SUMMARY

The Housing Developers Rules 1985 came into operation on 4 January 1985 with several amendments aimed at improving the control and functioning of the property development sector. Among the major changes introduced, Clause 19 of Form E or the 3% Ruling on floor area shortfall easily stole the limelight because of the controversy it evoked.

While the furore that this ruling caused has somewhat settled down, the basic questions raised on whether it was adequate, equitable or necessary have never been decisively answered. While consumers and the Controller of Housing debated on whether the 3% Ruling protected buyers or developers and on the rationale of allowing a 3% margin in favour of developers, the judgments on the two landmark cases on shortfall, Yeo Brothers Company (Private) Ltd v Atlas Properties (Private) Ltd (1988) 1 MLJ 150 and Chong Ah Kwee & Anor v Viva Realty Pte Ltd (1990) 2 MLJ 389, ran contrary to the main thinking behind Clause 19 which disallows a buyer from rescinding a contract based on error or misdescription of building area.

This study attempts to focus on the issue of whether the 3% Ruling is still necessary in the light of new regulations that have come into force since 4 January 1985. A survey of building areas submitted to the relevant authorities and sales areas used by developers was conducted by the writer.
The study aimed at determining the major cause of shortfalls. Altogether, 74 projects representing 9621 strata units completed between 1980 and 1989 where included in the survey. The findings indicate that extreme shortfall cases during the period between 1980 and 1986 were due to the lack of a standard measure of building areas used in official submissions and sales documents which allowed some developers to manipulate sales areas to their advantage. In November 1985, developers were required to attach a registered surveyor's certificate of strata area to the sales and purchase agreement. With effect from 1 December 1987, developers may only sell units in the project after approval of share values based on strata areas certified by an architect or surveyor. The effect is apparent in the survey results.

The study concludes that the 3% Ruling is unnecessary in present day context and recommends major changes in Clause 19 to bring it in line with the common law and equity principles. The study also recommends a major rethink by the Government, professionals, developers, consumers and all involved in the real estate and construction industry to evolve a total plan of excellence for the whole industry and not to accept and condone sub-standard work. It is an ambitious exhortation but the writer believes that it is worthwhile in the long run.