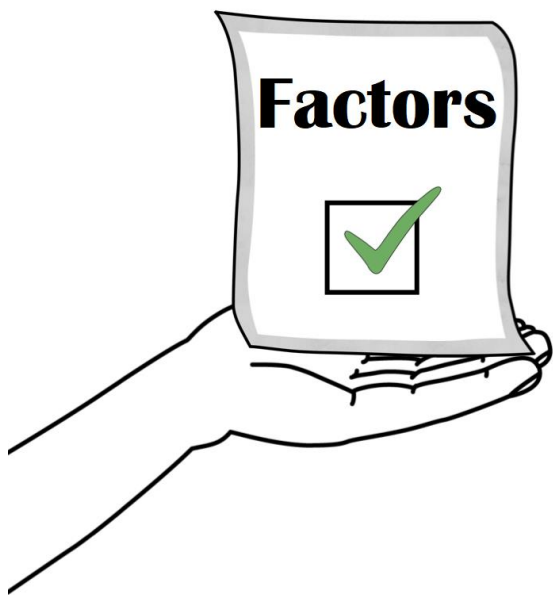


Other factors that need to be considered

A. SPs passed the 2012 resolution by a simple majority, but the resolution was rejected by the BCA. MCST did not inform SPs of the rejection, leading SPs to believe the resolution has become a by law. Communication gap needs to be addressed.



addressed.

B. After the award by the High Court, nothing was heard from the MCST, until the matter was reported in the newspapers, which then leads to a hurried announcement by the MCST. Communication gap needs to be

C. Lawyers' vs Managing Agents: The MCST has chosen to continue to use lawyers instead of Managing Agents to help them in the administration of the estate. The term "Managing Agents" is mentioned in at least 30 locations in the BMSMA, there is even a separate section for Managing Agents. The BCA envisages that most MCSTs will



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seek the help of Managing Agents, and in fact, most do, including in framing resolutions at their AGMs and EOGMs. The BCA licenses Managing Agents, and just about every MA has an excellent knowledge of the BMSMA. That is the reason that the High Court, at para 10, expressed surprise that when an MA indicated at the 2012 AGM that a resolution introduced requires 90%, the then chairman disagreed, on the basis that the Council had taken legal advice. The chairman and the lawyer were both wrong. Should the MCST begin relying more on MAs instead of Lawyers?

D. Under s 38 (3A) and (3B) of BMSMA, expenses of the MCST must be approved at an AGM or EOGM. The legal expenses as a result of MCST's recent defense at the STB and High Court needs



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the approval of SPs at an EOGM. Based on a feedback discussion on 13 August, it is clear that no such approval has been obtained. There is a need for the Council to explain their failure to seek approval, and propose ways to prevent a recurrence.

E. The trial at the STB commenced in mid 2019. Lawyers for the MCST should have invoiced for their fees by the end of the financial year June 2020. I may be wrong, but I do not recall seeing substantial legal expenses in the June 2020 financial statements. We have not yet seen the financial statements for the year ended June 2021, but I presume the auditors will need to qualify the accounts, as the

MCST had not obtained approval for the substantial expenditure during the financial year.

F. In addition to the unauthorized approvals for the construction of awnings on the 14th floor, over the years, the MCST has given approval for the construction of metal grilles, last estimated to exceed 50% of total units. There are of course the unauthorized air cons. There is a need to find a way to ensure that unauthorized approvals are not given in future.



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G. It is a traditional practice for the Council to secure as much proxies as possible prior to a meeting. The staff helps the council to secure the proxies. Council members will not be able to secure the proxies themselves. Staff usually ask SPs, who visit the office or when they are on their rounds around the estate to give their proxies to certain council members or other nominated persons who are willing to act as proxies. There is a report that during the 2012 AGM, the council secured proxies representing at least 58% of those voting. Put it another way, when SPs attended the 2012 meeting, they were already outvoted by the council even before the Agenda items were discussed. In subsequent years, my understanding is that the proxies represent 30% to 40% of those attending the AGM. Proxies are allowed by law, but it is not intended for a council to “corner” the proxies, and



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vote against SPs, even if SPs present have strong views about a topic discussed. The Council of the MCST and the staff are supposed to remain neutral on all matters, their role as a council is to present information for SPs to take decisions. It is interesting that in the BMSMA, Managing Agents are specifically disallowed from being involved in actions that

would influence the selection of council members. Should the practice of council trying to influence the topics for discussion thru their “cornering” of proxies be prohibited by SPs?

H. At the feedback meeting on 13 August, Council Members openly urged SPs to vote in favor of the resolution to be proposed. I find this unacceptable. The Council is voted in by SPs, and they must be a council **for all SPs**, and it is vital for them to remain neutral. Their role must be to provide information for SPs to take a decision on. When Council Members openly ask SPs to vote in a certain manner, showing clearly, they are not neutral, this could become a cause for the losing side to commence legal action to invalidate the vote, on the basis of improper action by the Council.

I. As explained earlier and as observed by the High Court, illegal actions may have taken place almost from the time the first council took office. It is vital to find the cause, is it because the administration has never used Managing Agents, and the office

FALSE

staff are not giving correct advice to the Council? Or is it that the office staff have in fact been giving correct advice, but the Councils have continuously overruled them and insisted that the illegal action be taken instead? And if this was the situation, is it that the office staff are unable to insist that the correct action be taken, because their jobs may be at stake if they insist, leading them to back off?

FALSE

J. In MCST's letter of 10 August, para 1 states "The High Court has ordered our MCST to seek a 90% resolution" **The statement is totally false and without foundation.** The High Court did not issue such an order. See para 80 of judgement.

K. In MCST's letter of 10 August, para 3 states "With this recent appeal decision of the High Court it is likely that most alterations such as awnings, certain aircon compressors, certain gates and affixed shoe cabinets will fall as items to be removed. **This statement is again totally false and without foundation.** In the entire judgement, the High Court has not mentioned a single word on gates, aircon compressors, or shoe cabinets, **the sole exception being fixed awnings** which should be the only item affected.