

any amendments to the DMC, a contractual agreement, may benefit one group of owners and inevitably affect the rights of another group of owners. Hence, unless the consent of all owners is obtained, any unilateral attempt to amend the terms of the DMC may lead to even more disputes.

(b) Separating the Accounts and Budgets of the Residential Part and the Commercial Part of a Composite Development

5.5 Guideline 24 of the existing DMC Guidelines provides that separate accounts and budgets for each part of a composite development must be kept, and that the owners are liable to contribute to the management and maintenance costs of their respective parts only. Guideline 15 allows the manager to appoint sub-managers to carry out various aspects of the management works or management works of certain areas of the development.

5.6 Building management disputes often arise in the cases of older composite developments where their DMCs do not provide for separating the accounts and budgets of the residential parts and commercial parts. Some suggest that separate accounts and budgets of the residential and commercial parts should become mandatory for all composite developments including the old ones.

5.7 However, there may be practical difficulties in implementing the suggestion under certain circumstances. For instance, it is not uncommon that the first few floors of a building are restaurants or shops with the residential units located on the upper floors. In such cases, the commercial part and the residential part share common and inseparable facilities such as water tanks, sewers and drains. Owners should have joint responsibility to manage and maintain the common parts.

(c) Applicability of the BMO to Sub-DMCs

5.8 Sub-DMCs are most common in phased developments. In most cases, the principal DMC covers matters which are applicable to the entire development and the first phase of the development.

The sub-DMCs cover matters which are applicable to the subsequent phases. Paragraph 29 of the Guidelines for DMCs provides that the developer may reserve rights to execute sub-DMCs in respect of separate towers, phases, etc.

5.9 Schedules 7 and 8 to the BMO are only applicable to DMCs but not sub-DMCs. There are suggestions that the two schedules should also apply to sub-DMCs to better protect the interest of owners.

5.10 Schedule 7 to the BMO is mainly related to the requirement that the manager should follow in relation to the financial management of the building, and the arrangements concerning the termination of the manager's appointment. The terms in Schedule 8 to the BMO relate to the procedures to be followed in respect of meetings of the owners' committee and of the owners. The provisions in Schedule 7 to the BMO are mandatory to every DMC, while the provisions in Schedule 8 which are consistent with the DMC shall be impliedly incorporated in every DMC.

5.11 A sub-DMC merely regulates a certain part of a building. That certain part of a building represents only a discrete area of a "building" defined in section 2 of the BMO. Accordingly, the so-called "common parts" under a sub-DMC do not carry the same meaning as the term "common parts" defined in section 2 of the BMO. If the definitions of "building" and "common parts" in the BMO are to be amended to cater for the applicability of the BMO to the sub-DMCs, substantial amendments to other parts of the BMO will be required and will have significant implications to the original intent of the BMO. There are practical difficulties in applying Schedules 7 and 8 to the BMO to sub-DMCs.

(II) One Building with Multiple OCs and Multiple Buildings with One OC

5.12 Under the BMO, an OC is formed on the basis of each DMC. For "one building with multiple OCs", these buildings usually consist of blocks which are erected on different sections of a