

# Starting on Strata in the Solomon Islands

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## Key Points

- The Solomon Islands has recently introduced the *Strata Titles Bill 2017 (Strata Bill)* in an effort to address the shortage of affordable residential accommodation in Honiara.
- The Strata Bill introduces a strata title scheme similar to schemes operating in Vanuatu and Australia.
- The division of land in Honiara into strata titles will make possible a range of innovation and diversity in development. It will attract the interest of developers while allowing land owners to better utilise their assets.
- Developers and landowners in the Solomon Islands must have an understanding of how the new scheme operates.

## Introduction

The Solomon Islands will soon be introducing a strata law framework, with the introduction of the *Strata Titles Bill 2017 (Strata Bill)*, which has been tabled before Parliament. The Strata Bill seeks to encourage higher density development while protecting the interests of individuals who buy units in such developments. It does this by allowing certain land to be divided by a strata scheme into lots after development permission has been obtained. The Strata Bill establishes a strong regulatory framework designed to achieve a balance between the interests of developers and the interests of purchasers of lots in strata scheme developments.

It is important that developers, landowners and investors are aware of the regulatory requirements which are proposed under the Strata Bill in order to take full advantage of the opportunities presented. This article will highlight the key features of the new law and provide a helpful comparison with the strata framework in Vanuatu.

## What is a strata scheme?

A strata scheme is a development where buildings and land are divided into strata lots and common property. The owner of a unit owns the inside portion of the building and the owners together are responsible for the common property through a strata scheme corporation, which is a body corporate automatically established on registration of the strata scheme.

A primary strata scheme may be further divided into a secondary scheme, which may be suitable for mixed developments that include, for example, both retail and residential units.

Importantly, the Strata Bill allows for schemes to set aside part of the strata parcel as a development lot for subsequent development. These development lots can be owned and sold or otherwise dealt with separately.<sup>1</sup>

## What land can be divided?

A parcel of land may be divided by registration of a strata scheme if the land is public land registered under the *Land and Titles Act* (Cap. 133) (LT Act) and the strata scheme developer owns a fixed-term estate in the land. However, if the land is subject to a registered lease, neither the parcel nor the lease may be divided by registration of a strata scheme.<sup>2</sup>

## How do you register a scheme?

Any proposed strata development must first receive planning approval under the *Planning and Development Act* before it can be divided under the LT Act. The Planning and Development Board will need to certify that the development can be completed satisfactorily before the scheme is registered and the land divided.

The land owner may apply for division of the parcel of land by registration of a primary strata scheme by lodging the approved form with the Commissioner of Lands. The form must be accompanied by the required strata scheme documents, such as a strata scheme plan, description and lot values, as well as the prescribed fee.

## Dealing with Strata

As previously stated, developers must obtain the Commissioner of Lands consent prior to creating a strata scheme. Once strata lots are registered, they may be sold and re-sold without the Commissioner of Lands prior consent.<sup>3</sup>

The Commissioner of Lands consent is also required for the registration of any amendment to the scheme, or any resolution to terminate the strata scheme. Amendments that will require the Commissioner of Lands consent include:

- The conversion of a development lot or a part of a development lot into a strata lot;
- The conversion of part of the common property into a lot;
- The combining of lots into a single lot;
- A change to the boundaries of one or more lots or the common property; and
- The delineation of a public road or public reserve.<sup>4</sup>

## What are a strata scheme developer's obligations?

Under the Strata Bill, a strata scheme developer has three key obligations:

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<sup>1</sup> *Strata Title Bill 2017* s10.

<sup>2</sup> *Strata Title Bill 2017* s 6.

<sup>3</sup> *The Strata Bill*, s 60.

<sup>4</sup> *The Strata Bill*, s 82.

- A strata scheme developer stands in a fiduciary relationship with the strata scheme corporation.<sup>5</sup> This means that the developer must act in the best interests of the strata lot owners. A strata scheme developer should have a comprehensive understanding of its fiduciary obligations before investing in a strata scheme;
- The developer must take out the required strata scheme insurance before the registration of the scheme; and
- The developer must convene the first general meeting of the strata scheme corporation. At this meeting, the developer must provide various documents verifying the validity of the strata scheme.

## Strata Schemes in Vanuatu

The Solomon Islands Strata Bill is substantively similar to the scheme in place in Vanuatu, the *Strata Titles Act [Cap 266] (Vanuatu Act)*. The Vanuatu Act requires any proposed strata scheme division to be approved by the relevant local government council, which will require similar documentation for registration, including the proposed strata plan. Strata plans are regulated by by-laws which provide for the control, management, administration, use and enjoyment of the strata lots.<sup>6</sup>

Land (including the whole or part of a building) may be subject to subdivision by registering a strata plan under the Vanuatu Act. Land in this context means land registered under the *Land Leases Act [Cap 163]* which is subject to an approved lease and included within a Physical Planning Area under the *Physical Planning Act [Cap. 193]*.

Similar to the Solomon Islands, upon registration of a strata plan in Vanuatu the proprietors of the plan become a body corporate. The body corporate has several duties in relation to the strata scheme, including insuring the building and keeping it in a state of good and serviceable repair.

A notable difference between the Solomon Islands and Vanuatu laws is that developers do not have a fiduciary obligation to the body corporate under the Vanuatu strata legislation. While the Vanuatu Act provides for the duties and powers of the body corporate to manage a strata scheme, it does not provide the same guidance for developers. In comparison, the Solomon Islands Strata Bill regulates developers in their dealings with strata schemes and manages the relationship between developers and other owners of strata lots. In this way, the Strata Bill encourages development and facilitates the growing relationship between developers and other owners of land.

The land review process which has taken place since 2013 has included some significant reviews of the land tenure position in Vanuatu. This included a prohibition on strata developments which was imposed approximately two years ago, flowing from problems associated with the existing strata title laws and their implementation in Vanuatu. The most recent changes which have been suggested, and we understood approved by Government include the following (and it is interesting to note these changes when considering the differences between the draft law in Solomon Islands and the amended law position, as it will be, in Vanuatu –

- To change the act so that it becomes a 'strata and community title act' whereby –
  - Strata title will apply to the division of multi-storey buildings, and
  - A community title concept will be adopted for the division of land lots (and where sub-divisions of more than 10 lots need to be registered under this new legislation
- Changes to the regulations dealing with sub-divisions so as to try to ensure that all generally needed services (eg water, electricity, roads etc) are provided with all sub-divisions – something that has been absent to date.

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<sup>5</sup> *The Strata Bill*, s 63.

<sup>6</sup> *Strata Titles Act [Cap 266]*, s 14.

## Conclusion

Developers interested in expanding in Honiara are now presented with a scheme that facilitates growth and encourages investment. In order to get on the ground floor of this opportunity, developers and other land owners must first obtain a series of regulatory approvals and consents; it is crucial to get this process right.

The history of strata title in the Pacific, notably in Vanuatu, has not been a happy one. It is important for any new scheme such as what is proposed in Solomon Islands to deal with and address the need for proper strata management businesses to be created and to exist, the need for the provision of essential services for all lots (in whatever type of sub-division is proposed) and the protection of the rights of all lot owners concerning access to and maintenance of common areas. It will be interesting to see how the Solomon Islands deals with the flaws that have been exposed in this type of legislation in other nearby jurisdictions.

For more information on how the new Strata Bill operates, or for any assistance in registering a new scheme, please contact John Ridgway.

## Contact

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