New Challenges to SiFUS of Strata Schemes

Paper prepared & presented by:

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Speaker Profile

Sr. Wong Kok Soo

Fellow member of the Royal Institution of Surveyors Malaysia (RISM), advisor & member of the Association of Valuers, Property Managers & Estate Agents In Private Sector (PEPS), member of the Malaysian Institute of Professional Property Managers (MIPPM), member of the Malaysian Institute of Estate Agents (MIEA) and consultant to the National Association of House Buyers (HBA). Member of the Board of Valuers, Appraisers, Estate Agents and Property Managers (BOVAEP).

Sr. Wong is the recipient of the Property Manager Award by the Board of Valuers, Appraisers and Estate Agents Malaysia in 2015; Property Manager Award by the Royal Institution of Surveyors Malaysia in 2014; and the Property Manager Award by the Board of Valuers, Appraisers and Estate Agents Malaysia in 2011.

Sr. Wong has 40 years of vast experience in the Property Industry. He was actively involved in the Drafting & Working Committees for the Malaysian Property Management Practice Standards 2011; the Strata Management Act 2013; the Standard Formulation of Allocated Share Units and Share Units; the Strata Management Regulations 2015; S.O.P. for formation of Subsidiary Management Corporations. He is a renowned authority and speaker on these subjects.

Currently Sr. Wong is the Group Managing Director of Burgess Rawson, Malaysia – a niche market professional property management and consultancy firm, having a property management stable of 30 projects in the Klang Valley with special focus on integrated mixed-use strata development areas.

Sr. Wong Kok Soo of Burgess Rawson, Malaysia provides professional consultancy and services to esteemed clients, developers, JMBs and MCs:-

➢ In-house training and seminar on SMA 2013 and SMR 2015;

➢ Facilitate and conduct AGM & EGM of JMB, MC and SMC;

➢ Consultancy and facilitating the establishment of subsidiary management corporations with limited common properties;

➢ Consultancy for formulation of suitable share units formula and equitable share units in mixed-use development areas;

➢ Property management of highrise buildings and strata development areas with special focus on integrated mixed-use development areas;

➢ Fire insurance valuations to determine insured sum of buildings;

➢ Property valuations for acquisitions, mergers, finance and corporate annual report.

Certificate of Share Unit Formula (SiFUS)

► In a strata scheme, a residential unit or a commercial unit is technically known as a parcel under the Strata Management Act 2013 (SMA) and the Strata Titles Act 1985 (STA).

► Every parcel has a share value that is expressed in whole number as share units under the STA.

► These share units are used for billing of Charges and sinking fund contributions, and the apportionment of expenses under the SMA.

► In addition, in the voting by poll at a general meeting, each share unit will represent one vote under the SMA. Thus, a majority shareholder will have a bigger say in decision making at AGM and EGM.

► Certificate of share unit formula (SiFUS) is a certificate that is issued by the Director of Land and Mines (PTG) upon the approval of the computation and allocation of share units prepared by the licensed land surveyor for all the parcels in the proposed strata scheme.
These share units are deemed to be equitable.

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Certificate of Share Unit Formula (SiFUS)

- The computation of share units in a strata scheme are based on the standard formula in the Fourth Schedule of Strata Titles Rules 2015.

- **Share unit of a parcel** $\qquad = \quad (A \times F_1 \times F_2) + \sum_1^N (B \times F_3)$

- **Share unit of a land parcel** $\quad = \quad (A \times 0.8) \qquad + \sum_1^N (B \times F_3)$

- Where

- A = area of parcel

- B = area of accessory parcel

- F_1 = weight for the type of parcel as specified in Table A

- F_2 = weight for the size of parcel as specified in Table B

- F_3 = weight for the type of accessory parcel as specified in Table C

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Certificate of Share Unit Formula (SiFUS)

Table A: Weightage Factors (F_1) for type of parcels, reflecting the frequency of usage and general maintenance

No.	Type of parcel	Without air-conditioning to common areas of corridors, lobbies and foyers		With air-conditioning to common areas of corridors, lobbies and foyers	
		F1 having benefit of common lift/escalator facility	F1 having no benefit of common lift/escalator facility	F1 having benefit of common lift/escalator facility	F1 having no benefit of common lift/escalator facility
1.	Apartment/Small Office Home Office (SOHO)	1.00	0.85	1.30	1.15
2.	Office/Institution (College) complex	1.00	0.85	1.30	1.15
3.	Retail complex	2.00	1.70	3.20	2.90
4.	Hotel/Medical centre complex	2.20	1.90	2.80	2.45
5.	Industrial complex	1.00	0.85	1.45	1.30
6.	Car park (whole floor parcel)	0.75	0.65	0.85	0.75
7.	Shop-houses, shop apartments & shop offices— (a) Upper floor parcel (b) Ground floor parcel	1.00 0.85	0.85 0.85	1.30 1.15	1.15 1.15

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Certificate of Share Unit Formula (SiFUS)

Table B: Weightage Factors (F_2) for the whole floor parcel & area ≥ 1,000 m²

No.	Parcel	F_2	Basis
1	Whole floor parcel excluding area of vertical transportation core (lifts or escalators) Also include parcel with an area of 1,000 sq.m. to 3,000 sq.m.	0.85	(a) To reflect an equivalent net lettable area after taking into account its large circulation area only. (b) In a retail complex, its circulation area is much larger but is offset by the letting of such parts to retail kiosks.
2	Whole floor parcel including area of vertical transportation core (lifts or escalators) Also include parcel with an area greater than 3,000 sq.m.	0.80	(a) To reflect an equivalent net lettable area after taking into account its large circulation area and vertical transportation core (lifts or escalators). (b) In a retail complex, its circulation area is much larger but is offset by the letting of such parts to retail kiosks.
3	Not whole floor parcel	1	Not applicable

Certificate of Share Unit Formula (SiFUS)

Table C: Weightage Factors (F$_3$) for an accesory parcel

No.	Accessory parcel	F$_3$	Basis
1	Outside building	0.25	To reflect a non-habitable open or enclosed area outside the building.
2	Within building	0.50	To reflect a non-habitable open or enclosed area within the building.

SHARE UNITS   Example of Apartment Parcel

Parcel No.	:	M3/3/52
Accessory parcel	:	A23 & A45
Parcel type	:	Apartment
Facilities	:	With lift & without air-conditioning
Area of parcel	:	105 m²
Area of accessory parcel	:	13 m² (within building), 13 m² (outside building)
Share units	=	(105x1.0x1.0)+(13x0.50)+(13x0.25)
	=	105 + 6.5 + 3.25
	=	114.75
	=	**115** (nearest whole number)

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Certificate of Share Unit Formula (SiFUS)

SHARE UNITS — Example of Retail Parcel

Parcel No.	:	M2/3/82
Accessory parcel	:	A100 (Store)
Parcel type	:	Retail Complex
Facilities	:	With lift & air-conditioning
Area of parcel	:	800 m^2
Area of accessory parcel	:	150 m^2 (within building)
Share units	=	(800x3.2x1.0)+(150x0. 5)
	=	2,560+75
	=	**2,635**

Understanding the real SiFUS in the industry

▶ The standard formula for the share value of a parcel is the summation of the weighted areas of the parcel and its accessory parcels where the share value is expressed as a whole number in share units.

▶ F_1 = weight for the type of parcel. It is the main weight in the standard formula, representing the ratios of the average costs for the components in the maintenance and management of their own exclusive common areas, facilities and services used and enjoyed therein.

▶ It is formulated for multiple parcels in a building block and not for single en bloc parcel of a building block.

▶ Therefore, the standard formula is ideal to compute equitable share units for all multiple-parcel blocks in a strata scheme.

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Discovering the inherent disruptive elements infecting the SiFUS of integrated mixed-use strata schemes

▶ However, in mixed-use strata schemes, the standard formula to determine equitable share units may not be applicable if there are presence of inherent disruptive elements.

▶ These inherent disruptive elements have been identified inter alia as –

(a) En bloc parcel of a building block;

(b) A specific facility located in a component block is shared in common with all other different component blocks;

(c) The use of a given facility is restricted to two or more component blocks only.

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(a) En bloc parcel of a building block

▶ The effect of this inherent disruptive element on the standard formula can be illustrated as follows:-

(i) The weight F_2 for size only provides allowance for a large parcel area in respect of its circulation space.

The size weightage factor F_2 of 0.85 or 0.80 is for adjusting a large parcel of 1,000 sm – 3,000 sm or above 3,000 sm respectively to its net lettable area so as to be on par with the lettable area of a small parcel in the same multiple-parcel block that shares the same M&E facilities and building services therein. Thus, the said large parcel will have share units that are equitable to all the small parcels in the same multiple-parcel block. This enables the said large parcel to pay a fair and reasonable Charges based on its equitable share units within the same multiple-parcel block.

It does not resolve the issue of an en bloc parcel that involves the maintenance costs of its private lifts/escalators and facilities therein the en bloc parcel.

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Legend

Common property

P Parcel of normal size

LP Parcel of large size

(1) LP is adjusted with size weightage factor of 0.80 for area exceeding 3,000 sm. so that it becomes comparable to parcel of normal size.

(2) The same rate of Charges is applied to P and LP.

(a) En bloc parcel of a building block

(ii)   For example, a mixed-use development in Petaling Jaya has multiple parcels in a retail mall and 2 serviced apartment towers; and 4 en bloc parcels in 3 office towers and 1 hotel tower.

The owners of such en bloc parcels, who is usually the developer and later the purchasers, will be adversely affected and suffer needlessly by paying unreasonably high Charges due to the imposition of a single uniform rate of Charges during the developer's management period and the JMB's management period under the SMA.
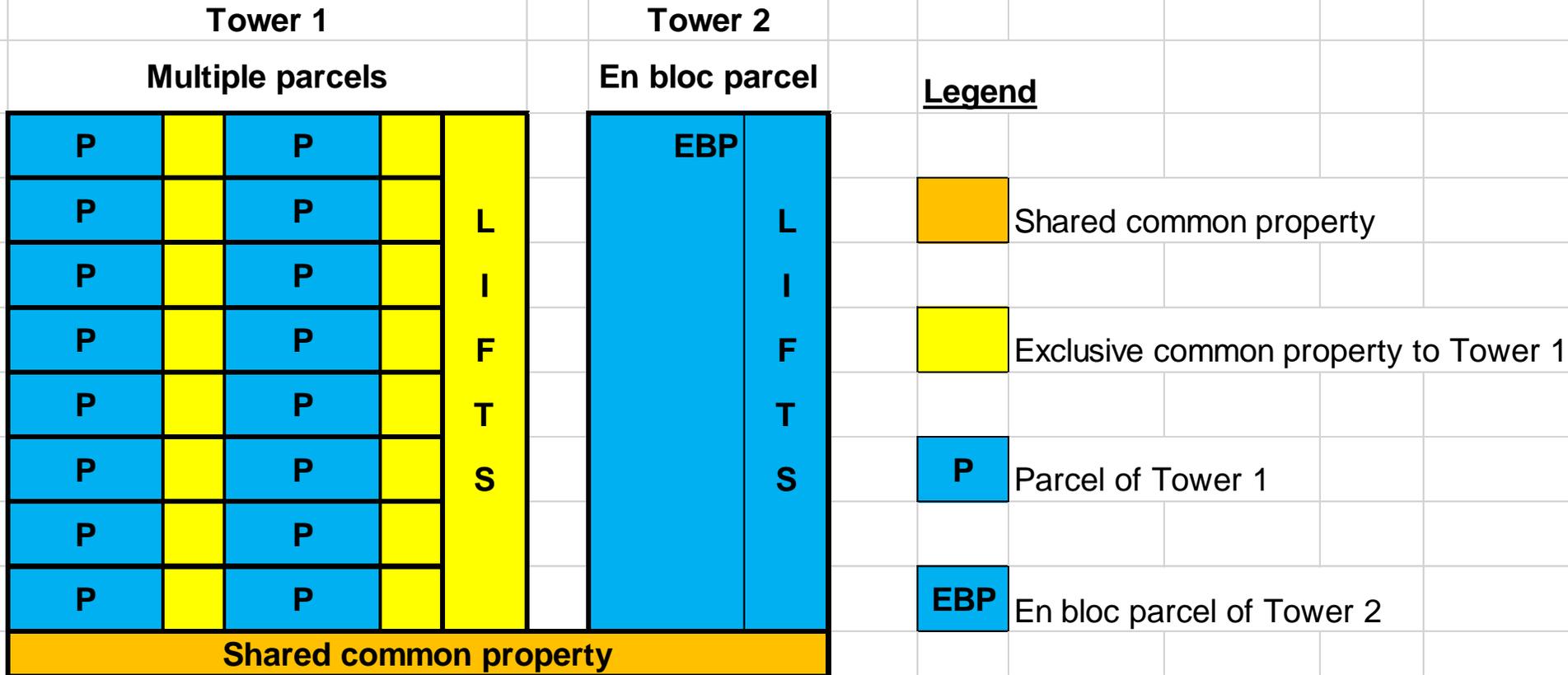
These owners of such en bloc parcels will have to manage and maintain their own private lifts, M&E facilities and building services of their en bloc parcels at their own expenses. At the same time, they have to pay unreasonably high Charges to the management body to maintain the common parts of the common property that is shared by all components in the strata scheme and also to subsidize the maintenance of the parts of the common property that are exclusively used and enjoyed by the retail mall or the serviced apartment blocks.

This type of case is frequently seen in large integrated mixed-use strata schemes, and makes it difficult to sell such en bloc parcels.

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(a) <u>En bloc parcel of a building block</u>

▶ The effect of this inherent disruptive element on the standard formula can be explained as follows:-

▶ (iii)   For example, an en bloc parcel of a large retail mall with size weightage factor F2 of 0.80 in an integrated strata scheme has to pay Charges which comprises the costs of maintenance of the parts of the common property shared in common with all other component blocks and the costs of maintenance of the parts of the common property in each of the multiple-parcel component blocks. This means that such en bloc parcel is subsidizing the costs of maintenance of the parts of the common property comprised in all the multiple-parcel component blocks in the integrated strata scheme.

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Tower 1

Multiple parcels

Tower 2

En bloc parcel

Legend

P	P
P	P
P	P
P	P
P	P
P	P
P	P
P	P

L I F T S

EBP

L I F T S

Shared common property

Shared common property

Exclusive common property to Tower 1

P Parcel of Tower 1

EBP En bloc parcel of Tower 2

(1) Single uniform rate of Charges

Parcel of Tower 1	=	Shared CP + Exclusive CP of Tower 1
En bloc parcel of Tower 2	=	Shared CP + Exclusive CP of Tower 1

(2) Different rates of Charges

Parcel of Tower 1	=	Shared CP + Exclusive CP of Tower 1
En bloc parcel of Tower 2	=	Shared CP

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(b) A specific facility located in a component block is shared in common with all other different component blocks

► For example, a mixed-use development in Petaling Jaya has multiple parcels in a retail podium, 2 serviced apartment towers, 2 office towers; and en bloc parcels comprising 1office block, 30 shopoffice blocks and 1 carpark block.

► However, the strata scheme is designed such that the main entrances of all the towers are located on level 4 which has a central park; and there are huge interconnecting escalators in the retail podium providing common access to the level 4.

► In such case, the said escalators, building services and designated parts of the common property in the retail podium are shared in common by all the components in this strata scheme.

► Furthermore, the serviced apartment towers and office towers have their own exclusive recreational facilities, building services and lifts.

► Hence, the owners of the retail podium will be adversely affected and suffer needlessly by paying unreasonably high Charges if a single uniform rate of Charges is imposed in the strata scheme.

► This is further aggravated because the parcel type weightage of the retail parcels is 2.5 as compared to that of 1.0 for the serviced apartment parcels and office parcels. This means that the retail parcels will be paying 2.5 times higher in Charges that includes subsidizing the maintenance costs of the exclusive recreational facilities, building services and lifts of the serviced apartment towers and office towers.

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Tower 1	Tower 2	Tower 3	**Legend**
Residential parcels	**Residential parcels**	**Soho parcels**	

Legend

- 🟧 Shared common property
- 🟨 Exclusive common property
- 🟦 **P** Parcel
- 🟦 **RP** Retail parcel
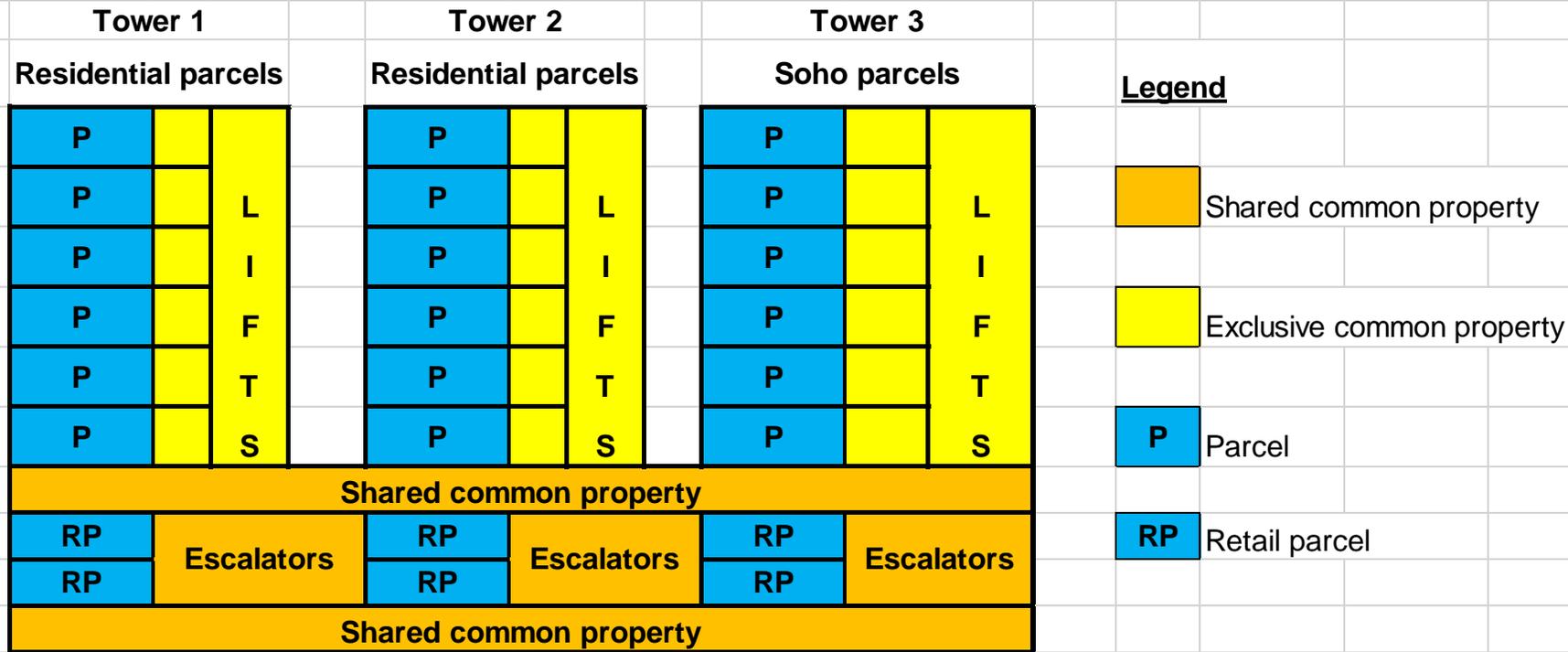
(1) Single uniform rate of Charges

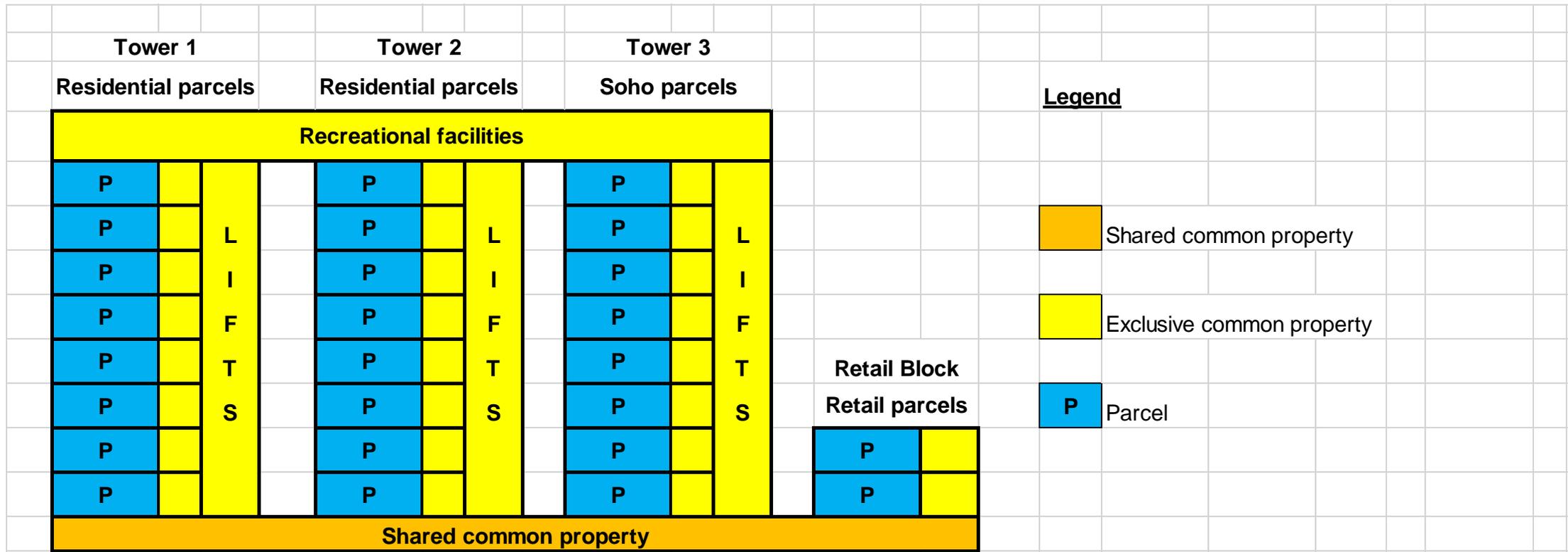|		
Parcel of Tower 1	=	**Shared CP + Exclusive CP of Towers 1, 2 & 3**
Parcel of Tower 2	=	**Shared CP + Exclusive CP of Towers 1, 2 & 3**
Parcel of Tower 3	=	**Shared CP + Exclusive CP of Towers 1, 2 & 3**
Retail parcel	=	**Shared CP + Exclusive CP of Towers 1, 2 & 3**

(2) Different rates of Charges

Parcel of Tower 1	=	**Shared CP + Exclusive CP of Tower 1**
Parcel of Tower 2	=	**Shared CP + Exclusive CP of Tower 2**
Parcel of Tower 3	=	**Shared CP + Exclusive CP of Tower 3**
Retail parcel	=	**Shared CP**

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(c) The use of a given facility is restricted to two or more component blocks only

► For example, a mixed-use development in Kuala Lumpur has multiple parcels in a retail podium, 3 serviced apartment towers and 1 Soho tower.

► However, the strata scheme is designed such that the extensive recreational facilities on levels 22, 23, 24 and 25 are exclusive to the use and enjoyment of the 3 serviced apartment towers and 1 Soho tower only.

► Hence, the owners of the retail podium will be adversely affected and suffer needlessly by paying unreasonably high Charges if a single uniform rate of Charges is imposed in the strata scheme.

► This is further aggravated because the parcel type weightage of the retail parcels is 2.5 as compared to that of 1.0 for the serviced apartment parcels and Soho parcels. This means that the retail parcels will be paying 2.5 times higher in Charges that includes subsidizing the maintenance costs of the exclusive recreational facilities, building services and lifts of the serviced apartment towers and Soho towers.

Tower 1
Residential parcels

Tower 2
Residential parcels

Tower 3
Soho parcels

Recreational facilities

(Tower 1, Tower 2, Tower 3: columns of parcels marked **P** with **LIFTS**)

Shared common property

Retail Block
Retail parcels
P
P

Legend

Shared common property

Exclusive common property

P Parcel

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(1) Single uniform rate of Charges

Parcel of Tower 1	**=**	**Shared CP + Exclusive CP of Towers 1, 2 & 3 + Recreational facilities + Exclusive CP of Retail Block**
Parcel of Tower 2	**=**	**Shared CP + Exclusive CP of Towers 1, 2 & 3 + Recreational facilities + Exclusive CP of Retail Block**
Parcel of Tower 3	**=**	**Shared CP + Exclusive CP of Towers 1, 2 & 3 + Recreational facilities + Exclusive CP of Retail Block**
Retail parcel	**=**	**Shared CP + Exclusive CP of Towers 1, 2 & 3 + Recreational facilities + Exclusive CP of Retail Block**

(2) Different rates of Charges

Parcel of Tower 1	**=**	**Shared CP + Exclusive CP of Tower 1 + Recreational facilities**
Parcel of Tower 2	**=**	**Shared CP + Exclusive CP of Tower 2 + Recreational facilities**
Parcel of Tower 3	**=**	**Shared CP + Exclusive CP of Tower 3 + Recreational facilities**
Retail parcel	**=**	**Shared CP + Exclusive CP of Retail block**

Discovering the inherent disruptive elements infecting the SiFUS of integrated mixed-use strata schemes

▶ In mixed-use strata schemes, the standard formula to determine equitable share units will be affected if there are presence of inherent disruptive elements in the building design –

(a)   En bloc parcel of a building block;

(b)   A specific facility located within a component block is shared in common with all other different component blocks;

(c)   The use of a given facility is restricted to two or more component blocks only

▶ The complication is escalated when the presence of such disruptive elements appears in a number of different permutations in a strata scheme. Hence, the standard formula will not be able to generate equitable share units for such strata scheme.

Remedy to such infected SiFUS and distorted Charges.

Alternative Formula

► In such cases, a developer is allowed under subrule 8(2) of the Fourth Schedule of Strata Titles Rules 2015 to submit an alternative formula for equitable share units for approval by the PTG

► An alternative formula for equitable share units will have to be based on an estimated operating expenses budget that will take into account such disruptive elements.

► The expertise of an experienced property management consultant specializing in mixed-use strata schemes will be required to format and determine the said estimated operating expenses budget.

► The weights for the alternative formula will be analysed from such budget.

► The alternative formula for equitable share units will be determined by the specialist property management consultant and then given to the licensed land surveyor to prepare the Schedule of Parcels and the list of allocation of share units to all the parcels in the strata scheme.

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Remedy to such infected SiFUS and distorted Charges.

Alternative Formula

▶ The above is the correct approach by a developer to provide equitable share units to the parcels in his strata scheme that is affected by the presence of the disruptive elements that are inherent in the design of the strata scheme.

▶ However, it is sad to note that almost all developments have adopted the standard formula in the Fourth Schedule of Strata Titles Rules 2015 without realizing that the design of their strata schemes may have incorporated the presence of such disruptive elements.

▶ Naively, both the developers and purchasers are affected by a single uniform rate of Charges based on such inequitable share units.

▶ **What will then be the remedy in such cases?**

Remedies to inequitable share units in a strata scheme

Alternative Formula

▶ The ideal remedy is to immediately change the SiFUS to equitable share units before the proposed strata plan and the list of proposed share units are approved by the PTG for the opening of the strata register at the land office.

Court Order

▶ After the opening of the strata register, the approved share units cannot be changed by the PTG unless there is a court order directing the PTG to effect such changes. This ideal remedy of applying for a court order will be a very long and tedious process.

Grant of ECP

▶ The alternative remedy, which is not exactly ideal, is for the management body to grant exclusive use and enjoyment of the designated parts of the common property within a component block to the owners of those parcels in that component block (called the "Exclusive Common Property").

▶ This is likewise repeated for all the other component blocks. The resulting balance of

Remedy to such infected SiFUS and distorted Charges.

Grant of ECP

▶ An operating budget can be determined for the Exclusive Common Property of each component block and the Shared Common Property. The different rates of Charges for each of the different component blocks can then be analysed from the said operating budget. Such rates of Charges will be at least reasonable and acceptable to the owners of their parcels in the respective component blocks.

▶ The above alternative can only be implemented and enforced through additional by-laws under:-

(a) Section 32 of SMA in conjunction with By-law 4 in Third Schedule of SMR during the developer's management period and JMB's management period; or

(b) Sections 60 & 70 of SMA in conjunction with By-law 4 in Third Schedule of SMR during the MC's management period.

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Remedy to such infected SiFUS and distorted Charges.

Grant of ECP

► This alternative remedy can be illustrated as shown below:-

(a) Shared Common Property   :   Uniform rate* of Charges for the strata scheme

(b) Exclusive Common Property
   of component A: Specific rate of Charges for component A .

                                       Collective rate of Charges for component A

► (*) This uniform rate of Charges will not be exactly the same between the commercial components and the residential components if the billings of the Charges are subject to GST. This is because the commercial components have GST output tax in their billings and can claim for GST input tax in their expenditure, whereas the residential components are exempted from GST output tax in their billings and hence cannot claim for GST input tax in their expenditure. This is an inevitable minor aberration caused by the GST law.

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