

**Right to file claim to the Strata Management Tribunal (Part IX, Chapter 3 Section 107)**

**Voting rights (Second Schedule, Section 7) :**

**Voting rights for Proxies (Second Schedule, Section (18) – (20))**

**Voting rights for Proprietors and Co-Proprietors (Second Schedule, Section 21 – 23)**

A proprietor shall not be entitled to vote if, on the 7<sup>th</sup> day before the date of the meeting, all or any part of the charges, sinking fund, or any other money payable to the MC in respect of his parcel are in arrears.





## **JMB's Rights & Responsibilities**

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**JMB's responsibilities (Part IV, Section 19 – 26 and Second Schedule).**

**JMB's powers (Chapter IV, Section 21(2)).**

**Right to file claim to Strata Management Tribunal (Part IX, Chapter 3 Section 107)**



## MC's Rights & Responsibilities

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**MC's responsibilities (Part V, Chapter 3 Section 59 – 62) and Sub MC (Section 64 - 67 ) and under Second Schedule**

**Powers of MC and Sub MC (Part V, Chapter 3 Section 59 dan 64).**

**Right to claim to Strata Management Tribunal (Part IX, Chapter 3 Section 107)**

**Second Schedule.**

Applies to both JMC and MC. Elected at AGM. >3 and <14 Natural Persons.

Must have election (or re-election) at every AGM.

Chairman, Secretary and Treasurer to be elected from among the Committee Members immediately after AGM and cannot hold office for more than 2 consecutive years.

Term of office is from Date of Election until conclusion of next AGM.

Any Committee Member can be re-elected but cannot hold office more than 3 consecutive terms.



## COB's Responsibilities

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### Part X Section 125 - 135

Compared to the current acts, Act 757 gives much wider powers of enforcement to COB e.g. power of investigation, search and seizure with and without warrant, compel attendance before him, examination.

Obstructing the COB is a criminal offence, fine not <RM 100,000 or Prison term not <3 years or both. can compound offences and prosecute with consent of Public Prosecutor.

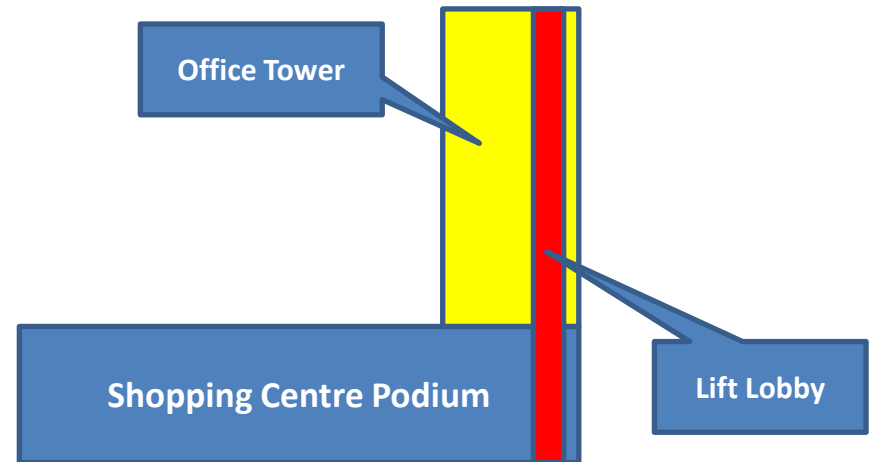


## Subsidiary MC and Limited Common Property

Subsidiary Management Corporation (Sub MC) can be applied for after obtaining Comprehensive Resolution

Concept of limited common property therefore relates to the area of the common property which can only be exclusively utilised by the co-proprietors within the same building use/component e.g.

- Entrance Lobby
- Lift and Lift lobby
- Aircond system and Equipment
- Lighting
- Cleaning
- Firefighting System and Equipment
- Common carpark within the building
- Swimming pool
- Gymnasium



The cost of maintaining and managing the said common property is borne by the co-proprietors, paid by the service charges collected.

Licensed Land Surveyor prepares Limited Common Property Plan

JUPEM will check and notify PTG, PTG approves and issue Certificate for Sub MC



## Proxies - Appointment

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### **Section 18 Second Schedule**

Proxy need not be a proprietor and shall be appointed by proprietor or his attorney.

If proprietor is a company, society, statutory body or any other body, shall be appointed under seal, by an officer of the organisation or by its attorney.

If appointed by an attorney, must provide copy of power of attorney.

One person can act for only one proprietor.



## Proxies -Voting Rights

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### **Section 18 Second Schedule**

Proxy not eligible for election. Must be deposited with MC >48 hours before time of meeting or any adjournment of meeting.

Members with outstanding contribution for service charges/sinking fund not eligible.

If one co-proprietor is nominated, the other co-proprietor cannot be nominated.

In the case of proprietor who owns a major share, there is a threshold limit as to the number of Committee members he can nominate and be elected into the Committee.

The limit is proportional to his share units against the total share units(ignoring any fraction) or not more than 49% of the number of committee members elected whichever is lower. therefore where a proprietor owns more than 50% of the property, he can have only 49% representation in the committee.



## By Laws

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### **Chapter 5, Section 70 - 71:**

By special resolution MC or JMB can make by-laws on safety and security measures, details of any Common Property of which the use is restricted, keeping of pets, parking, floor coverings, refuse control, behaviour, architectural and landscaping guidelines and imposition of fines <RM 200 for breaching any of the by-laws.

The by-laws must be endorsed by the COB.

Similarly by-laws can be made for Limited Common Property. Non compliance of the by-laws can be referred to the Strata Management Tribunal.



# Insurance

## Fire Insurance (Part VIII Section 93 – 100)

Duty under the Act to insure the building for fire, lightning, explosion, bursting or overflowing of water tanks or pipes, storm, public liability, etc.

To insure up to the reinstatement value which must be valued by a registered valuer every 5 years.

All proceeds from insurance claim must be used for reinstatement, rebuilding or rehabilitation of the building..







## Recovery of Debt

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### **Chapter 5, Section 77 - 79:**

All proprietors must pay service charges and contribution to sinking fund to JMB or MC.

Failure to pay is an offence punishable by a fine <RM 5,000 or imprisonment < 3 years or both.

Debt can be recovered by legal action or vide Strata Management Tribunal.

JMB or MC must serve at least one (1) written notice giving <14 days to pay failing which file summons in Court or Tribunal and attach moveable property.

Any tenant, sub tenant or occupier who in order to avoid the attachment or sale of the movable property for non-payment by the proprietor pays the amount owing can deduct the amount from the rent due (in the absence of any written agreement to the contrary).



## Managing Agent

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Managing agent must be an independent party (Section 87). Parties with professional or financial interest cannot be appointed as managing agent..

JMB and MC can manage on their own by hiring inhouse staff.

It is however recommended that registered property managers registered with Lembaga Penilai, Pentaksir dan Ejen Hartanah (BoVAEA) (under Valuers, Appraisers and Estate Agents Act 1981 (Act 242) and Rules 1985).are appointed.

Registered property managers are governed by:

- Act 242 and Regulations
- Malaysian Property Management Standards issued by BoVAEA
- Members of Malaysian Institute of Professional Property Managers
- Can only charge according to fee scale under Act 242
- Must possess professional indemnity insurance

Managing agent must deposit bond with COB (Section 88).



## Strata Management Tribunal

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### Part IX Chapter 1 - 6:

Purpose of the Strata Management Tribunal is to resolve disputes and claims without having to go to court. consist of persons in the legal profession sitting alone.

To hear any claim specified in Fourth Schedule <RM 250,000 e.g. recovery of charges, sinking fund, enforcement of by-laws, common area issues, car parking, etc.

Tribunal can also override COB's decision.

Once claim filed with Tribunal, it cannot be heard in court.

No representation by lawyer unless complex legal issues involved. Apply rules of natural justice. One can use own knowledge and expertise.

Decision within 60 days and is final and binding and deemed to be Order of Court.

Can appeal to High Court on grounds of serious irregularity only.

Failure to comply is a criminal offence punishable by fine <250,000 or imprisonment <3 years or both.



## Conclusion

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**Clearer and Comprehensive provisions.**

**More powers for COB and JMB and MC.**

**Recourse vide Strata Management Tribunal.**

**Heavier penalties.**

- From 10 in Act 663 to 35 offences in Act 757.
- More punitive.
- Minimum penalty increased from <RM500 to <RM100k or 3 months jail previously or both under Act 663 previously to minimum <RM5k to <RM500k or 3 years jail or both .

**Heavier responsibilities and liabilities for stakeholders.**

**Hence, the public must be made aware of the new legislative provisions as a matter of urgency.**





Thank You.



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