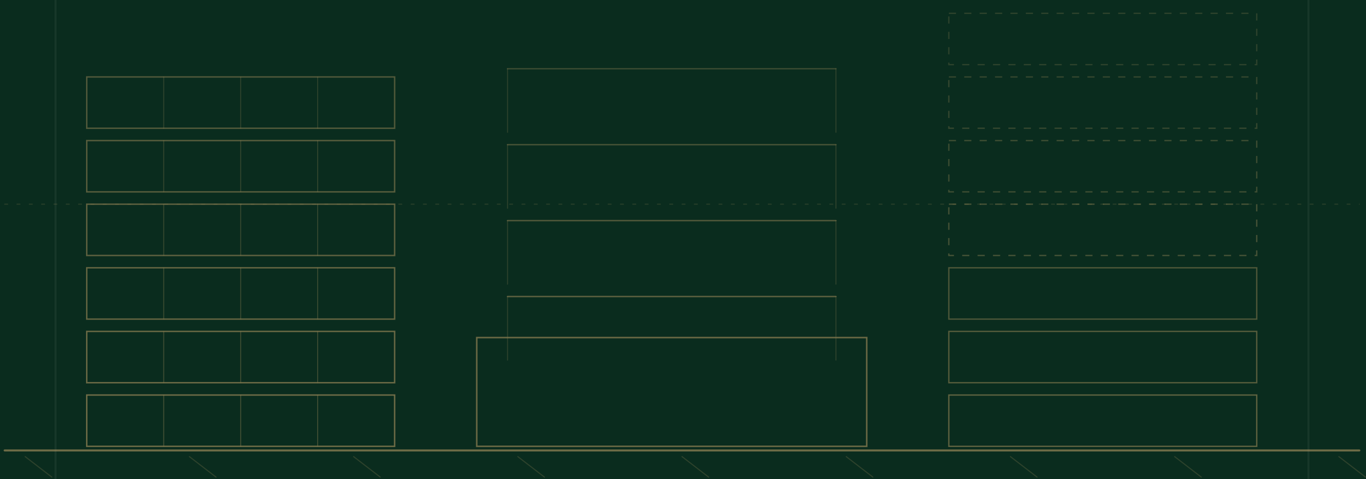
PRACTICAL LAW · ILLUSTRATED BILINGUAL GUIDE

Queensland Management Rights Assignment Guide

昆士蘭管理權轉讓指南

Caretaking · Letting · Body corporate approval · Sale and purchase

看管 · 出租 · 業主法人團體批准 · 買賣



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VERSION 1 • 6 AUGUST 2026

第1版 · 2026年8月6日

ENGLISH & TRADITIONAL CHINESE · 3 FIGURES

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白宗翰是Bugden Allen Group Legal合夥人。他專注於分層及社區產權發展、複雜及混合用途產權架構、項目重組、業主法人團體治理及管理權，並為發展商、業主法人團體、駐場管理人、融資機構、投資者及海外參與者處理交易、治理及爭議事宜。

Kevin is an honours law graduate of the University of Queensland and a member of the Australian College of Strata Lawyers, the Urban Development Institute of Australia (Queensland) and Strata Community Association (Queensland). He acts on both sides of the management rights relationship, which is the reason this guide is written from three perspectives rather than one.

白宗翰以榮譽成績畢業於昆士蘭大學法律系，並為澳洲分層產權律師學院、澳洲城市發展學會（昆士蘭）及昆士蘭分層社區協會成員。他同時代表管理權關係的雙方，這也是本指南以三個角度而非單一角度撰寫的原因。

PRACTICE	FIRM	MEMBERSHIPS
Strata & community title development 分層及社區產權發展	Bugden Allen Group Legal 合夥人	ACSL · UDIA (Qld) · SCA (Qld) 專業學會成員

Reader note

讀者須知

IMPORTANT 重要提示

This guide is general educational information, not legal, financial, tax or investment advice. Outcomes in a management rights transaction turn on the actual caretaking agreement, letting authorisation, community management statement, applicable regulation module and current law. Obtain independent Queensland legal advice before signing a contract, granting or withholding approval, waiving a condition, or settling.

本指南僅提供一般教育資訊，並非法律、財務、稅務或投資意見。管理權交易的法律結果，取決於實際的看管合約、出租代理授權、社區管理聲明、適用規管模組及現行法律。在簽署合約、給予或拒絕批准、豁免條件或完成交割前，應取得獨立的昆士蘭法律意見。

Terminology follows the statute. The Body Corporate and Community Management Act 1997 (Qld) speaks of a "service contractor" and a "letting agent"; the market speaks of a "caretaker", an "onsite manager" or a "resident manager". Where the legal consequence depends on the statutory category, this guide uses the statutory word. Traditional Chinese terms follow the standard Australian strata glossary; where a translation differs from the English text, the English text governs.

本指南術語以法例為準。《1997年業主法人團體及社區管理法》（昆士蘭）使用「服務承辦商」及「出租代理」，市場則慣稱「看管人」、「駐場經理」或「駐場管理人」。凡法律後果取決於法定分類者，本指南一律採用法定用語。繁體中文詞彙依據澳洲分層產權標準詞彙表；如譯文與英文有異，概以英文為準。

Editorial method

編寫方法

Each subject first identifies the legal structure, then explains how it operates in practice, then states the consequence for the party whose perspective is under discussion. Chapters 1 and 2 establish the framework common to all three parties. Chapters 3, 4 and 5 take the body corporate, the seller and the buyer in turn. Chapter 6 addresses what happens when an assignment fails.

每個主題先確認法律架構，再說明其實際運作，最後指出對所討論一方的後果。第1章及第2章建立三方共通的法律框架；第3、4、5章分別處理業主法人團體、賣方及買方；第6章處理轉讓失敗時的情況。

Legislation current to 6 August 2026.

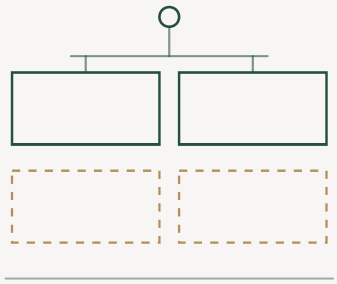
法例資料截至2026年8月6日。

Contents

目錄

Each chapter opens with its own section list. Figures are numbered 1 to 3.
各章開首另列該章節目；圖表編號為第1至3號。

CHAPTER 1 · 第1章



01

What Is Actually Being Assigned

轉讓的標的究竟是甚麼

A management rights transaction is described in the market as the sale of a business. In law it is the simultaneous transfer of several distinct legal relationships, each with its own counterparty, its own consent requirement and its own failure mode. Almost every dispute I see begins with a party who treated the bundle as a single asset.

市場慣以「出售業務」形容管理權交易。在法律上，它是若干獨立法律關係的同步移轉，每項關係各有其對手方、各自的同意要求，以及各自可能出錯之處。我所處理的爭議，幾乎都源於當事人把這一整組權利視為單一資產。

1.1

The four components

四項組成部分

A typical Queensland management rights business comprises a caretaking engagement with the body corporate, a letting agent authorisation from the body corporate, a set of individual letting appointments given by participating lot owners, and usually a lot or an office from which the business is conducted. The first two are creatures of the Body Corporate and Community Management Act 1997 (Qld). The third is governed by the Property Occupations Act 2014 (Qld). The fourth is ordinary freehold conveyancing.

典型的昆士蘭管理權業務包括：與業主法人團體訂立的看管服務聘任合約、業主法人團體給予的出租代理授權、參與出租的各單元業主分別給予的委任，以及通常用以經營業務的單元或辦公室。前兩項源於《1997年業主法人團體及社區管理法》（昆士蘭）；第三項受《2014年物業職業法》（昆士蘭）規管；第四項則屬一般永久業權物業轉易。

A person engaged by the body corporate for a term of at least one year to supply services other than administrative services is a service contractor under section 15 of the Act. A person authorised by the body corporate to conduct a letting agent business for the scheme is a letting agent under section 16. Section 117 permits the two to be combined in a single instrument, and in practice they usually are, which is why they are commonly assigned together.

根據該法第15條，凡獲業主法人團體聘任、任期不少於一年、提供行政服務以外服務者，即為服務承辦商；根據第16條，凡獲業主法人團體授權為該社區產權項目經營出租代理業務者，即為出租代理。第117條容許兩者合併於同一份文件內，實務上亦通常如此，因此兩者一般一併轉讓。

FIG 1　**The four components of a management rights business** ／ 管理權業務的四項組成部分

ONE BUSINESS, FOUR LEGAL RELATIONSHIPS
一項業務，四種法律關係

Transferable with body corporate approval
經業主法人團體批准後可轉讓

Not transferred by that approval
不因該批准而移轉

Caretaking engagement 看管服務聘任合約	Letting authorisation 出租代理授權	Letting appointments 個別出租委任	Manager's lot or office 管理人單元或辦公室
Services to the body corporate 向業主法人團體提供服務	Letting business for the scheme 為項目經營出租業務	Personal to each owner 屬各業主的個人委任	Freehold, sold separately 永久業權，另行買賣
BCCM Act + module 《BCCM法》及規管模組	BCCM Act + module 《BCCM法》及規管模組	Property Occupations Act 《物業職業法》	Land Title Act 《土地所有權法》

Each participating owner must give the buyer a fresh appointment. Body corporate approval delivers the scheme instruments, not the letting pool.
每名參與業主均須向買方重新作出委任。業主法人團體的批准只交付社區產權項目文件，不交付出租組合。

PRACTICAL EFFECT 實務效果

The buyer does not acquire one contract. The buyer acquires two body corporate instruments, a portfolio of individual owner appointments and, usually, a lot. Each requires its own transfer mechanism.

買方所取得的並非單一合約，而是兩份業主法人團體文件、一組個別業主委任，以及通常一個單元。每一項均需各自的移轉方式。

1.2

The distinction that governs the transaction

決定交易性質的關鍵區別

The caretaking engagement and the letting authorisation are transferable, with the body corporate's approval, under the applicable regulation module. However, the individual letting appointments are not transferable. Each appointment is a personal agency relationship between a lot owner and a licensed agent, and it does not pass to the buyer merely because the body corporate has approved the transfer of the two scheme instruments.

看管服務聘任合約及出租代理授權，可依適用規管模組並經業主法人團體批准而轉讓；個別出租委任則不可。每份委任均屬單元業主與持牌代理之間的個人代理關係，不會僅因業主法人團體批准移轉該兩份社區產權項目文件而隨之移轉。

The buyer therefore needs a fresh appointment from each participating owner, in the approved form under the Property Occupations Act 2014. A letting pool of sixty units is sixty separate commercial decisions by sixty owners, each of whom is free to appoint a different agent or none. The rate at which those appointments are renewed after settlement is the single largest variable in the buyer's first-year income.

因此，買方必須按《2014年物業職業法》的訂明格式，向每名參與業主重新取得委任。六十個單元的出租組合，即是六十名業主各自作出的六十個獨立商業決定，各人均可自由委任其他代理或不作委任。交割後這些委任的續任比率，是買方首年收入的最大變數。

PRACTICAL EFFECT 實務效果

Body corporate approval delivers the scheme instruments. It does not deliver the letting pool. These are separate risks and should be separately conditioned in the contract.

業主法人團體的批准只能交付社區產權項目文件，不能交付出租組合。兩者屬不同風險，應在合約中分別設定條件。

1.3

Why the regulation module decides the value

規管模組如何決定價值

The regulation module recorded in the community management statement determines the maximum term of the engagement and authorisation. Under the Standard Module the maximum is ten years. Under the Accommodation Module and the Commercial Module it is twenty-five years. Because management rights are conventionally valued as a multiple of net profit, and because the multiple is sensitive to the unexpired term, the module is a pricing input before it is anything else.

社區管理聲明所記錄的規管模組，決定聘任合約及授權的最長年期。標準規管模組上限為十年；住宿規管模組及商業規管模組則為二十五年。由於管理權慣以淨利潤倍數估值，而倍數又對餘下年期敏感，規管模組首先是一項定價因素。

A change of module does not shorten an existing engagement. Section 128 of the Act preserves the module provisions applying to the engagement or authorisation until it ends. A body corporate that adopts the Standard Module cannot thereby reduce a subsisting twenty-five year Accommodation Module agreement; the ten-year ceiling binds it only when it enters a new agreement.

更改規管模組不會縮短現有聘任合約。該法第128條訂明，適用於該聘任或授權的模組條文，於其終止前持續適用。採納標準規管模組的業主法人團體，不能因此縮短仍然有效的二十五年住宿模組合約；十年上限僅在其訂立新合約時方具約束力。

1.4

Term, options and top-ups

年期、選擇權及續期補足

Three different mechanisms are routinely confused. An option is a right of extension already granted in the agreement, which the manager exercises. A top-up is a fresh amendment adding a new right or option of extension. A variation changes some other term. Only the second and third require a new body corporate decision.

三種機制經常被混淆。選擇權是合約中已授予、由管理人行使的延期權利；續期補足是新增延期權利或選擇權的新修訂；變更則是修改其他條款。只有後兩者需要業主法人團體重新作出決定。

Sections 140 and 141 of the Standard Module, and the corresponding provisions of the Accommodation Module, permit the body corporate subsequently to amend the engagement or authorisation to include a further right or option of extension of not more than five years at a time, provided the total unexpired term remains within the module ceiling. Whether that could be done more than once was contested for years. The adjudicator in Atlantis West [2024] QBCCMCmr 340 rejected the single-top-up argument, confirming long-standing industry practice.

標準規管模組第140及141條，以及住宿規管模組的對應條文，容許業主法人團體其後修訂聘任合約或授權，每次加入不超過五年的延期權利或選擇權，惟餘下總年期不得超出模組上限。此舉可否重複進行，多年來一直存有爭議。Atlantis West [2024] QBCCMCmr 340一案的裁決官否定了「只可補足一次」的主張，確認了行業長期以來的做法。

A top-up requires an ordinary resolution at a general meeting. It is not a committee decision, and it is not part of the transfer approval. A seller who assumes that a buyer-driven top-up will be dealt with alongside the assignment has confused two separate decisions made by two different organs of the body corporate.

續期補足須經業主大會普通決議通過，並非委員會決定，亦不屬轉讓批准的一部分。賣方若假設買方要求的續期補足會與轉讓一併處理，即是混淆了由業主法人團體兩個不同機關作出的兩項獨立決定。

PRACTICAL EFFECT 實務效果

Term is created at a general meeting and transfer is approved by the committee. Sequencing the two is a matter of strategy, not administration.

年期由業主大會創設，轉讓則由委員會批准。兩者的先後安排屬策略問題，而非行政程序問題。

1.5

Licensing sits outside the body corporate's decision

牌照要求不屬業主法人團體的決定範圍

A letting agent conducting a letting agent business must be licensed under the Property Occupations Act 2014. Section 27 of that Act describes what a resident letting agent may do: let lots in a building complex and collect rents for them. Caretaking work for the body corporate is governed by the service contract, not by the licence.

經營出租代理業務的出租代理，必須持有《2014年物業職業法》下的牌照。該法第27條說明駐場出租代理可從事的活動：為建築物綜合體內的單元出租及收取租金。至於為業主法人團體提供的看管工作，則由服務合約規管，而非由牌照規管。

The licence is a matter between the buyer and the regulator. The body corporate does not grant it and cannot waive it. But an unlicensed transferee cannot lawfully operate the letting business, which is a legitimate matter for the body corporate to take into account when assessing competence and qualifications, and a fatal one for the buyer's financier.

牌照事宜屬買方與監管機構之間的事，業主法人團體既不能授予，亦不能豁免。惟未持牌的承讓人不能合法經營出租業務，此點業主法人團體在評估其能力及資格時可合理考慮，而對買方的融資機構而言更屬致命。

PRACTICAL CHECKLIST 實務清單

- Identify the regulation module from the community management statement, not from the agent's summary.
- Calculate the unexpired term, distinguishing exercised options from unexercised ones.
- Confirm whether the caretaking engagement and letting authorisation are in one instrument or two.
- Count the letting appointments and confirm each is in the approved form.
- Verify the licence category the buyer will need before the contract is signed.

- 從社區管理聲明確認規管模組，不要依賴代理提供的摘要。
- 計算餘下年期，並區分已行使與未行使的選擇權。
- 確認看管服務聘任合約與出租代理授權是載於同一份文件還是兩份。
- 點算出租委任數目，並確認每份均採用訂明格式。
- 在簽署合約前，核實買方所需的牌照類別。

CHAPTER 2 · 第2章

02

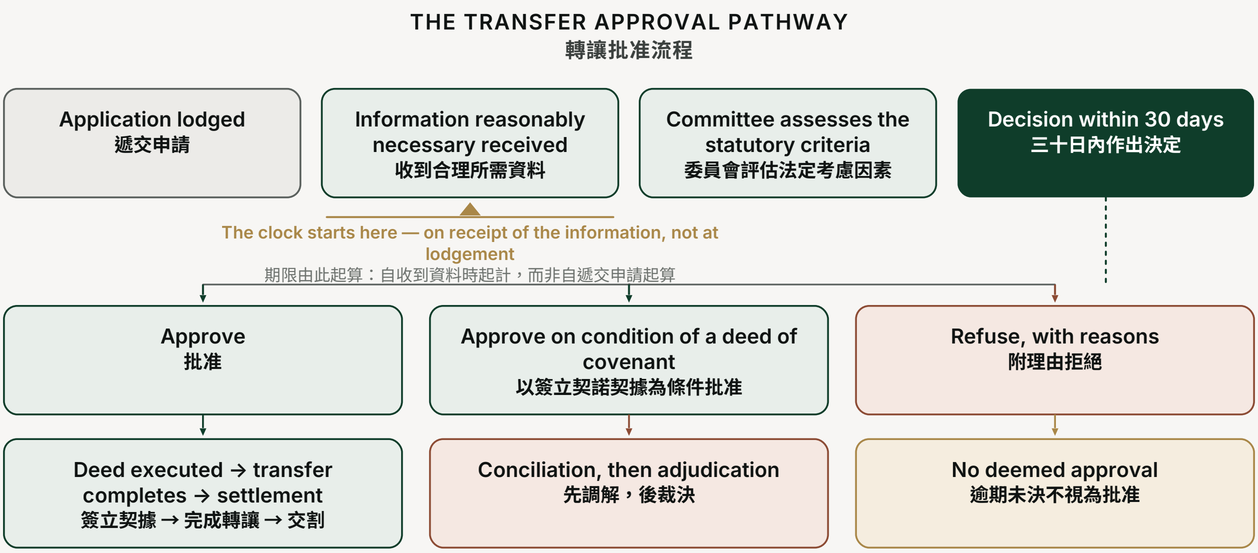
The Transfer Approval Regime

轉讓批准制度

The approval provision is short, and almost every contested assignment turns on how it is read. Section 143 of the Standard Module, and section 133 of the Accommodation Module in identical terms, provide that an engagement as a service contractor, or an authorisation as a letting agent, may be transferred only if the body corporate approves the transfer.

批准條文本身簡短，但幾乎每宗有爭議的轉讓，都取決於如何解讀該條文。標準規管模組第143條，以及條文相同的住宿規管模組第133條訂明：服務承辦商的聘任或出租代理的授權，僅在業主法人團體批准轉讓的情況下方可轉讓。

FIG 2 **The transfer approval pathway** ／ 轉讓批准流程



2.1

Who decides

由誰決定

The module declares, to avoid doubt, that the approval may be given by the committee. That is the ordinary course, and it matters commercially: a committee can convene quickly, whereas a general meeting cannot. The committee decision approves a transfer of the existing instrument on its existing terms. It does not amend the instrument.

模組為免生疑問，明文訂明該項批准可由委員會給予。此乃常規做法，且具商業意義：委員會可迅速召開會議，業主大會則不能。委員會的決定是批准按現有條款移轉現有文件，並不修改該文件。

Any change to the terms — a longer term, a revised duties schedule, a different remuneration figure — is an amendment requiring an ordinary resolution at a general meeting under section 135 of the Standard Module. A committee that purports to vary the agreement while approving the transfer has exceeded its authority, and the variation is exposed.

任何條款變更——延長年期、修訂職責清單、調整報酬金額——均屬修訂，須依標準規管模組第135條經業主大會普通決議通過。委員會如在批准轉讓的同時意圖變更合約，即屬越權，該項變更亦可被推翻。

DECISION 決定事項	ORGAN 決策機關	THRESHOLD 通過門檻
Approve a transfer of the engagement or authorisation 批准聘任或授權的轉讓	Committee 委員會	Committee resolution 委員會決議

DECISION 決定事項	ORGAN 決策機關	THRESHOLD 通過門檻
Amend the engagement or authorisation 修訂聘任合約或授權	General meeting 業主大會	Ordinary resolution 普通決議
Add a further option or top up the term 新增選擇權或補足年期	General meeting 業主大會	Ordinary resolution 普通決議
Terminate after a remedial action notice 在發出補救行動通知後終止	General meeting 業主大會	Ordinary resolution 普通決議

2.2

The statutory criteria

法定考慮因素

In deciding whether to approve, the body corporate may have regard to the character of the proposed transferee and of related persons; the financial standing of the proposed transferee; the competence, qualifications and experience of the transferee and related persons, including training received or likely to be received; and other matters stated in the engagement or authorisation itself.

業主法人團體在決定是否批准時，可考慮：擬承讓人及其關連人士的品格；擬承讓人的財務狀況；承讓人及關連人士的能力、資格及經驗，包括已接受或可能接受的培訓；以及聘任合約或授權本身所列明的其他事項。

The module defines related persons. For a corporate transferee they are its directors, substantial shareholders and principal staff; for a partnership, the partners and principal staff. A body corporate assessing a corporate buyer is therefore entitled to look through the company to the people who will actually run the building, and a buyer structuring through a company should expect that scrutiny.

模組界定了關連人士。就法團承讓人而言，指其董事、主要股東及主要職員；就合夥而言，指合夥人及主要職員。因此，業主法人團體在評估法團買方時，有權穿透公司架構審視實際管理該大廈的人；以公司架構進行交易的買方，亦應預期會受到此等審查。

PRACTICAL EFFECT 實務效果

The criteria are directed at the person who will perform the agreement. Matters unconnected to performance — the price paid, the seller's conduct, an unrelated grievance about levies — are outside them.

各項考慮因素均針對將履行合約的人。與履約無關的事項——成交價、賣方的行為、與管理費有關的無關投訴——均不在其列。

2.3

The thirty-day rule and what starts the clock

三十日期限及其起算時點

The body corporate must decide whether to approve a proposed transfer within thirty days after it receives the information reasonably necessary to decide the application. The clock therefore does not start when the application is lodged. It starts when the body corporate holds enough information to make the decision.

業主法人團體須在收到足以作出決定所合理需要的資料後三十日內，決定是否批准擬進行的轉讓。因此，期限並非自遞交申請之日起算，而是自業主法人團體掌握足夠資料以作決定之時起算。

That formulation cuts both ways. A body corporate cannot restart the period by issuing successive requests for information it does not reasonably need. Equally, a buyer who lodges a thin application and then complains about delay has usually created the delay. The module attaches no deemed approval to a failure to decide within the period; the remedy is an application under the dispute resolution provisions, which takes considerably longer than thirty days.

此一表述對雙方均有約束。業主法人團體不得藉連番索取其並非合理需要的資料，而重新起算該期限；同樣，買方若遞交內容單薄的申請，其後又投訴延誤，延誤通常是其自己造成的。模組並未就逾期未作決定訂明視作批准的效果；補救途徑是依爭議解決條文提出申請，而其所需時間遠超三十日。

> **PRACTICAL EFFECT 實務效果**
>
> Neither party should treat thirty days as a settlement date. It is a decision deadline that begins on a date determined by the completeness of the application.
>
> 任何一方均不應把三十日視為交割日。它是作出決定的期限，起算日取決於申請資料是否完整。

2.4

Reasonableness and the prohibition on charging

合理性及不得收費的規定

Section 143 provides that the body corporate must not unreasonably withhold approval, and must not require or receive a fee or other consideration for approving the transfer beyond reimbursement of expenses reasonably incurred in relation to the application. The two limbs are related: a demand for value in exchange for approval is both a prohibited charge and evidence that the refusal was not based on the statutory criteria.

第143條訂明，業主法人團體不得無理拒絕批准，亦不得就批准轉讓要求或收取任何費用或其他代價，惟就申請合理招致的開支獲得補償者除外。兩項規定互有關連：以批准換取利益的要求，既屬被禁止的收費，亦足以顯示拒絕並非基於法定考慮因素。

Reimbursable expenses are the body corporate's actual costs of assessing the application — the legal fee for reviewing the deed, the cost of the interview, the meeting cost. They are not a fee calculated by reference to the sale price, and they are not a contribution to the scheme's sinking fund.

可獲補償的開支，是業主法人團體評估申請的實際成本——審閱契據的法律費用、面談費用、會議費用。它不是按成交價計算的費用，亦不是對該計劃償債基金的注資。

2.5

The deed of covenant

契諾契據

Approval may be given on condition that the transferee enters into a deed of covenant to comply with the terms of the engagement or authorisation. This is the body corporate's principal protective mechanism and it should be used in every assignment. Without it the body corporate may find itself with a transferee who disputes whether particular obligations bind it.

批准可附加條件，要求承讓人簽立契諾契據，承諾遵守聘任合約或授權的條款。這是業主法人團體最主要的保障機制，每宗轉讓均應採用。若無此契據，業主法人團體可能面對承讓人爭辯某些義務對其不具約束力的情況。

The deed is a covenant to comply with the existing terms. It is not a vehicle for introducing new obligations. A deed presented to a transferee with additional duties, a shortened term or a reduced remuneration embedded in it is an amendment in substance, and the committee has no power to require it as a condition of approval.

該契據是承諾遵守現有條款的契諾，並非引入新義務的工具。若向承讓人提出的契據內載有額外職責、縮短年期或削減報酬，實質上即屬修訂，委員會無權將其作為批准條件。

> **PRACTICAL EFFECT 實務效果**
>
> Ask of every proposed condition: does this secure performance of the agreement as it stands, or does it change the agreement? Only the first is available to the committee.
>
> 對每項擬議條件均應自問：這是確保現有合約得以履行，還是改變了合約？委員會僅可採用前者。

2.6

The transfer fee within the prescribed period

訂明期間內的轉讓費

Sections 145 to 148 of the Standard Module, and sections 135 to 138 of the Accommodation Module, impose a transfer fee payable by the transferor to the body corporate where a transfer is approved within the prescribed period after the transferor's own initial contract date. If the approval day falls not more than one year after that date the fee is three per cent of the amount representing fair market value for the transfer; if it falls more than one year after that date the fee is two per cent.

標準規管模組第145至148條，以及住宿規管模組第135至138條，訂明凡轉讓在轉讓人本身的首份合約日期起計的訂明期間內獲批准，轉讓人須向業主法人團體繳付轉讓費。若批准日期距該日不超過一年，費用為轉讓公平市值金額的百分之三；若超過一年，則為百分之二。

The head of power sits in section 122(3) of the Act, which allows the regulation module to provide for a payment to the body corporate where rights under the engagement or authorisation are transferred within a prescribed period. That subsection operates by reference to section 122(2), so whether a fee is payable in a particular scheme is a question about the history of the engagement and not only about the calendar.

授權來源為該法第122(3)條，該條容許規管模組就聘任合約或授權下的權利在訂明期間內移轉時，訂定向業主法人團體支付款項的規定。該款須參照第122(2)條運作，故個別社區產權項目是否須繳費，涉及該聘任合約的沿革，而不僅是日期的計算。

The provisions contain exceptions, including where a financier exercises a power of sale, and a transferor who claims that no fee is payable must tell the body corporate. The fee is a seller cost and is frequently missed in the sale of a business acquired only recently. It should be identified before the price is agreed, not at settlement.

有關條文載有例外情況，包括融資機構行使強制出售權的情形；聲稱無須繳費的轉讓人，須通知業主法人團體。該費用屬賣方成本，在出售近期方購入的業務時經常被忽略，應在議定價格前而非交割時確認。

2.7

The financier is a statutory participant

融資機構是法定參與者

Divisions of Part 2 of Chapter 3 of the Act protect the financier of a management rights contract. Sections 123 to 127 define who is a financier, require the body corporate to be given an address for service, require notice to the financier of changes affecting the financed contract, limit termination of a financed contract, and prohibit certain agreements between the body corporate and the financier.

該法第3章第2部相關分部為管理權合約的融資機構提供保障。第123至127條界定何謂融資機構、規定須向業主法人團體提供送達地址、規定影響受融資合約的變動須通知融資機構、限制受融資合約的終止，並禁止業主法人團體與融資機構之間訂立某些協議。

For all three parties this has a practical consequence. A body corporate that proposes to act against a manager must check whether a financier has registered an address. A seller cannot deliver clear title to the agreements without the financier's release. A buyer's own financier will impose its own conditions, commonly including a minimum unexpired term, which is the mechanism by which lenders drive top-up motions.

此對三方均有實際影響。業主法人團體如擬對管理人採取行動，須先查核是否有融資機構已登記送達地址；賣方若未取得融資機構解除擔保，即無法交付無負擔的合約權益；買方本身的融資機構亦會提出自身條件，常見者為最低餘下年期要求，而這正是貸款機構推動續期補足動議的機制。

2.8

A drafting trap worth naming

值得指出的引註陷阱

Section 143 of the Standard Module governs voluntary transfers. Section 143 of the Act does something quite different: it sits within the division dealing with the required transfer of a letting agent's management rights and concerns the body corporate's choice of transferee where a transfer has been compelled. Correspondence that cites "section 143" without identifying the instrument is a recurring source of confusion, and occasionally of costs.

標準規管模組第143條規管自願轉讓；而該法第143條的內容截然不同：它屬於處理強制轉讓出租代理管理權的分部，涉及在轉讓被強制進行時業主法人團體對承讓人的選擇。信函中引用「第143條」而未指明所屬法律文件，是反覆出現的混淆來源，有時更引致費用損失。

PRACTICAL CHECKLIST 實務清單

- Cite the instrument as well as the section number in every letter.
- Record the date on which the body corporate held sufficient information.
- Separate the transfer application from any amendment or top-up motion.
- Check the transferor's initial contract date against the prescribed period.
- Confirm whether a financier has an address for service on the body corporate record.

- 在每封信函中，除條文編號外亦須指明所屬法律文件。
- 記錄業主法人團體掌握足夠資料的日期。
- 把轉讓申請與任何修訂或續期補足動議分開處理。
- 對照訂明期間，查核轉讓人的首份合約日期。
- 確認業主法人團體記錄中是否載有融資機構的送達地址。

CHAPTER 3 · 第3章

03

The Body Corporate's Perspective

業主法人團體的角度

A committee asked to approve an assignment is usually being asked to decide something it has never decided before, on a timetable set by someone else, with commercial pressure applied by parties who are not its members. The discipline that protects the committee is simple: decide the question the module asks, on evidence, and record the reasoning.

獲要求批准轉讓的委員會，通常正就其從未處理過的事項作出決定，時間表由他人設定，商業壓力則來自並非其成員的各方。保障委員會的原則其實簡單：按模組所提出的問題作決定、依據證據、並記錄理由。

3.1

What the committee is deciding, and what it is not

委員會所決定與不決定的事項

The committee is deciding whether this proposed transferee should be permitted to step into an agreement that already binds the body corporate. It is not deciding whether the agreement was a good bargain, whether the remuneration is too high, or whether the scheme would be better served by a different model. Those are real questions, but they are not answered by refusing an assignment.

委員會所決定的，是應否容許該擬承讓人承接一份已對業主法人團體具約束力的合約。委員會並非在決定該合約是否划算、報酬是否過高，或該社區產權項目採用其他模式是否更佳。這些都是真實的問題，但拒絕轉讓並不能解答這些問題。

I put it to committees this way. If the incumbent manager were performing the agreement adequately and had no intention of selling, would the committee have any present right to reopen the terms? If the answer is no, the arrival of a buyer does not create one.

我向委員會提出的問題是：若現任管理人正妥善履行合約且無意出售，委員會現時有否任何權利重開條款？若答案是否定的，買方的出現亦不會創造這項權利。

> **PRACTICAL EFFECT 實務效果**
>
> An assignment is an opportunity to assess a person. It is not an opportunity to renegotiate a contract that the body corporate is already bound by.
>
> 轉讓是評估「人」的機會，而非重新談判業主法人團體已受其約束的合約的機會。

3.2

Building the information request

擬定資料要求

The thirty-day period begins when the body corporate holds the information reasonably necessary to make the decision. Accordingly, the first substantive act is to define what that information is. A single, complete, early request is more defensible than a series of partial ones, and it is far more likely to produce a decision the body corporate can stand behind.

由於三十日期限自業主法人團體掌握作出決定所合理需要的資料時起算，首項實質工作便是界定該等資料的範圍。一次過、完整、及早提出的要求，比多次零碎索取更具說服力，亦更有可能促成業主法人團體足以堅守的決定。

The standard industry assignment questionnaire circulating in the market is a sound starting point. It is a starting point rather than a template: a scheme with a resort letting operation, a heritage building or a substantial plant inventory needs questions the standard document does not ask.

由昆士蘭分層社區協會、昆士蘭業主法團網絡及澳洲駐場住宿經理協會聯合編製的行業問卷，是穩妥的起點，但僅屬起點：設有度假式出租業務、歷史建築或大量機電設備的社區產權項目，所需查問的事項超出標準文件的範圍。

- Identity and structure of the transferee, and of every related person.
- Evidence of financial standing, including the funding structure for the purchase.
- Licence status under the Property Occupations Act 2014, and the licensee's identity.
- Relevant experience, qualifications and completed or scheduled training.
- Who will physically reside on site and perform the caretaking duties.
- Any matter the engagement or authorisation itself specifies.

- 承讓人及每名關連人士的身分及架構。
- 財務狀況證明，包括購買資金的安排。
- 《2014年物業職業法》下的牌照狀況，以及持牌人身分。
- 相關經驗、資格，以及已完成或已安排的培訓。
- 實際駐場居住及執行看管職責者為何人。
- 聘任合約或授權本身指明的任何事項。

3.3

The interview

面談

An interview is not a statutory requirement, and it is nearly always worth holding. The criteria concern character, competence and capacity to perform, and those are assessed better in conversation than on paper. The interview should be conducted by the committee, minuted, and directed to the statutory criteria rather than to the commercial terms of the sale.

面談並非法定要求，但幾乎必然值得進行。法定考慮因素涉及品格、能力及履約能力，透過對話比單憑文件更能評估。面談應由委員會進行、作成會議紀錄，並針對法定考慮因素，而非買賣的商業條款。

Two questions are worth asking in every case. First, who will be on site at seven in the morning when a pump fails. Second, what the transferee understands its duties to be, in its own words, without reference to the schedule. The answers reveal more about deliverability than any financial statement.

有兩個問題每次均值得提出。其一，泵機在清晨七時故障時，何人會在現場；其二，承讓人以自己的說法，理解其職責為何，而不參照職責清單。這些答案比任何財務報表更能反映履約能力。

3.4

Conditions that hold and conditions that do not

可成立與不可成立的批准條件

The module authorises one condition expressly: a deed of covenant to comply with the terms of the engagement or authorisation. Conditions that secure compliance with the existing agreement — evidence of the licence before completion, confirmation of the on-site resident, delivery of the executed deed — are consistent with that power.

模組明文授權的條件只有一項：簽立契諾契據以承諾遵守聘任合約或授權的條款。凡確保現有合約得以遵守的條件——於完成前提供牌照證明、確認駐場人員、交付已簽立契據——均與該項權力相符。

Conditions that alter the bargain do not survive scrutiny. Requiring the transferee to accept a shorter term, to surrender an option, to pay a contribution to the sinking fund, or to agree to duties not in the schedule, is an amendment dressed as a condition. It is beyond committee power, it engages the prohibition on receiving consideration for approval, and it supplies the transferee with a ready-made application for adjudication.

凡改變原有交易安排的條件均難以成立。要求承讓人接受較短年期、放棄選擇權、向償債基金注資，或同意職責清單以外的職責，均屬以條件之名行修訂之實。此舉超越委員會權限，觸及不得因批准而收取代價的禁令，並為承讓人提供現成的裁決申請理由。

CONDITION 條件	ORDINARILY AVAILABLE 一般可行	REASON 理由
Deed of covenant to comply with existing terms 承諾遵守現有條款的契諾契據	Yes 可行	Expressly authorised 模組明文授權
Evidence of licence before completion 完成前提供牌照證明	Yes 可行	Goes to capacity to perform 關乎履約能力
Reimbursement of the body corporate's reasonable expenses 補償業主法人團體的合理開支	Yes 可行	Expressly permitted 明文准許
Reduction of the remaining term 削減餘下年期	No 不可行	Amendment, not a condition 屬修訂而非條件
Payment to the body corporate calculated on the sale price 按成交價向業主法人團體付款	No 不可行	Prohibited consideration 屬被禁止的代價
New duties not in the agreement 合約以外的新職責	No 不可行	Requires a general meeting 須經業主大會決定

3.5

Conflict, disclosure and the record

利益衝突、披露及記錄

Committee voting members are bound by the code of conduct in Schedule 1A of the Act. A member who is negotiating with the seller for the purchase, who has a family connection to either party, or who has an unresolved personal grievance with the incumbent, should disclose it and consider abstaining. The cost of a disclosed abstention is nil. The cost of an undisclosed interest surfacing in an adjudication is the decision itself.

委員會有表決權的成員受該法附表1A的行為守則約束。凡正與賣方洽購、與任何一方有親屬關係，或與現任管理人存有未了個人恩怨的成員，均應予以披露並考慮避席。已披露而避席的代價為零；未披露的利益在裁決中被揭發，代價則是該項決定本身。

The minutes should record the information received, the date it was complete, the criteria considered, the substance of the interview, and the reasons for the decision. A body corporate that refuses without recorded reasons will be defending the refusal on reconstruction rather than on contemporaneous evidence.

會議紀錄應載明所收到的資料、資料齊備的日期、所考慮的因素、面談的內容要點，以及作出決定的理由。業主法人團體如未記錄理由即予拒絕，日後只能以事後重塑而非同期證據為該拒絕辯護。

3.6

Refusing, and refusing defensibly

拒絕批准及其可辯護性

A body corporate is entitled to refuse. What it is not entitled to do is refuse unreasonably. A refusal grounded in an identified statutory criterion, supported by evidence and communicated with reasons, is defensible. A refusal grounded in a general preference for a different manager, in dissatisfaction with the terms of the agreement, or in the committee's view that the price is too high, is not.

業主法人團體有權拒絕批准，但無權無理拒絕。凡以已指明的法定考慮因素為依據、有證據支持並附具理由通知的拒絕，均具可辯護性；若拒絕的理由是一般性地希望換人、不滿合約條款，或委員會認為成交價過高，則否。

Where the concern is capacity rather than character, a conditional approval will often serve the scheme better than a refusal. Approval conditional on the deed, on evidence of licensing and on confirmation of the on-site resident addresses most realistic concerns without exposing the body corporate to a dispute it is likely to lose.

若關注點在於能力而非品格，附條件批准往往比拒絕更符合該社區產權項目的利益。以簽立契據、提供牌照證明及確認駐場人員為條件的批准，足以處理大部分實際關注，而不致令業主法人團體陷入很可能敗訴的爭議。

PRACTICAL EFFECT 實務效果

The question is not whether the committee would have chosen this person. It is whether a reasonable body corporate, applying the statutory criteria to the evidence, could withhold approval.

問題不在於委員會會否選擇此人，而在於一個合理的業主法人團體，按法定考慮因素衡量證據後，是否可以拒絕批准。

3.7

Where the body corporate's real leverage lies

業主法人團體真正的籌碼所在

Committees frequently over-estimate their leverage at assignment and under-estimate it elsewhere. The assignment decision is narrow and reviewable. The performance regime is not: the codes of conduct in Schedules 2 and 3 form part of the engagement and authorisation, and a documented failure to perform can be addressed by a remedial action notice and, if unremedied, by termination approved at a general meeting.

委員會往往高估自己在轉讓階段的籌碼，卻低估在其他方面的籌碼。轉讓決定範圍狹窄且可被覆核；履約制度則不然：附表2及附表3的行為守則構成聘任合約及授權的一部分，凡有記錄的履約失當，均可透過補救行動通知處理，若未獲補救，更可經業主大會批准而終止。

A body corporate that wants better performance should be building a performance record throughout the term, not attempting to extract concessions in the four weeks in which it happens to hold an approval application. The former is durable and lawful. The latter is neither.

希望改善服務水平的業主法人團體，應在整個合約期內建立履約記錄，而非在偶然持有批准申請的四星期內試圖爭取讓步。前者持久且合法，後者兩者皆非。

CHAPTER 4 · 第4章

04

The Seller's Perspective

賣方的角度

A seller of management rights is selling a contractual position that a third party has to approve. That single fact shapes everything: the preparation, the contract, the timetable and the seller's residual exposure after settlement.

管理權賣方所出售的，是一項須經第三方批准的合約地位。單憑此點，便決定了一切：準備工作、合約條款、時間表，以及賣方在交割後的剩餘責任。

4.1

Preparation begins well before the market

準備工作須遠早於推出市場

The value of the business is a function of net profit and unexpired term. Both are capable of being improved before sale, and neither can be improved quickly. A top-up motion requires a general meeting, which requires notice, which requires a committee willing to put the motion. A seller who decides to sell and then discovers that four years remain has left the work too late.

業務價值取決於淨利潤及餘下年期，兩者均可在出售前改善，惟均無法速成。續期補足動議須經業主大會，業主大會須發出通知，而通知又須有願意提交該動議的委員會。賣方若決定出售後方發現只餘四年年期，準備工作已然過遲。

The same applies to compliance. An outstanding remedial action notice, an unresolved complaint history, an unapproved alteration to common property or a lapsed licence each become disclosure items and negotiating leverage for the buyer. They are cheaper to fix as the incumbent than to warrant as the seller.

合規事項亦然。未處理的補救行動通知、未了結的投訴記錄、未經批准改動共有財產，或已失效的牌照，均會成為披露事項及買方的議價籌碼。以現任管理人身分修正，成本遠低於以賣方身分作出保證。

PRACTICAL CHECKLIST 實務清單

- Confirm the unexpired term and whether a top-up is realistic with this committee.
- Close out every remedial action notice and documented complaint.
- Reconcile the letting appointments against the units actually in the pool.
- Check the transfer fee position against your own initial contract date.
- Obtain the financier's in-principle position on release before listing.

- 確認餘下年期，並評估在現屆委員會下續期補足是否實際可行。
- 了結每份補救行動通知及有記錄的投訴。
- 核對出租委任與實際列入出租組合的單元。
- 按你本身的首份合約日期，查核轉讓費的適用情況。
- 在放盤前，取得融資機構就解除擔保的原則性立場。

4.2

The contract and its conditions

合約及其條件

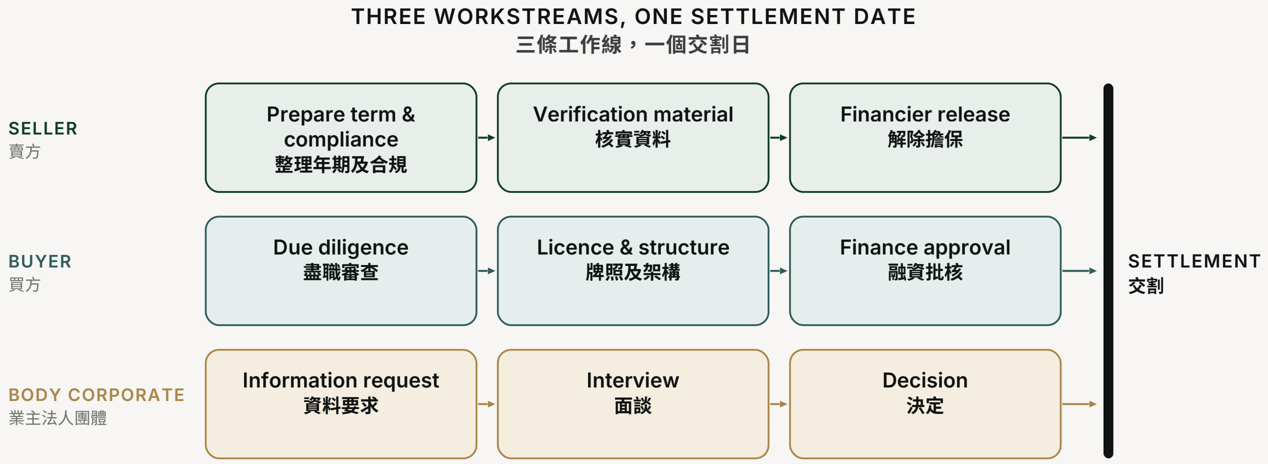
A management rights contract is conditional by necessity. The essential conditions are body corporate approval of the transfer, the buyer's finance, and verification of the income the business is represented to produce. Each must have a date, a standard of satisfaction and a consequence, and the seller should resist conditions expressed as the buyer's unqualified satisfaction.

管理權合約必然附有條件。核心條件包括：業主法人團體批准轉讓、買方的融資，以及核實業務所申述的收入。每項條件均須訂明期限、達成標準及後果；賣方應拒絕以買方「絕對滿意」為標準的條件。

The approval condition deserves particular attention. It should oblige the buyer to lodge a complete application within a short, fixed period, to provide the information the body corporate reasonably requests, and to attend an interview. Without those obligations the seller has given the buyer control of the timetable and, in effect, an option.

批准條件尤須留意。該條件應規定買方須在短而固定的期限內遞交完整申請、提供業主法人團體合理要求的資料，並出席面談。若欠缺這些義務，賣方等同把時間表的控制權交予買方，實際上等於給予對方一項選擇權。

FIG 3 **Three workstreams, one settlement date** ／三條工作線，一個交割日



The approval condition should oblige the buyer to lodge early and completely — otherwise the seller has handed the buyer control of the timetable.
批准條件應規定買方及早遞交完整申請，否則賣方等同把時間表的控制權交予買方。

PRACTICAL EFFECT 實務效果

The seller cannot control the body corporate's decision. The seller can control whether the buyer gives the body corporate a proper opportunity to make it.

賣方無法控制業主法人團體的決定，但可以控制買方有否給予業主法人團體適當的決定機會。

4.3

Verification of income

收入核實

Verification is the process by which the buyer's accountant tests the profit figure on which the price was calculated. It is the most common point of renegotiation, and the most avoidable. The figures presented at the outset should be the figures the accountant will find, on the basis the contract specifies.

收入核實是由買方會計師檢驗定價所依據的利潤數字的程序，既是最常見的重新議價節點，亦是最可避免的。最初提供的數字，應與會計師按合約指明的基礎所核實的數字一致。

Three adjustments recur. Body corporate remuneration should be stated on the contractual basis, including any indexation due before settlement. Letting income should exclude units under notice or already withdrawn. Owner-occupied and related-party arrangements should be identified rather than absorbed into the pool.

有三項調整反覆出現。業主法人團體支付的報酬，應按合約基礎列明，包括交割前應作的指數調整；出租收入應剔除已發出終止通知或已退出的單元；自住及關連方安排應予識別，而非併入出租組合計算。

4.4

Warranties, restraint and handover

保證、競業限制及交接

The buyer will seek warranties as to the accuracy of the financial information, the currency of the agreements, the absence of breach and the absence of undisclosed disputes. A seller should confine warranties to matters within its knowledge, define that knowledge, cap liability and impose a claims period. Uncapped warranties on a business sold for a multiple of profit are a disproportionate risk.

買方會就財務資料的準確性、合約的有效性、並無違約及並無未披露爭議等事項要求保證。賣方應把保證限於其所知悉的事項、界定該等知悉的範圍、設定責任上限並訂明索償期限。以利潤倍數出售的業務若提供無上限保證，風險與代價明顯不相稱。

A restraint of trade is standard and should be drafted to be enforceable rather than ambitious: a defined activity, a defined radius, a defined period, and cascading alternatives. The handover or training period should be specified in days and in content, because a vague handover obligation is a dispute waiting for a slow first month.

競業限制條款屬標準做法，起草時應以可執行為目標而非追求範圍廣泛：明確界定受限活動、範圍、期限，並設梯級式備選條款。交接或培訓期應同時訂明日數及內容，因為含糊的交接義務，只會在首月經營不順時演變成爭議。

4.5

What settlement does not end

交割並不終止的責任

An assignment moves the seller's rights under the scheme instruments to the buyer and, once the body corporate approves the transfer and the buyer signs the deed of covenant, moves the obligations as well. It does nothing to any separate promise the seller has made to a third party.

轉讓把賣方在社區產權項目文件下的權利移轉予買方；待業主法人團體批准轉讓並由買方簽立契諾契據後，義務亦一併移轉。但轉讓完全不影響賣方對第三方另行作出的任何承諾。

A personal guarantee given to a financier, to the landlord under an office lease, or to a trade supplier continues to bind the seller after settlement unless the party holding it agrees to release it. Sellers commonly assume that paying out the loan ends the guarantee. Paying out the loan ends the debt; the guarantee is a separate instrument and requires a separate written release, negotiated before settlement rather than after it.

賣方向融資機構、辦公室租約業主或供應商提供的個人擔保，除非持有該擔保的一方同意解除，否則在交割後仍然對賣方具約束力。賣方常誤以為清償貸款即等同終止擔保：清償貸款只終止該筆債務，擔保屬另一份獨立文件，須另行取得書面解除，並應在交割前而非交割後談妥。

The second residual exposure is the transfer fee. Where the transfer is approved within the prescribed period after the seller's own initial contract date, the fee is payable by the transferor, and a transferor claiming that an exception applies must tell the body corporate. Because the fee is calculated on the value of the transfer it can be a substantial sum, and a seller who has not built it into the price simply pays it out of the proceeds.

第二項剩餘責任是轉讓費。凡轉讓在賣方本身首份合約日期起計的訂明期間內獲批准，該費用即由轉讓人繳付；聲稱適用例外情況的轉讓人，須通知業主法人團體。由於該費用按轉讓價值計算，金額可能相當可觀；賣方若未把它計入定價，最終只能從成交所得中支付。

PRACTICAL EFFECT 實務效果

Settlement ends the seller's income on the day it happens. It ends the seller's obligations only to the extent each one has been separately released in writing.

交割當日即終止賣方的收入；至於賣方的各項責任，則僅在每一項均已個別取得書面解除的範圍內方告終止。

4.6

Managing the body corporate relationship during a sale

出售期間對業主法人團體關係的處理

The seller has one asset in the approval process that the buyer does not: standing with the committee. A seller who tells the committee early, introduces the buyer properly, and answers questions candidly materially improves the prospect of a timely approval. A seller who presents the assignment as a fait accompli invites the opposite.

在批准程序中，賣方擁有買方所沒有的一項資產：與委員會之間的信任。及早知會委員會、妥為引介買方並坦誠回應提問的賣方，可顯著提高及時獲批的機會；把轉讓當作既成事實提交的賣方，則招致相反結果。

The codes of conduct continue to bind the seller until the engagement ends. Pressure applied to committee members, or attempts to influence the composition of the committee during a sale, are conduct issues under Schedules 2 and 3 and they travel badly in any subsequent dispute.

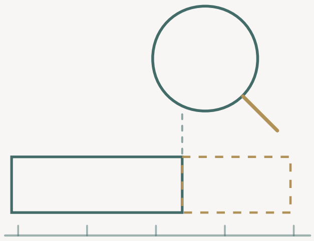
行為守則在聘任合約終止前持續約束賣方。在出售期間向委員會成員施壓，或試圖影響委員會的組成，均屬附表2及附表3下的操守問題，在其後任何爭議中都會對賣方極為不利。

CHAPTER 5 · 第5章

05

The Buyer's Perspective

買方的角度



The buyer carries the consequences of every decision made in this transaction for the balance of the term. The seller exits at settlement; the body corporate's committee changes each year; the buyer remains, bound by a document it did not negotiate, in a building it does not control, earning income from owners who are free to leave.

在這宗交易中，買方須在合約餘下年期內承受每一項決定的後果。賣方於交割時退出，委員會每年更替，唯獨買方留下，受一份並非由其議定的文件約束，身處一幢並非由其控制的大廈，收入則來自可隨時離開的業主。

5.1

Read the agreements before you agree the price

議價前先閱讀合約

The price is a multiple of a profit figure. The agreements determine whether that profit is durable. A duties schedule that is wide, vague or expressed by reference to a standard the body corporate sets unilaterally will cost the buyer money every year of the term, and it will not appear in any financial statement.

成交價是利潤數字的倍數，而合約決定該利潤能否持續。若職責清單範圍寬泛、措辭含糊，或以業主法人團體單方面訂立的標準為準，買方在合約每一年均須為此付出成本，而這在任何財務報表上都不會顯示。

- The duties schedule: what is included, what is charged separately, who supplies materials.
- The remuneration clause: the review mechanism, the index, the review date.
- The assignment clause: what the agreement itself adds to the module requirements.
- Default and termination provisions, and any cure periods.
- Any occupation authority over common property, and its terms.

- 職責清單：何者已包括在內、何者另行收費、材料由何方提供。
- 報酬條款：檢討機制、所採用的指數、檢討日期。
- 轉讓條款：合約本身在模組規定之外附加了甚麼要求。
- 違約及終止條款，以及任何補救期。
- 任何佔用共有財產的授權及其條款。

5.2

Term risk is the buyer's central risk

年期風險是買方的核心風險

A business with seven years to run and a business with twenty years to run may produce identical profit today and command very different prices, because the second can be sold and the first is approaching the point where it cannot be financed. The buyer's exit is determined by the term at the time of exit, not at the time of entry.

餘下七年與餘下二十年的業務，今日可能產生相同利潤，價格卻可相差甚遠，因為後者可以出售，前者則已接近無法取得融資的臨界點。買方的退場條件，取決於退場時而非入場時的餘下年期。

A buyer who intends to rely on a future top-up should understand that the top-up is a discretionary ordinary resolution of a general meeting, not an entitlement. It depends on owners the buyer has not yet met, in a meeting that has not yet been called, on a motion the committee must be willing to put. Pricing a business on the assumption that the term will be extended transfers that risk to the buyer without compensation.

若買方擬倚賴日後的續期補足，須明白該補足屬業主大會可自由裁量的普通決議，而非一項權利。它取決於買方尚未認識的業主、尚未召開的會議，以及委員會是否願意提交的動議。以「年期將獲延長」為假設定價，等同在無補償的情況下由買方承擔該風險。

PRACTICAL EFFECT 實務效果

Buy the term you have. Treat any future extension as upside, and price it at zero until the resolution is passed.

按現有年期作價。把日後任何延期視為額外收益，在決議通過前一律以零值計算。

5.3

Due diligence on the scheme, not just the business

對社區產權項目而非僅對業務進行盡職審查

The buyer is acquiring a long relationship with a body corporate, and the condition of that body corporate is part of what is being bought. A scheme with an under-funded sinking fund, significant unresolved building defects, or a history of adjudication applications is a scheme in which levies will rise, owners will be unhappy, and the manager will be the most visible person in the building.

買方所取得的，是與業主法人團體之間的長期關係，而該團體的狀況正是交易標的的一部分。若某社區產權項目的償債基金撥備不足、存在重大未解決的建築缺陷，或有裁決申請的歷史，則其管理費勢將上升、業主情緒不佳，而管理人將是大廈內最顯眼的人。

- Body corporate records: minutes, financial statements, sinking fund forecast.
- Insurance, valuation currency and any claims history.
- Defect, remediation and cladding history, and any statutory notices.
- Current and recent disputes, adjudication applications and orders.
- The community management statement, by-laws and any exclusive use allocations.

- 業主法人團體記錄：會議紀錄、財務報表、償債基金預測。
- 保險、估值時效及任何索償記錄。
- 缺陷、修繕及外牆覆材歷史，以及任何法定通知。
- 現時及近期的爭議、裁決申請及命令。
- 社區管理聲明、管理規約，以及任何專用權分配。

5.4

The letting pool and the appointments

出租組合及委任

The letting pool is the part of the business that no one can transfer to the buyer. Each participating owner must give the buyer a fresh appointment in the approved form. Owners who were loyal to the outgoing manager for fifteen years have no obligation to be loyal to a stranger, and the period immediately after settlement is when competing agents approach them.

出租組合是業務中無人能移轉予買方的部分。每名參與業主均須以訂明格式向買方重新作出委任。曾對前任管理人忠誠十五年的業主，並無義務對陌生人同樣忠誠，而交割後緊接的一段時間，正是競爭代理接觸他們的時機。

Sensible protection is contractual: a retention held against appointment attrition over a defined period, a seller obligation to introduce the buyer to owners before settlement, and a restraint that prevents the seller from soliciting the pool. A buyer relying instead on assurances about owner loyalty is relying on the one asset the seller cannot deliver.

合理的保障來自合約安排：就指定期間內委任流失設定保留金、賣方須在交割前把買方引介予業主的義務，以及禁止賣方招攬出租組合的競業限制。若買方改為倚賴有關業主忠誠度的口頭保證，等於倚賴賣方唯一無法交付的資產。

5.5

The manager's lot

管理人單元

Where the transaction includes a lot, it is a conveyance and it carries conveyancing risk: title, encumbrances, by-law compliance, the accuracy of the plan, and whether the lot is genuinely fit for the required residence and office use. Check whether the agreement requires the manager to reside in a particular lot, because that requirement converts the lot from an investment into an operational necessity.

若交易包括一個單元，則屬物業轉易，並帶有轉易風險：業權、產權負擔、管理規約合規、測量圖的準確性，以及該單元是否確實適合作所需的居住及辦公用途。應查核合約有否規定管理人須居於特定單元，因為該規定會令該單元由投資資產變為營運上的必需品。

Where the office or reception area is common property, the right to occupy it derives from an occupation authority under the module rather than from ownership. Its terms, and its expiry, should be verified with the same care as the caretaking agreement.

若辦公室或接待處屬共有財產，佔用該處的權利源於模組下的佔用授權，而非源於所有權。其條款及屆滿日期，應以與看管合約同等的謹慎程度核實。

5.6

Finance, licensing and structure

融資、牌照及架構

Management rights lending is specialised. Lenders assess the unexpired term, the ratio of body corporate remuneration to letting income, the scheme's profile and the borrower's experience. A buyer new to the industry should expect conditions including a minimum term, and should raise the term question with the body corporate early rather than discovering it at finance approval.

管理權融資屬專門範疇。貸款機構會評估餘下年期、業主法人團體報酬與出租收入的比例、社區產權項目的概況，以及借款人的經驗。初入行的買方應預期會面對包括最低年期在內的條件，並應及早就年期問題與業主法人團體溝通，而非到融資審批階段才發現問題。

Licensing and structure should be settled before the approval application is lodged, not after. The body corporate is entitled to assess the character, financial standing and competence of the transferee and its related persons, and a structure that changes midway through the assessment restarts the committee's work and, with it, the practical timetable.

牌照及架構應在遞交批准申請前確定，而非其後。業主法人團體有權評估承讓人及其關連人士的品格、財務狀況及能力；若架構在評估過程中變更，委員會的工作須重新開始，實際時間表亦隨之延後。

5.7

The first hundred days

首一百天

The assignment is approved, the deed is executed, settlement occurs, and the buyer now has to perform an agreement drafted by someone else for a body corporate that has just scrutinised it. The first hundred days determine the relationship for the balance of the term.

轉讓獲批、契據簽立、交割完成，買方此時須履行一份由他人草擬的合約，而對方是剛剛審查過自己的業主法人團體。首一百天將決定合約餘下年期內的雙方關係。

- Perform the duties schedule visibly and keep a contemporaneous record of doing so.
- Meet the committee early and establish a reporting rhythm.
- Secure the letting appointments before competing agents do.
- Diarise the remuneration review date and the option exercise dates.
- Diarise the top-up horizon well before the term becomes a financing problem.

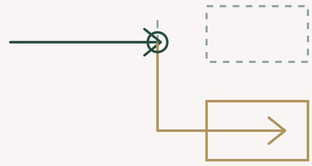
- 以可見方式履行職責清單，並同期作出記錄。
- 及早與委員會會面，建立定期匯報機制。
- 在競爭代理行動之前取得出租委任。
- 記下報酬檢討日期及選擇權行使日期。
- 在年期成為融資問題之前，及早訂下續期補足的時間點。

PRACTICAL EFFECT 實務效果

The buyer's next sale is being determined now, by the performance record and the committee relationship built in the first year.

買方的下一次出售，此刻已在決定之中——取決於首年建立的履約記錄及委員會關係。

CHAPTER 6 · 第6章



06

When an Assignment Fails

轉讓失敗時

Most assignments complete. Those that do not tend to fail for a small number of recurring reasons, and the pathways available afterwards are narrower and slower than the parties expect.

大部分轉讓均可完成。未能完成者，失敗原因通常屬少數反覆出現的類型，而其後可用的途徑，遠比當事人預期為窄、為慢。

6.1

Where assignments actually fail

轉讓實際失敗的原因

FAILURE POINT 失敗環節	USUAL CAUSE 常見原因
Incomplete approval application 批准申請不完整	The thirty-day period never begins 三十日期限從未起算
Conditions imposed beyond power 所施加的條件超出權限	Committee treats approval as a renegotiation 委員會把批准視為重新談判
Verification shortfall 收入核實不足	Represented profit not supported on the contract basis 所申述利潤在合約基礎上無法支持
Finance declined 融資被拒	Unexpired term below the lender's threshold 餘下年期低於貸款機構要求
Licence not held at completion 完成時未持牌	Structure or licensee resolved too late 架構或持牌人過遲確定
Financier release not obtained 未取得融資機構解除擔保	Seller's security position addressed too late 賣方擔保狀況處理過遲

6.2

The dispute pathway

爭議處理途徑

A buyer or seller who considers that approval has been unreasonably withheld applies under the dispute resolution provisions in Chapter 6 of the Act. The process begins with conciliation and proceeds, if unresolved, to adjudication, with appeal to the Queensland Civil and Administrative Tribunal on a question of law. It is comparatively inexpensive and it is not quick.

若買方或賣方認為批准被無理拒絕，可依該法第6章的爭議解決條文提出申請。程序先經調解，如未能解決則進入裁決階段，並可就法律問題向昆士蘭民事及行政審裁處提出上訴。此程序費用相對較低，但並不迅速。

The timetable is the practical difficulty. A contract with a fixed approval date will usually have terminated long before an adjudicator decides. That is why the drafting of the approval condition, and the extension mechanism within it, matters more than the theoretical availability of a remedy.

真正的實務困難在於時間。訂有固定批准期限的合約，通常在裁決官作出決定前早已終止。正因如此，批准條件的草擬方式及其中的延期機制，比補救途徑在理論上是否存在更為重要。

6.3 Compelled transfer and termination

強制轉讓及終止

The Act contains a separate regime under which a body corporate may require the transfer of a letting agent's management rights following a code contravention notice, with provisions governing the letting agent's choice of transferee, notice to the financier, the body corporate's choice where the letting agent does not act, the terms of the service contract on transfer, and termination where no transfer occurs.

該法另設一套制度：業主法人團體可在發出違反守則通知後，要求轉讓出租代理的管理權，並就出租代理選擇承讓人、通知融資機構、出租代理不作行動時業主法人團體的選擇權、轉讓時服務合約的條款，以及未能轉讓時的終止事宜，訂有相應條文。

This regime is distinct from the voluntary assignment provisions in the modules, and it is not a shortcut. It is triggered by contravention, requires notice and an opportunity to remedy, and terminating an engagement after an unremedied remedial action notice requires an ordinary resolution at a general meeting rather than a committee decision.

此制度有別於模組中的自願轉讓條文，亦非捷徑。它須由違反行為觸發，須發出通知並給予補救機會；而在補救行動通知未獲遵從後終止聘任合約，須經業主大會普通決議，而非委員會決定。

PRACTICAL EFFECT 實務效果

The voluntary and compelled transfer regimes answer different questions. A body corporate dissatisfied with performance should be in the second, not obstructing the first.

自願轉讓與強制轉讓兩套制度回應的是不同問題。對服務水平不滿的業主法人團體，應循後者處理，而非阻撓前者。

PARTNER'S CLOSING TEST 合夥人最終測試

BEFORE YOU SIGN, APPROVE OR REFUSE 簽署、批准或拒絕前

Which instrument governs, and which section of it? Who has power to make this decision — the committee or a general meeting? What information started the thirty-day clock, and on what date? Does the proposed condition secure the existing agreement or change it? Who is released, and in writing? What is the unexpired term on the day of settlement, and what will it be on the day of exit?

適用的是哪份法律文件、其中哪一條？誰有權作出此項決定——委員會還是業主大會？三十日期限由甚麼資料觸發、起算日為何？擬議條件是保障現有合約，還是改變了合約？誰獲解除責任、有否書面確認？交割當日的餘下年期為何？退場當日又將為何？

DOCUMENT CONTROL 文件控制

ITEM 項目	DETAIL 內容
Title 名稱	Queensland Management Rights Assignment Guide 昆士蘭管理權轉讓指南

ITEM 項目	DETAIL 內容
Version 版本	Version 1 第1版
Date 日期	6 August 20262026年8月6日
Author 作者	Kevin Pai, PartnerKevin Pai，合夥人
Scope 範圍	Queensland; Standard and Accommodation Modules 昆士蘭；標準及住宿規管模組
Status 狀態	General educational information 一般教育資訊

Principal sources: Body Corporate and Community Management Act 1997 (Qld); Body Corporate and Community Management (Standard Module) Regulation 2020; Body Corporate and Community Management (Accommodation Module) Regulation 2020; Property Occupations Act 2014 (Qld); Atlantis West [2024] QBCCMCmr 340.

主要資料來源：《1997年業主法人團體及社區管理法》（昆士蘭）；《2020年業主法人團體及社區管理（標準規管模組）規例》；《2020年業主法人團體及社區管理（住宿規管模組）規例》；《2014年物業職業法》（昆士蘭）；Atlantis West [2024] QBCCMCmr 340。