

02 NOV, 2019

## Flat rate maintenance fee deemed unfair

Focus Malaysia, Malaysia



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- **The** crux of the matter is that stratified property owners in mixed developments have to pay maintenance for facilities and amenities that they do not enjoy
- **The** fee does not reflect the actual cost of maintenance for the different components and their usage



by Sharina Ahmad

**T**he recent court ruling on a flat rate maintenance fee for mixed-use properties is seen to cause chaotic situations for property management.

The Malaysian Institute of Property and Facility Managers (MIPFM) recently forefronted this serious issue and it foresees various problems arising from the court decision.

Real Estate and Housing Developers' Association (Rehda) president Datuk Soam Heng Choon says the Ministry of Housing and Local Government is going through the amendment of the whole strata management and is engaging with various stakeholders, including Rehda, on potential amendments to the Act.

"We hope all stakeholders can present their input and find the best solution and amend that section of the Act to reflect what is best for all parties."

"Meanwhile, Joint Management Body Malaysia can continue with the process of appeal to the highest court. I urge the ministry to quickly engage with the various stakeholders to achieve an amicable solution in the immediate term and the amendments of the Act as a permanent solution," Soam tells *FocusM*.

### Confusion and uproar

MIPFM's president Adzman Shah Mohd Ariffin hopes the issue will be resolved by the government soon as it is a serious matter.

"As such, we wish to urge the custodian of the Act, that is the ministry, to quickly look into the matter and provide a solution to which may involve, among others, amending the Act to make Section 60(3)(b) consistent for both management corporations (MC) and JMBs as well as to review the share units formula under the first

schedule to ensure equitableness for all parties," he said during a press conference recently.

Adzman says the recent court decision has caused an uproar in the strata-owner community.

"We view the recent judgment made in the Court of Appeal as a landmark decision which will result in a lot of confusion and uncertainty in the strata owners' community."

"The practitioners and strata property owners have long recognised the vast difference in the cost of managing and maintaining mixed-use developments from a single tower with different uses to several buildings/towers on top of podium buildings to enbloc/freestanding buildings sited on the same land title," he says.

The Strata Management Act 2013 (Act 757) and Strata Management Regulations 2015 are the governing legislation for strata management related matters. Act 757, unfortunately, did not foresee the evolution of property development which involve different components with exclusive facilities and amenities being constructed on the same land title, says Adzman.

"Following the complications faced by the various Joint Management Body (JMB), strata owners and developers in relation to this problem, even the ministry has recognised this issue which needs a long-term solution."

"A good example is when there are a mall, service apartment and office within a mixed development on the same land title. The operational cost for the mall is RM2-3 per sq foot (psf) per month against service apartment at 30-40 sen psf pm and office at 80 sen to RM1 psf pm. The conversion to share units at the same rate will be highly inequitable and will cause disharmony among owners and JMBs as there will be an element of subsidisation between the parties."

Act 757, however, allows under Section 60(3)(b) for the Management Committee (MC) but is silent for the JMB to determine different rates.

"The spirit of this provision clearly shows that the Act recognises such a problem as inequitable treatment may occur. Having recognised the problem, commissioners of building have also allowed owners and JMBs to decide in annual general meetings (AGMs) on the rates as part of the democratic process," he points out.

### One size does not fit all

National Home Buyers Association (HBBA) secretary-general Datuk Chang Kim Loong says the association recognises the great diversity of mixed-use strata developments in Malaysia where many permutations are possible, and involving many types of components.

"For instance, there are a few types of components - condominium blocks, serviced apartment blocks, medium-cost apartment blocks, low-medium-cost



The court decision is causing an uproar among strata owners, says Adzman

apartment blocks, low-cost flats, office blocks, retail blocks, shop-office blocks, shopping mall, hotel, carpark blocks, land parcels and others.

"To further complicate this great diversity in mixed-use strata developments, the components can be either - a block parcel block (for example, a block with a single strata title) or multiple parcels block (for example, a block with multiple strata titles," he explains.

Chang says to compound the matter, the common property including facilities in such mixed-use strata development may either be shared in use equally by all the parcels or components in a strata development, or not shared in use equally by the components in a strata development (for example, there is exclusivity of use of certain designated parts of the common property to only one or more components but not all the components).



"A simple example is found in JMB's Central Park, Penang where the high-cost facilities in its condominium are not shared with its low-cost flats."

"Another example is in JMB's Bukit Jambul Complex, Penang where the centralised air-conditioning system of its multiple parcels shopping mall is not shared with its condominium and its low-cost flats," says Chang, highlighting a few situations.

Upon taking into account the great diversity and complications in the mixed-use strata development in Malaysia, it is crystal clear that one uniform rate of maintenance charges will not apply equally to all the different types of mixed-use strata developments, says Chang.

"The maxim is true here that one size



The ministry needs to engage with the stakeholders to achieve an amicable solution, says Soam



The centralised air-conditioning system for the shopping mall at Bukit Jambul Complex in Penang is not shared with its condominium and low-cost flats

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There is a great diversity of mixed-use strata developments in Malaysia where many permutations are possible and with various types of components involved

does not fit all. Hence, we support the different rates of maintenance charges for mixed-use strata developments where they are based on the fair principle of an owner paying for what he is entitled to use and vice-versa.

"This basic concept and fair principle is applicable to the three management periods by the management bodies (developers, JMBs and MCs)," he notes.

Chang adds that HBA supports the position taken by MIPFM that it is fair and justifiable for a JMB to impose different rates of maintenance charges in a mixed-used strata development.

The Association of Valuers, Property Managers, Estate Agents and Property Consultants in the Private Sector, Malaysia (PEPPS) views with grave concern the ruling that JMB is required to determine and fix only a single rate of maintenance charge in a mixed development.

The organisation recognises the inequity, complications and the resulting impact of having a single maintenance rate for mixed-use strata developments.

"The crux of the matter lies in stratified property owners in mixed developments having to pay maintenance for facilities and amenities that they do not enjoy or get to enjoy.

"This may result in dissatisfaction amongst the subsidiary proprietors and a general reluctance to pay maintenance fees as a form of protest."

As such, the association fully supports MIPFM and HBA's position that it is more equitable and justifiable to have different rates of maintenance charges for mixed use strata development.

**FocusM** tried to reach Housing and Local Government Minister Zuraida Kamaruddin but received no response.

Building Management Association of Malaysia (BMAM) president Tan Sri Teo Chiang Kok says the court's decision disallowing the JMB to charge different rates of maintenance fees for different types of



**Chang says one uniform rate of maintenance charges will not apply equally to the different types of mixed-use development**

usage within mixed-use developments is fundamentally unfair.

"It does not reflect the actual cost of maintenance for the different components and usage. In fact, Section 60 of the Strata Management Act allows the MC to determine different rates for different components. The JMB is merely the precursor of the MC and will be succeeded by the MC once the strata titles are issued."

Teo says logically and rationally, the law should have been written clearly, in the same spirit, to allow the JMB to also determine the different rates.

"The Strate Management Act is currently being updated and amended and this court decision warrants an expeditious resolution and the urgent finalisation of the amendments to the Act.

"Principally, the Strata Titles Act 1985 and the Strata Management Act have already recognised the need for different

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**RM100 mil for the repair and refurbishment of low- and medium-cost strata housing is considered inadequate**

treatment for different components in mixed-use and multi-phase development projects with the provisions already included for sub-management committees (sub-MCs) to be formed for each component.

“Unfortunately, the current legislation only allows such sub-MCs to be formed after the formation of the main MC. This is not practical as the main MC can only be formed after the strata titles for the entire project have been issued. This time lag could be years.”

Teo notes that the industry has called for the planned sub-MCs to be disclosed at the onset before the sale of the strata units and allow the “functions” of each sub-MC to be implemented as each component is completed and occupied even before the issuance of the strata titles.

“Theoretically, as envisaged in the

Strata Management Act, strata titles should be issued at the same time as the handing over of vacant possession. This seems unlikely in the foreseeable future. This is yet another instance of idealism not meeting the real and practical circumstances in the housing sector.”

The association emphasises the urgency for the JMB to determine different rates as soon as possible.

The total number of sub-MCs for any mixed-use and multi-phase development should be determined at the planning stage itself and approved for formation as each component/phase is completed.

The different rates are to be determined by the developer and subsequently by the JMB and sub-MC/MC as each component/phase is completed but subject to the approval of members at the AGM/extraordinary general meeting. **FocusM**



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### SUMMARIES

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