



STRATIFIED PROPERTY MANAGEMENT: ISLAMIC ASPECT



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ABSTRACT

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Stratified property management encompasses various activities. Amongst others, it seeks to control interests in the property taking into consideration the short and long term objectives of the parcel owner and particularly for the purpose of which the property is being held. In Malaysia, there are various issues relating to the management of multi storey development in the civil law perspective which fails to be resolved. The objective of this paper is to focus on some of the views on management from the Islamic perspective which can be considered and adapted in the management of multi storey development in Malaysia. The research method used in writing up this paper is the qualitative research in which it will be based on revealed sources of Al-Qur'an, Al Hadith and writings of the traditional jurists as well as contemporary writers in Islamic jurisprudence. The finding of this paper is that there has been no direct principle that demonstrates management of stratified properties from the Islamic perspective. In this context, it is hope that if members of the Joint Management Body ("JMB") and Management Corporation ("MC") can emulate and apply the qualities and practices of the Muslim scholars and Shariah teachings, the writer is of the view that the management of the JMB and MC will become more effective and equitable. Hence, it is believed that with the practice of the Islamic values, qualities and Shariah teachings by the JMB and MC in managing the stratified property, it will assist the JMB and MC in performing their responsibilities for the utmost benefit of all the parties concerned.

Contribution/Originality: This study contributes in the existing literature in focusing on some of the views on management from the Islamic perspective which can be adapted in the management of multi storey development in Malaysia. However, there has been no direct principle that demonstrates management of stratified properties from the Islamic perspective.

1. INTRODUCTION

In Malaysia, various activities are involved in stratified property management. Among these activities are obtaining and maintaining of the strata titles, negotiating tenancies and their terms and conditions, establishing a proper tenant mix through tenant selection, optimising the income from the property, maximising the capital value in the process, exploring the merger of interests with adjacent properties where possible, recognising opportunities for development potential where possible, maximising the occupancy rate of the complex, determining the rents, outgoings, service charges, implementing letting strategies, implementing advertising, promotional and publicity

strategies, monitoring tax implications, maintaining adequate insurance, maintaining the building fabric and preparing investment reports on the property (Gurjit, 1992). In the above context, the management of the stratified properties involves an organisational entity which shall manage the stratified properties. The form of the said organisational entity could be one (1) of the following types:

- i. a resident property management team specifically set-up to manage that particular property. On that account, the stratified properties could be managed by the Joint Management Body as stipulated under Section 17(4) of Strata Management Act 2013 or Management Corporation as stated in Section 39(1), (2) and (3) of STA 1985 respectively.
- ii. a professional property management organisation registered with the Board of Valuers, Appraisers and Estate Agents employed by the MC or parcel owner of particular stratified properties (Gurjit, 1992).

The absence and lack of a comprehensive and extensive set of laws and regulations pertaining to the stratified property management leads to the key problem relating to the stratified property management. It appears that the most frequent and common problem encounter in most of the stratified property management is the non-payment of the maintenance charges. In furtherance to that, this is one of the major reasons why this has led to circumstances in which the stratified property management takes the repair and maintenance of the stratified properties lightly. In that context, it is believed that a more comprehensive and definitive stratified property management legal framework is essential to ensure that the obligation of all the concerned parties within the stratified properties is outlined clearly. Hence, the Strata Management Act 2013 ("SMA") was legislated to protect parcel owners; especially in order to ensure that there is proper maintenance and management of the building and common property free from unscrupulous developers and illegal property managers. It is also significant to recognise that one of the main challenges in stratified properties is that the parcel owners are only responsible for the maintenance and repair of their parcel immediately after the issuance of strata titles. In connection to that, the common property as defined under Section 4 of the STA is the shared responsibility of all parcel owners. Hence, there is a need for a medium to facilitate the proper control and maintenance of the common property. As stipulated in the Strata Titles Act 1985 ("STA"), the parcel owners need to set-up a MC which is an independent body to regulate and manage all the amenities provided by the developer. Nonetheless, the said amenities do not come free and the parcel owners have to pay a fee for the facilities provided within the stratified properties area (Che, 2009). It is essential to note that there is no direct link between management in Islam to the stratified property management. The main reason is that most of the literatures (Ahmad, 1991; Yusof, 1996; Syed, 1997; Syed, 1998; Azmie, 1999; Ismail, 2002; Abbas, 2005; Syed, 2005; Wan, 2008; Asmadi, 2011; Kamar and Abdul Razak, 2011; Muhammad and Afroza, 2011) at hand, deal with the corporate management of an organisation from the Islamic perspective. Nevertheless, it is submitted that there are some management principles which will be discussed in order to improve the stratified property management in the multi storey development.

2. MANAGEMENT: ISLAMIC PERSPECTIVE

The Islamic approach to management emphasises that all humans depend upon the guidance of Allah (SWT) and following His Prophet (SAW) with an account mentality, integrity and skills in order to achieve a predetermined objective. All the messengers of Allah from Prophet Adam (AS) to Prophet Muhammad (SAW) led and taught people the Islamic approach and way of life on managing and conducting all their worldly activities in order to bring happiness to them in this world as well as life in the Hereafter. The most essential concept is the concept of *Al-Tawhid* (the uniqueness of Allah). *Tawhid* is the most fundamental principle and basis for the Islamic faith. *Tawhid* concerns man's particular relationship with the universe and binds everything to Allah (SWT). When a person looks upon everything in the world as belonging to Allah (SWT), he then cannot be biased in his thinking and his behavior. His vision is wider and his sense of service is not restricted to any specific spheres or groups. The

belief in unity of Allah (SWT) requires a person not to discriminate among his peers as well as subordinates. (Kamar and Abdul Razak, 2011; Muhammad and Afroza, 2011) Hence, it will be good for the JMB or MC in managing the stratified properties to have the fear to Allah (SWT) and believe in the unity of Allah (SWT). This will ensure that they will perform their duty since they are not only responsible to the parcel owners but most importantly they are responsible to Allah (SWT).

2.1. Principles of Management in Islam

It is important to understand that the principles discussed under this sub-heading are not laws *per se*. Therefore, these guiding principles can be modified as and when the need arises. Similar to the fourteen (14) principles formulated by Fayol (1949) i. Division of work ii. Unity of command iii. Remuneration iv. Equity v. Unity of direction vi. Centralisation vii. Sub-ordination of individual interest to the general interest viii. Discipline ix. Authority x. Order xi. Stability of tenure of personnel xii. Initiative xiii. Scalar chain (Line of authority) xiv. Esprit de corps. The management which could be modified to the principles of management in Islam is as follows (Muhammad and Afroza, 2011; Musharaf, 2011):

i. Tawakkal (Faith to Allah)

In surah *al-Ikhlās*, verses 1-2 states “Say: He is Allah, the One and Only; Allah, the Eternal, Absolute.” The principle of *Tawakkal* is the cardinal assistance for being virtuous in gaining one’s goal. This principle shall encompass every sphere of activity or atmosphere, and so a person’s mind should be established in faith and depend on Allah (SWT). A person who depends on Allah (SWT) directly, succeeds to reach their goal with the help and grace of Allah. Therefore, taking into consideration the principle of *Tawakkal*, the JMB or MC which put their faith to God will be able to manage the stratified properties with a peace of mind and will remain calm in whatever challenges it may be faced with. This state of mind will then provide benefit to the parcel owners because the JMB or MC will be able to achieve the goal of managing the stratified properties successfully with their belief that whatever the outcome, it would be in the best interest of all the parcel owners.

ii. Accountability

Islam has made self and formal accountability mandatory. As stated in surah *al-Zalzalah*, verses 7-8, “Then shall anyone who has done an atom's weight of good, see it! And anyone who has done an atom's weight of evil, shall see it.” Therefore, in managing the stratified properties, the JMB or MC must have the conscience of being accountable for all their deeds to the Almighty Allah (SWT) as well as the parcel owners who elected them to manage the stratified properties on their behalf. This is a level of trust which the parcel owners have entrusted on the JMB or MC.

iii. Authority

In this respect, stratified property management is generally self-regulated management. The law allows the parcel owners to appoint their own committee to manage and represent others. The management requires leaders and managers to be elected and appointed. Surah *Al-Nisa*, verse 59 says to the following meaning:

“O ye who believe! Obey Allah, and obey the Messenger, and those charged with authority among you. If ye differ in anything among yourselves, refer it to Allah and His Messenger, if ye do believe in Allah and the Last Day: That is best and most suitable for final determination.”

Applying the principle of authority in Islam to the situation in stratified property management, the developer, JMB or MC must abide by the laws and regulations with regards to stratified property management. Further to that, the developer, JMB and MC must also be subjected to any requirements imposed on them by the State

Authority and Commissioner of Buildings (“COB”) as stipulated under Section 4(1) of Strata Management Act 2013. This is because these are the relevant regulatory authorities overseeing the issues pertaining to the stratified property management.

iv. Al- 'Adl (The Equilibrium of Justice)

Islam is absolutely clear and unambiguous about eradicating from human society all traces of *zulm* (all forms of injustice, inequity, exploitation, oppression). It is stated in surah *al-Nahl*, verse 90 that “Allah commands justice, the doing of good, and liberality to kith and kin, and He forbids all shameful deeds, and injustice and rebellion: He instructs you, that ye may receive admonition.”

This means that all human beings deserve to be treated in a manner that benefits them without any form of injustice. In the context of the stratified property management, it would be detrimental for the developer, JMB or MC to determine the maintenance charges for the parcel owners which would be unjust and would not benefit the other parcel owners. The quantum for the maintenance charges must be determined fairly and equally as the share units of all the parcels. It is important to illustrate that charging interest for any part of the late payment of the maintenance charges is a form of oppression and it is against the practice of Islam. Charging interest will give a negative impact to the stratified properties community because it will create an unsatisfied feeling to the person where interest is being charged. This negative and unsatisfied feeling will eventually increase over time and will result in abuse of the common property and also abusive behaviour towards the members of the JMB and MC. Therefore, from the Islamic perspective, the JMB or MC must avoid charging interest on the late payment of the maintenance charges.

v. Preference of Organisational Interest to Other Interests

One of the key pillars of management from the Islamic perspective is that the interest of an organisation should be given priority over and above the interest of an individual. Umar Ibn Abdul Aziz (RA) the fifth Khalifah of Islam, when received an application from his officers asking for various facilities, would write at the corner of the application, “Write less with public paper and pen, waste less ink and such illegal facilities will be achieved by no mean” (Musharaf, 2011). This clearly indicates and demonstrates that Islam encourages people to sacrifice for the interest of others and not for the individual self. It is submitted that this is a wise principle for the developer, JMB or MC to apply in managing the stratified properties. The JMB or MC must do its best to always avoid misuse of the power entrusted on them and strive to put the interest of all the parcel owners above their own. To illustrate this point, the JMB or MC must strive to be fair and resolve any disputes between the parcel owners amicably. Hence, the parcel owners would have a higher level of trust on the JMB or MC because the parcel owners would know that their best interest is being kept as priority at all times.

vi. Model Behavior of the Muslim

The actions and behaviours of a Muslim in any organisation should be in line with the Quranic principles and teachings. The JMB or MC should demonstrate a high level of commitment and not act corruptly or commit any mischief in managing the stratified properties. The model behaviour of a Muslim is always putting the best interest of the parcel owners and its community first above the interest of any individual. A committed Muslim is always aware and will be concerned of the fact that Allah (SWT) knows every good or bad deeds they do. As stated in surah *Luqman*, verse 34 “Verily the knowledge of the Hour is with Allah (alone). It is He Who sends down rain, and He Who knows what is in the wombs. Nor does any one know what it is that he will earn on the morrow: Nor does anyone know in what land he is to die. Verily with Allah is full knowledge and He is acquainted (with all things).”

vii. Discipline

Every Muslim must have self-discipline that can give benefit to them in this world and the Hereafter. The teaching of Islam has clearly trained the servant of Allah (SWT) that performs the compulsory provision of five (5) time prayer at given times, fasting in the definite month of Ramadhan, performing hajj in the month of Zul-hijjah and other Islamic activities are the elevated instances of discipline in Islam. As Islam is a way of life, those disciplines should be translated in all aspects of human's life. In the management of the stratified properties, the JMB or MC should comply with the requirements imposed by the COB or State Authority, particularly to submit the audited account of the maintenance account as stated in Section 2 of the Strata Management Act 2013 and also the requirement on the developer to maintain a register of the parcel owners.

viii. Division of Work

It is one of the most imperative principles of management in Islam. Nobody may be assigned to work beyond his capacity. As stated in surah *al-Baqarah*, verse 286 "On no soul doth Allah Place a burden greater than it can bear. It gets every good that it earns, and it suffers every ill that it earns. "Our Lord! Condemn us not if we forget or fall into error; our Lord! Lay not on us a burden Like that which Thou didst lay on those before us; Our Lord! Lay not on us a burden greater than we have strength to bear. Blot out our sins, and grant us forgiveness. Have mercy on us. Thou art our Protector; Help us against those who stand against faith."

Allah never places a burden more than the soul can bear. In the history of state philosophy, the Islamic state established at Medina by the holy Prophet Muhammad (SAW) is a unique example of division of work. For the purpose of execution and direction of administrative activities, planning and execution, integration of the competency and to ensure the effective patronisation in every field, the strong Parliament of Medina was organised through the process of labor division. Similarly to the stratified property management, the JMB or MC must clearly distribute their duties to the respective members of the JMB or MC in order for the smooth running of the management to the stratified properties. The Islamic principle of not to overburden a person beyond his capacity should be applied and monitored closely by the JMB or MC. This is important to ensure that the members of the JMB or MC will not be pressured or burdened with the task that they are not capable of handling.

ix. Remuneration

No economy has so far been able to indicate such a perfect principle in matters of remuneration of labor as demonstrated in Islam. As Prophet Muhammad (SAW) said, "Pay to the laborers their due the right way before the drying of the sweat on their foreheads". Islam also provides that paying high salary is a way to deter the staff from taking bribes. It is important to note that the establishment of the JMB or MC is a voluntary body. In that spirit, it is however, good for the parcel owners to consider during the AGM to pass a resolution for the payment of a nominal sum of money to the members who volunteer themselves to manage the stratified properties for the benefit of all the parcel owners in the stratified properties. Such token of appreciation or payment would make the members of the JMB or MC feel appreciated and encourage them to provide a much better service and dedication in the future. It will also avoid the members from any unhealthy activities such as receiving any bribe from interested contractors in lobbying for the contract to maintain the common property in the stratified properties since the sole focus of the members of the JMB or MC is for the benefit and betterment of the parcel owners.

x. United Efforts

It is important for any organisation to have teamwork in order to achieve a common goal. Islam purports unity and strong brotherhood as stated in surah *Al-Imran*, verse 103 "And hold fast, all together, by the rope which Allah (stretches out for you), and be not divided among yourselves; and remember with gratitude Allah's favour on you; for ye were enemies and He joined your hearts in love, so that by His Grace, ye became brethren; and ye were on

the brink of the pit of Fire, and He saved you from it. Thus doth Allah make His Signs clear to you: That ye may be guided.”

Therefore, the principle of united effort must be practised by the JMB or MC in managing the stratified properties. The JMB or MC must make decisions in the management of the stratified properties in the AGM or EGM and the decision made must be a decision of the majority. The parcel owners and the members of the JMB or MC must stress on team effort in any decision or actions taken with regards to the management of the stratified properties. This principle is one of the most important principles to be utilised by the JMB or MC since an organisation that is lacking in team work will be crippled and be dysfunctional.

xi. Right Man in the Right Place

It is crucial for the parcel owners to elect the members of the JMB or MC during the AGM that are capable and qualified to perform their duty in managing the stratified properties on behalf of all the parcel owners. As the Prophet Muhammad (SAW) said “One who appointed an incompetent person to a responsible post has as though betrayed Allah and the Prophet”. It is important for the members of the JMB or MC that have accepted the appointment to the JMB or MC to understand their roles and functions in the JMB or MC. In any event that the members of the JMB or MC are unable to perform their duties, there is a concept of *Al-Wakalah* in Islam that can be employed by the JMB or MC in managing the stratified properties.

xii. Gratefulness

Islam teaches the principle of gratefulness, the spirit of which can be derived from surah *Ibrahim*, verse 7 “And remember! Your Lord caused to be declared (publicly): “If ye are grateful, I will add more (favours) unto you; But if ye show ingratitude, truly My punishment is terrible indeed.”

The principle of gratefulness must always be in the heart of the members of the JMB or MC and even the parcel owners of the stratified properties. All the parties must always be grateful for all the facilities put in place for them to enjoy and the establishment of the JMB or MC to cater for the need to run smoothly the management of the stratified properties. When the feeling of gratefulness is implanted in the parcel owners as well as the JMB or MC, the management of the stratified properties by the JMB or MC will be a breeze.

xiii. Moderation

All decisions and actions should be taken on the basis of moderation. Islam is against extremism as stated in surah *al-Furqan*, verse 67 “Those who, when they spend, are not extravagant and not niggardly, but hold a just (balance) between those (extremes).” This principle should be practiced by the JMB or MC in making any decision pertaining to the management of the stratified properties. Any action taken or decisions made by the JMB or MC must be in moderation.

For instance, in the case whereby the parcel owners have failed to make payment of the maintenance charges, the action taken by the JMB or MC must be considerate and avoid oppressing the defaulter. This in the long run will give a positive impact to the stratified property’s community since the feeling of dissatisfaction to the action taken is not present.

xiv. Patience (Øabr’)

Patience has two (2) aspects. Firstly, it is called mental patience, which is restraint on demands of carnal desires and anger. This requires a firmness of mind in controlling anger and greed for wealth. Secondly, it is called bodily patience, which is the endurance of physical pain felt in performing devotional or non-devotional acts and in disease and in injury. Patience is encouraged in Islam as stated in surah *al-Baqarah*, verse 153 “O ye who believe! seek help with patient perseverance and prayer; for Allah is with those who patiently persevere.” Patience is very

much required in business because one will somehow encounter something that is disagreeable. As in the case of the JMB or MC, the members of the JMB or MC must practice mental and physical patience in dealing with the parcel owners during the management of the stratified properties. The members of the JMB or MC will surely be faced with dispute and disagreement between parcel owners or between parcel owners and the JMB or MC.

3. CONCEPT OF WAKALAH

Section 86 of the Strata Management Act 2013 stipulates that the Managing Agent can be appointed by the MC, parcel owner or COB. The Islamic concept of *Wakalah* can be related to and is similar in many aspects to the concept of appointing Managing Agent in the current situation of the strata titles management. The concept of *Wakalah* is essentially an agent-principal relationship, which is similar to the Managing Agent who acts as an agent on behalf of the JMB or MC. In return to the service with the JMB or MC, the respective party shall earn a fee for services rendered. In all, a contract of *Wakalah* will describe the scope of doing certain work or providing any service on behalf of another party.

By literal definition, *Wakalah* means protection or remedying on behalf of others. Legally, *Wakalah* refers to a contract where a person authorises another to do a certain well-deemed legal action on his behalf. Under Article 1449 of the *Majelle*, "*Wakalah*" is for someone to put business of his on another, and to make him stand in his own place in respect of that business.

The person who appoints the other is called "*muwakil*" and the person who stands in his place is referred to as "*wakil*" and that business is called "*muwakil bih*". The essence of the appointment of a *wakil* is the proposal and acceptance. Therefore, as stated in Article 1451 of *The Majelle*, if the person who appoints says "I make you *wakil* in this matter" and the *wakil* says, "I accept it", or if he says something else indicative of assent, the *Wakalah* is deemed a concluded contract.

The need for *Wakalah* arises when a person has no ability or expertise to perform a certain action due to certain circumstances, for example due to distance or size. It is important to note that *Wakalah* is not permissible in activities prohibited in the Shariah or act of dishonesty. The *wakil* must act in accordance to the instructions of the principal and exercise due care and skill. *Wakalah* is a non-binding contract whereby the principal or the agent may withdraw at any time in the following circumstances; mutual agreement, unilateral termination, discharging the obligation, destruction of the subject matter and the death or loss of legal capacity of the contracting parties.

There are four (4) types of *Wakalah* as discussed in the Article 1456 of *The Majelle*:

i. Absolute *Wakalah*

In Absolute *Wakalah*, there is no condition put for the transaction or made dependent on a time or limited by any limitation. As an example, if the principal assigns an agent to buy a house and the *wakil* does not specify the price, the method of payment or other conditions. In this example, the *wakil* would still be bound to act within the prevailing practices and customs. One of the Shariah scholars' Imam Abu Hanifah argued that a *wakil* is not bound by the customs. He was of the opinion that customs differ from place to place. However, notwithstanding the view pointed by the said scholar, according to his two (2) disciples and the majority of fuqaha, the *wakil* is bound by the custom common among the people. In the event that the *wakil* acts contrary to the custom, the transaction would depend on the principal to determine and decide.

ii. Particular *Wakalah* or Special Agency

This Particular *Wakalah* is only made for a certain known transaction. As an example, if one person says, "I have made you my *wakil* to sell this horse of mine, if such a merchant comes here", and that person accepts, the appointment as *wakil* is made subject to and on condition that said merchant comes. And if that merchant comes, the *wakil* can sell the property, and otherwise he cannot sell it and has no authority to deal with the said property.

iii. *Wakalah* dependent on time

In this kind of *Wakalah*, the appointment of a wakil is made dependent on a pre-defined period in time. For instance, when one person says "I have made you *wakil* to sell my animals in the month of April" and that person accepts the appointment. In this illustration, when the month of April arrives, the said person becomes agent and now has the legal authority to sell those animals as *wakil* during that month and/or after the said period. However, he cannot sell the said animals before the month of April. In these circumstances, the *wakil* has to strictly observe these conditions that have been set-out as a condition to the appointment. However, it is to be noted that if any of the conditions are not met, the transaction will not bind the principal.

iv. Restricted *Wakalah*

In this Restricted *Wakalah*, the appointment is limited and subject to a set limitation. For example, if one says "I have appointed you *wakil* to sell this watch of mine for 1,000 piastres". In this illustration, the appointment of the *wakil* is subject to the limitation that he shall not sell for less than 1,000 piastres.

There are certain conditions which are imposed upon the issuance of *Wakalah*. The followings are the conditions:-

- i. The principal should have the power and be competent to deal and own the property. If the principal is not competent to perform certain action, then he cannot delegate the said obligation to another person. In this regards, it is clear that an insane or a minor cannot appoint an agent to act on their behalf.
- ii. The *wakil* is a competent person. In this regards, it is a condition that the wakil must have reason and understanding (*mumayyiz*). However, it is to be noted that it is not a condition that the *wakil* should arrive the age of puberty.
- iii. It is essential that the subject matter or act should be known in order to avoid any form of uncertainty or *gharar*.
- iv. The action is a lawful action.
- v. The action authorising the *Wakalah* is an action that is accepted in the concept of *Wakalah*. In this regards, it is critical to note that *Wakalah* cannot be accepted with regards to *solat*, fasting, taking ablution or with regards to public (*mubah*) property (Agus, n.d).

However, in any circumstances discussed above, the principal may reserve the right to dismiss his *wakil* from the contract of *Wakalah*. Nevertheless, the principal cannot dismiss the *wakil* in the event that the right of another is depending on the said *Wakalah*. In the case where the *wakil* has been dismissed by the principal, the *wakil* continues as the *wakil* in the contract of *Wakalah* until the notice of dismissal reaches the *wakil*. It is essential to note that the *wakil* may, on his own accord resign from the contract of *Wakalah* if the right of another party is not depending on the contract of *Wakalah*. Upon the resignation of the *wakil*, the principal must be notified by the *wakil* and the *wakil* remains responsible to the contract of *Wakalah* until such time the resignation of the *wakil* comes to the knowledge of the principal.

It is also relevant to note that the *wakil* can also be naturally released from the contract of *Wakalah* upon the completion of the work for which the *wakil* was appointed initially. It is essential to further note that in the event either the principal or the *wakil* becomes insane, the contract of *Wakalah* becomes void. In furtherance to that, the *wakil* shall be discharged from the contract of the *Wakalah* upon death of the principal. However, when there are rights of another party, the *wakil* shall not be discharged from the *Wakalah*. On the contrary, upon the death of a *wakil*, the right of *Wakalah* shall cease and the heirs of the *wakil* shall not inherit the contract of *Wakalah* as stipulated in Article 1521-1530 of *The Majelle*.

In light of the above discussions, some concepts of *Wakalah* should be considered in respect of the appointment of the Managing Agents. It is suggested that these principles of *Wakalah* are relevant as a guideline and should be considered in the existing stratified property management framework. The principle of *Wakalah* appears to be relevant in respect of the scope of the appointment of Managing Agents in the STA. Furthermore, it is ascertained that the scope of the Managing Agents' appointment appears in the Strata Management Act 2013 ("SMA") is not comprehensive.

4. SETTLEMENT OF DISPUTES IN ISLAM

The current stratified property management composes of two (2) bodies which have the authority to hear and determine disputes upon an application being made by the parcel owners, JMB or MC or any person or body which has a registered interest in a parcel. The two (2) bodies with the authority are the COB and Strata Management Tribunal ("SMT").

In resolving disputes, the responsibilities of the COB can be split into two (2) stages. First the pre-issuance of the strata titles and second the post-issuance of the strata titles. Amongst others, the COB's responsibilities during both stages are to attend to parcel owners' complaints on defects, poor maintenance and management of common property. It also includes addressing issues with the MC through mediation of MC related disputes.

In comparison to the above, the SMT is an administrative tribunal. The establishment of the SMT is provided in Part IX of the SMA.

The SMA empowers the SMT to exercise quasi-judicial functions pertaining to matters relating to stratified properties as stipulated in the SMA. The objective for establishing the SMT is to hear and determine disputes upon an application being made by the parcel owners, JMB, MC or any person or body having a registered interest in a parcel. One of the primary objectives of the SMT is to protect the parcel owners' interests. The law requires the SMT to make its award within sixty (60) days from the first day of the hearing before the Tribunal commence. The writer submits that it would be an excellent idea for the existing stratified property management to apply the Islamic principles and method of resolving disputes as a guideline based on concepts of *Al-Takm* (arbitration) and *Al-Sulh* (advisory opinion).

4.1.1. Al-Takm (Arbitration)

Al-Takm literally means a request to decide the judgment (Rahmat, 1978). In addition, *Al-Takm* is also defined as the appointment of one (1) person by two (2) disputing parties to settle their dispute as mentioned in *Al Fiqh Al Islamah wa Adillatuh*, Juzuk 8 written by Al-Zuayl.

The Qur'an illustrates that *Al-Takm* may be applied in order to determine the amount of punishment for a person who had intentionally killed the animal while he was in *Ihram*, it is stated in surah *al-Maidah* verse 95 "O ye who believe! Kill not game while in the sacred precincts or in pilgrim garb. If any of you doth so intentionally, the compensation is an offering, brought to the Ka'ba, of a domestic animal equivalent to the one he killed, as adjudged by two just men among you; or by way of atonement, the feeding of the indigent; or its equivalent in fasts: that he may taste of the penalty of his deed. Allah forgives what is past: for repetition Allah will exact from him the penalty. For Allah is exalted, and Lord of Retribution". According to *Al-hakam* (arbitrator) can be a male or female and possesses the necessary qualifications to be a witness.

The writer Mahmood (1996) outlined the conditions for a witness into two (2) categories; firstly with regards to admissibility and secondly the giving of testimony. In order for the testimony to be accepted, a witness must be sane, not blind, major, free from slavery and a Muslim. On the other hand the conditions for the testifying witness should be a Muslim, of sound mind, *baligh*, just (*adil*), good memory, beyond suspicion of good morals and honour, free from slavery, capable of speech and capable of seeing. *Al-Takm* is applicable in disputes concerning property

and family matters like marriage and divorce. *Al-Takm* may be used as a means of dispute resolution since it involves a dispute on quality of property that is a personal right of a purchaser.

Thus, in the context of the existing stratified property management, the COB and the SMT as stated in SMA are given similar responsibility as the *hakam*. This is in connection with the COB's role in attending to complaints from the parcel owners, JMB and MC on defect, poor maintenance and management of common property through mediation of disputes. In addition, there is some *hakam's* position which is similar to the SMT in attending to the dispute between the parties in the stratified property management.

4.1.2. Al-Sulh (Advisory Opinion)

Al-Sulh is defined as a contract to settle a dispute between two (2) conflicting parties (Ali and Sulayman., 1998). The authorities for the practice of *Al-Sulh* are found in the Al-Quran and Sunnah where two (2) verses relate to the possibility of employing *Al-Sulh* was found in a dispute between a husband and his wife and secondly, in the case of war.

Allah the All Mighty encourages the disputing parties to amicably resolve their dispute in peace. The negotiation process shall involve three (3) parties; negotiator, claimant and respondent as stated in Article 1532-1534 of *The Majelle*. It is stated in surah *al-Hujurat* verse 9 "If two parties among the Believers fall into a quarrel, make ye peace between them: but if one of them transgresses beyond bounds against the other then fight ye (all) against the one that transgresses until it complies with the command of Allah; but if it complies then make peace between them with justice and be fair: for Allah loves those who are fair (and just)".

It is important to note that the negotiation must fulfill these criterions; first, the respondent must admit the claim against him. Second, the respondent does not admit the claim but agree for a settlement. Third, the respondent is silent; neither admits nor denies the claim. The learned Muslim jurists from the schools of Shafei and Ibn Ab Lal opined that there can be no settlement if the respondent admitted the claim against him. This is to avoid people from claiming the right that does not belong to them where this would encourage the practice of approving what is prohibited and prohibiting what is permitted.

The conditions for *Al-Sulh* are;

- i. The two (2) disputing parties have attained the age of majority;
- ii. The subject matter of dispute should be something exchangeable in Islam;
- iii. That subject matter must be known;
- iv. Matters in dispute must be personal and not related to the right of Allah like *hudud* punishment and the offer and acceptance (*ijab* and *qabul*) must be made in the *majlis* of agreement.

The writer submits that there are similarities for *Al Sulh* which can be considered by the COB because the COB's main duty is to provide advice and opinion to the relevant parties after hearing their disputes.

5. CONCLUDING REMARKS

From the discussions above, the writer submits that management by example was a clear way in which the earlier Islamic leaders paved the way for the Islamic generation to learn and ensure success through hard work and devotion. The utmost success of the management of multi storey development in Malaysia can be achieved by following the teachings of Islam through the practices of Prophet Muhammad (SAW) and the *Shariah* that have shaped the Islamic values. In this context, it is suggested that if members of the JMB and MC can emulate and apply the qualities and practices of the Muslim scholars and *Shariah* teachings, the writer is of the view that the management of the JMB and MC will become more effective and equitable.

It is believed that by applying the Islamic principles as discussed above, the JMB and MC may be better equipped to overcome any challenges and complexities in managing any disputes brought before them. This is in line with the fact that Islam is a way of life and it promotes equality and peacefulness when dealing with people. It

is believed that when the JMB and MC share the same Islamic values and qualities, it will help the JMB and MC in performing their responsibilities for the utmost benefit of all the parties concerned. Therefore, it is believed that with the practice of the Islamic values, qualities and Shariah teachings by the JMB and MC in managing the stratified property, it will assist the JMB and MC in performing their responsibilities for the utmost benefit of all the parties concerned. To that end, the writer submits that this has proven to be compatible with man's need for prosperity and happiness in all affairs of life. In contrast to the *Shariah* and Prophet's teachings, it can be seen that some norms and practices of societies tend to be situational and specific; and these practices change over time, depending on societal standards and acceptance. However, Islamic values are indeed universal and hence applicable in all spheres of life (Abdus, 2008). The Islamic values remain constant despite the evolution of time.

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