

THE AMENDMENTS TO THE CONDOMINIUM ACT

The Condominium Act (No. 4) B.E. 2551 (2008) (“**Act No. 4**”), which amends the Condominium Act B.E. 2522 (1979) (the “**Condominium Act**” or the “**Act**”), was published in the Government Gazette on March 6, 2008 and became effective on July 4, 2008, 120 days from the date of publishing (the “**Effective Date**”). Act No. 4 amends and adds certain provisions to the Act, in order to update the provisions of the Act which may have been impractical and insufficient, so as to provide higher protection to consumers who have acquired or will acquire condominium units for residential purposes, including the provisions in relations to fees and penalties.

This Newsletter contains a summary of the material amendments and additions to the Condominium Act set forth in Act No. 4 and the relevant new regulations that should be of interest to all investors, consumers and the existing and future condominium juristic persons, and which may effect the existing and the future regulation of the condominium juristic person (the “**Regulations**”). Regulations effective on or prior to the Effective Date shall continue to be in effect, as long as the terms do not conflict with the provisions of Act No. 4. Please note that conflicting terms shall be amended within 360 days from the Effective Date.

New Advertisement Requirement

Owners of properties advertising the sale of condominium units are required under Act No. 4 to keep a copy of the advertisement photo or phrases used in such advertisement at his place of business until all the condominium units have been sold, and at least one copy is to be provided to the condominium juristic person. The details of the advertisement is required to be identical to the evidence and details used in the application process and the information regarding common property, other than those required by law, must be clearly provided in such advertisement. It should also be noted that the advertisement is deemed to form part of the sale and purchase agreement (the “**SPA**”); and if the information is conflicting, it shall be determined it a way benefiting the purchaser.

SPA Forms

Under Act No. 4, the SPA to be entered into between the owner of the properties and the condominium unit purchaser must be made in the form as stipulated by the Minister. It should be noted that due to this amendment there are now 3 forms of SPAs in relation to the sale of condominium units as follows:

1. The form of the agreement to sale and purchase a condominium unit between the owner of the land and building as the seller and the purchaser, in the case where the condominium is under construction;
2. The form of the condominium sale and purchaser agreement between the owner of the land and building as the seller and the purchaser, in the case where the condominium has completed construction; and
3. The form of the sale and purchase agreement between the owner of the condominium unit as the seller and the subsequent purchaser of such unit.

If any SPA is not made in the stipulated form and does not provide more favorable terms to the purchaser, the terms of such SPA, which do not benefit the purchaser, shall be unenforceable.

New Method of Common Property Ratio Calculation

In order to provide justification to the owners of the condominium unit (each a “**Co-owner**” and collectively the “**Co-owners**”), the means of calculation of the ratio in the common property under Act No. 4 is the area amount of each condominium unit against the total area amount of all the condominium units, at the time of registration.

Additional Common Property

Under the former Act, common property of a condominium includes (1) the land on which the building is situated, (2) the land for mutual benefit, (3) the structures of the building, (4) part of the building for mutual benefit, (5) tools and utilities for mutual benefit, (6) places for common services, and (7) other properties for mutual benefit. Act No. 4 adds the following properties as common property of a condominium including (8) the office of the condominium juristic person, (9) immovable properties with obligations, (10) structures or systems for security or environmental purposes in the condominium (i.e. electricity, ventilation, air-conditioning, drainage and disposal and fire prevention systems etc.), and (11) other assets maintained by the common expenses collected from the Co-owners.

New Limitation on Commercial Areas

Act No. 4 also adds provisions governing the commercial area in the condominium, providing that if there are commercial areas in the condominium, the entrance and exit ways to such areas must not affect the Co-owners. In addition, retail shops can only be located in the commercial area of the building.

New Requirement on Common Expenses for Condominium Units that have not been Sold and Interest Rate for Late Payments

Under the former Act, the Co-owners are obligated to pay expenses arising from the common services according to the portion of benefits and taxes and expenses for the maintenance of common property according to the ratio in such common property. However, the former Act is silent on the payment of expenses and taxes for condominium units that have not been sold. Act No. 4 provides that for such units, the owner of the land and building is obligated to pay the expenses and taxes.

In addition, if a Co-owner fails to make payment of the common expenses within the stipulated period, Act No. 4 provides that he is obligated to pay interest at a rate not exceeding 12 per cent per annum on such amount as provided in the Regulations and if the failure continues for over 6 months, the rate shall be increased to 20 per cent per annum and the common services or right to use common properties may be ceased, including the right to vote in Co-owners' meetings.

No Exception to Limitations on ownership of Foreign Co-Owners (49%)

Under the former Act and Act No. 4, a condominium can have the total number of foreign Co-owners not exceeding 49 per cent of the total area amount of all the condominium units at the time of registration.

Under Act No. 4, there is no longer the exception for condominiums located in the Bangkok area and other areas under the Ministerial Regulation which have parcels of land where the building is located and for mutual benefit not exceeding 5 rais.

Requirement for Amendment of the Regulations

Under Act No. 4, in order to amend the registered Regulations, resolution of the Co-owners' meeting is required, which the manager shall register the changes within 30 days from the date the resolution is passed. The competent authority will register the changes once determined that they do not conflict with the law.

Additional Power and Duty of the Manager

Under the former Act, the power and duty of the manager include the power and duty to:

1. Carry out the work according to the objectives or according to the resolutions of the Co-owners' meeting or the committee;
2. If necessary due to urgency, at his own initiative, carry out the work as a prudent person would towards his own property;
3. Act as representative of the condominium juristic person; and
4. Other duties as stipulated in the Ministerial Regulations.

Act No. 4 also adds that the manager shall also have the power and duty to:

5. Provide safety measures for the condominium;
6. Provide monthly accounting and announce to the Co-owners within 15 days from the last day of each month and for a continuing period of not less than 15 days; and
7. Take legal action against the Co-owners who fail to make payment of the common expenses for the period over 6 months.

New Requirements on Qualification and Appointment of the Committee

Please note that the manager or the Committee members who are in position prior to the Effective Date shall remain in position for his/her term under the Regulations or until the Co-owners' meeting appoints a new manager or Committee member (as the case may be).

Act No. 4 provides that there shall be a committee of the condominium juristic person (the "Committee"), having at least 3 and not more than 9 committee members, appointed by resolution of the Co-owners' meeting.

The Committee members shall be in position for a term of 2 years and may be re-appointed, however, re-appointment cannot be made over 2 continuing terms unless new members cannot be found.

Please note that the manager shall register the Committee member appointments with the competent authority within 30 days from the date the resolution of the Co-owners' meeting is passed.

New Requirements on Power and Duty of the Committee and the Quorum of Committee Meetings

Under Act No. 4, the Committee members shall select 1 member to be the chairman and another to be the assisting chairman. The chairman shall call for the Committee meetings, or in event that at least 2 Committee members request for a meeting, the chairman shall call for a Committee meeting within 7 days from the date of request. At least half (1/2) of the numbers of Committee members are required to form a quorum of the Committee meeting. A resolution of the Committee meeting shall require majority vote and the chairman shall have the casting vote.

The power and duty of the Committee include the power and duty to:

1. Manage the operation of the Condominium;
2. Appoint a Committee member to be the manager in event that there is no manager or the existing manager cannot undertake its normal duties for over 7 days;
3. Have Committee meetings at least once every 6 months; and
4. Other duties are stipulated in the Ministerial Regulations.

New Requirements on Financial Statements and Annual Reports

Act No. 4 provides that, the condominium juristic person shall prepare financial statements at least once every 12 months, which shall be deemed as the condominium juristic person's fiscal year. In addition, the financial statements must be audited and submitted for approval of the Co-owners' meeting within 120 days from the end of each fiscal year.

Furthermore, the condominium juristic person has duty to prepare the annual report and submit to the Co-owners' meeting together with the financial statements. Please note that a copy of such documentation shall be provided to the Co-owners at least 7 days prior to the meeting. The annual report, the financial statements and the Regulations shall be kept at the office of the condominium juristic person for inspection by the competent authority and the Co-owners, and such documents shall be kept at least 10 years from the date of approval by the Co-owners' meeting.

Requirements for General Co-Owners' Meetings

Under Act No. 4, the Committee shall call for a general Co-owners' meeting at least once every year within 120 days from the end of each fiscal year for the following purposes:

1. Consider the financial statements;
2. Consider the annual report;
3. Appoint the auditor; and
4. Consider other agendas.

In necessary cases, the following persons may call for a Co-owners' meeting at anytime:

1. The manager;
2. The Committee by resolution of at least half (1/2) of the Committee members;
3. The Co-owners by at least 20 per cent of the votes of the Co-owners notifying in writing, together with their signatures, requesting the Committee to call for a meeting, in which case the Committee shall hold the meeting within 15 days from the

date of notice. If the Committee fails to hold the meeting, the Co-owners may hold the meeting and appoint a representative to call for the meeting.

Please note that there is a requirement that notices of the meeting are to be sent at least 7 days prior to the meeting date, and shall include the date, time and place, the agendas and sufficient information.

New Quorum for Co-Owners' Meetings

Under the former Act, not less than one third (1/3) of the Co-owner attendants with the right to vote shall form a quorum for the Co-owners' meeting. However, Act No. 4 provides that, only one fourth (1/4) of the Co-owner attendants with the right to vote is required to form a quorum. In addition, if a quorum is not formed, a new meeting shall be called within 15 days from the calling date of the first meeting and no quorum is required. It should be further noted that, the manager or his/her spouse cannot be the chairman of the meeting.

Voting Rights and New Limitation on Proxies

Act No. 4 amends the provisions of the former Act with regards to voting rights of the Co-owners and their proxies and voting requirements for special resolutions, by providing that Co-owners may appoint a proxy in writing to cast votes, however, the proxy may vote in a meeting for a limited number of 3 condominium units Co-owners.

Act No.4 further limits the persons who may act as proxies for the Co-owners by prohibiting the following persons from acting as proxies including:

1. The Committee and his/her spouse;
2. The manager and his/her spouse;
3. Employees or workers of the condominium juristic person or service providers of the condominium juristic persons; and
4. Employees or workers of the manager in case that the manager is a juristic person.

Requirements for Special Resolutions

Act No. 4 provides that the resolutions which require not less than one fourth (1/4) of the total votes of all Co-owners include:

1. Appointment and removal of the manager; and
2. Indicating operations which can be delegated by the manager,

In addition, the following resolutions require more than half (1/2) of the total votes of all Co-owners:

1. The purchase of immovable property or receipt of property with obligations to be common property;
2. Dispose of common property which is immovable property;
3. Permission to any Co-owner to modify its condominium unit affecting the common property at his own expense;
4. Amendment to the Regulations regarding the use or management of common property;
5. Change to the ratio of common expenses under the Regulations;
6. Modification or improvement to the common property other than those specified in the Regulations; and
7. Seek of benefit from common property.

In event that the resolutions require more than half (1/2) of the total votes of all Co-owners, and the number of Co-owners' votes does not meet the requirement, a new meeting shall be held within 15 days from the date of the previous meeting and the resolution of the new meeting shall be not less than one third (1/3) of the total votes of all Co-owners.

The amendments and additions set forth in Act No. 4 will apply to future Regulations, as well as those effective prior to the Effective Date. However, certain provisions of the Act including (i) the ratio in common property, (ii) the common property and (iii) the common expenses in the Regulations of the existing condominium juristic persons shall not be effected. In addition, the provisions in Act No. 4 in relation to commercial areas shall not be enforced on the existing condominium juristic persons that have condominium units used for the commercial purposes, on or prior to the Effective Date.

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Important Note and Disclaimer

The content of this Newsletter is prepared as of 1 September 2008, based on Condominium Act (No. 4) B.E. 2551 (2008).

This Newsletter is informational in nature and is not to be considered as legal advice. It does not exhaustively cover the subjects which it treats, and is only intended to address some of the key issues. When specific questions arise in practice, it is necessary to obtain appropriate legal advice.