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A Subsidiary Management Corporation (Sub-MC) is established when the limited common property is designated by the Management Corporation (MC) to represent the different interests of a group of proprietors, through a comprehensive resolution under Section 17A of the Strata Titles Act 1985 (STA 1985).

Section 17A of the STA 1985 can be distilled into three key components:

- (a) A Sub-MC can only be established by an MC (not a JMB or developer);
- (b) It can only be created through a comprehensive resolution; and
- (c) Limited common property must be designated.

At the outset, it is important to note that not all strata schemes can establish a Sub-MC. Before exploring the possibility of forming one, it must be demonstrated that a part of the common property can be designated for the exclusive benefit of the proprietors of two or more but not all, parcels.

Next, the MC must assess the readiness of the strata development and determine whether the required threshold of 66.7% of the aggregate share units of the entire strata scheme is achievable.

In many cases, meeting this threshold is challenging due to how the scheme progresses. Conducting preliminary due diligence is highly recommended to prevent the MC from incurring unnecessary costs, as failing to meet any of the above requirements will yield no positive results. Understanding these prerequisites as early as possible helps the MC save both time and resources.

If the preliminary due diligence findings are favourable, the next step is to identify the limited common property for each component. Limited common property:

- Must have its boundaries described, identified, or defined

in the special plan prepared by a land surveyor;

- Must specify each parcel included in that special plan whose proprietors are entitled to the exclusive benefit of the limited common property; and
- Must conform to any additional requirements as determined by the Director of Survey.

Since June 1, 2015, only four Sub-MCs have been established. This suggests that forming a Sub-MC is far more complex than it may seem.

Notwithstanding the challenges, establishing a Sub-MC provides a strata scheme with the ultimate flexibility in managing a mixed strata development area, offering the following advantages:

- (a) The creation of a separate legal entity with an official Sub-MC certificate issued.
- (b) The ability for the Sub-MC to initiate or defend legal proceedings independently, without requiring reference to the MC.
- (c) The legal capacity for the Sub-MC to enter into contracts.
- (d) The ability of the Sub-MC to open and maintain its own maintenance and sinking fund accounts with a bank.
- (e) The option for the Sub-MC to purchase separate insurance coverage.
- (f) The authority to convene its own general meetings.
- (g) The ability to issue invoices under the name of the Sub-MC to proprietors within its jurisdiction.
- (h) The right to recover charg-

es from proprietors within the Sub-MC.

- (i) The power to determine its own rates for the proprietors within the Sub-MC.

After the Sub-MC's establishment, the MC will still retain its powers and responsibilities concerning common property that is not designated as limited common property. In essence, the MC will continue managing these areas and carrying out its core functions, including convening the annual general meeting, setting rates for all proprietors, issuing invoices and collecting maintenance charges and sinking fund contributions.

Making the process easier

In summary, the full process of setting up a Sub-MC follows several key stages and can take approximately one to two years. However, even after its establishment, there is no absolute certainty that disputes between the Sub-MC and proprietors of different limited common properties will be completely resolved. While the primary intention of a Sub-MC is to minimise friction among different proprietor groups, conflicts may still arise.

To simplify the process, the following improvements are being considered:

- (a) Allowing developers to prepare the equivalent of a special plan at the inception stage, preferably when drafting the sched-

ule of parcels, with associated costs absorbed by the developer.

- (b) Implementing e-voting to accelerate the process of achieving the required 66.7% threshold.

(c) Engaging with relevant counterparts (JKPTG) to propose necessary amendments to the STA 1985 to facilitate these changes.

Minimising disputes

Additionally, discussions are ongoing regarding the possibility of allowing a Sub-MC to be established from the outset—before the delivery of vacant possession. This would enable more equitable rate structures for different groups of purchasers based on the expected expenditures of managing the strata scheme. Early designation of common property would also provide greater transparency to buyers, ensuring they are fully aware of the facilities available and the associated maintenance obligations.

We believe this is the most efficient way to minimise disputes. Allowing the special plan or its equivalent to be prepared at inception and filed at the stage of the subdivision application, with a copy extended to the Commissioner of Buildings, will also provide greater certainty.

We are actively engaging with various stakeholders, including JUPEM and JKPTG, with the ultimate objective of having the Sub-

MC certificate issued as early as the point of delivery of vacant possession.

At the same time, we aim to enhance the functionality of the Sub-MC by:

- (a) Granting the representative of the Sub-MC (elected at the Sub-MC's general meeting) an automatic seat within the MC, eliminating the need for election at the MC's AGM.

(b) Mandating that the developer and/or MC provide a designated administrative office for each Sub-MC.

(c) Requiring the MC to distribute any surplus funds to the Sub-MC.

(d) Introducing a straightforward mechanism to dissolve a Sub-MC.

On a broader level, we are also exploring ways to exempt integrated mixed developments from the usual setback requirements. This would allow two or more different strata development areas to be built in phases while sharing a boundary line between adjoining strata schemes.

We believe this approach will facilitate the integration of such developments, particularly when an integrated mixed-use strata scheme is planned on adjacent land (though not for vertical blocks built on a common podium). This would enable separate MCs to oversee their respective strata schemes while collaboratively managing shared facilities (if any) that serve multiple schemes.

In essence, this would allow individual MCs to manage their own strata schemes independently while remaining part of a larger, integrated mixed-use development.

If you have any specific subject matter you feel strongly about which requires amendment, kindly email info@cheehoe.com or izzah@kpkt.gov.my

Why there has to be a Sub-MC

