ADJUDICATION ORDERS

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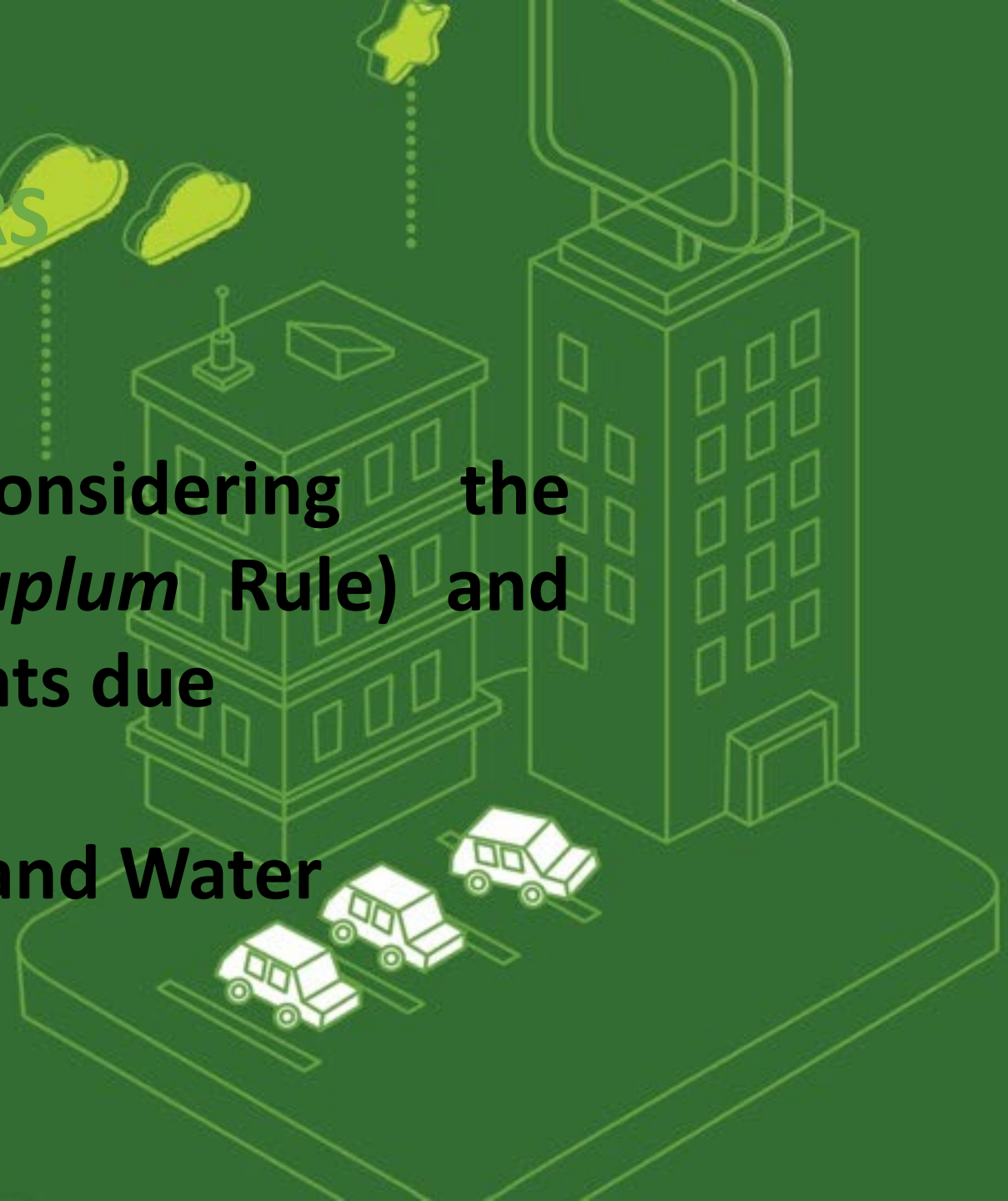
SOS
Community Schemes Ombud Service



CSOS ADJUDICATION ORDERS

1. Arrear Contributions considering the National Credit Act (*In Duplum* Rule) and Prescription of arrear amounts due
2. Rental Attachment Orders
3. Disconnection of Electricity and Water



ARREAR CONTRIBUTIONS

Facts:

- ❑ Member in arrear with levies from 2012 – 2020 (short payments or skipping payments)
- ❑ Summons issued 2015
- ❑ Default Judgment
- ❑ Account in arrears again
- ❑ Brought to CSOS late 2015 (prior to promulgation)
- ❑ Matter conciliated by CSOS in 2016
- ❑ Reneged on settlement agreement
- ❑ Period between 2015 – October 2017 / 2020



BC Prayers for Relief

- ❑ Amount of R 57 897.80, including outstanding arrears and legal fees (period 2012 – 2020)

Prescription…

BC failed to act on arrears owing by member from period between October 2017 – October 2020 (debt simply accumulated) THUS prescription kicked in!

What does Prescription Act say?

"A debt such as that arising from levies, prescribes (or *becomes extinguished*) after a period of 3 years"

and

''In order to avoid losing the legal right to enforce a claim or payment of a "debt", a creditor must interrupt prescription by issuing summons against the debtor "

- **The Applicant has failed to allege, or prove, that summons has been issued out of a Court, or that an adjudication/arbitration order has been obtained against the Respondent in the intervening period between October 2017 and October 2020 (3 years)**

- **CSOS is therefore not concerned with what happened prior to October 2017 – *the parties ought to have resolved this at the time and the Applicant has lost the right in terms of the Prescription Act to do so now*.**

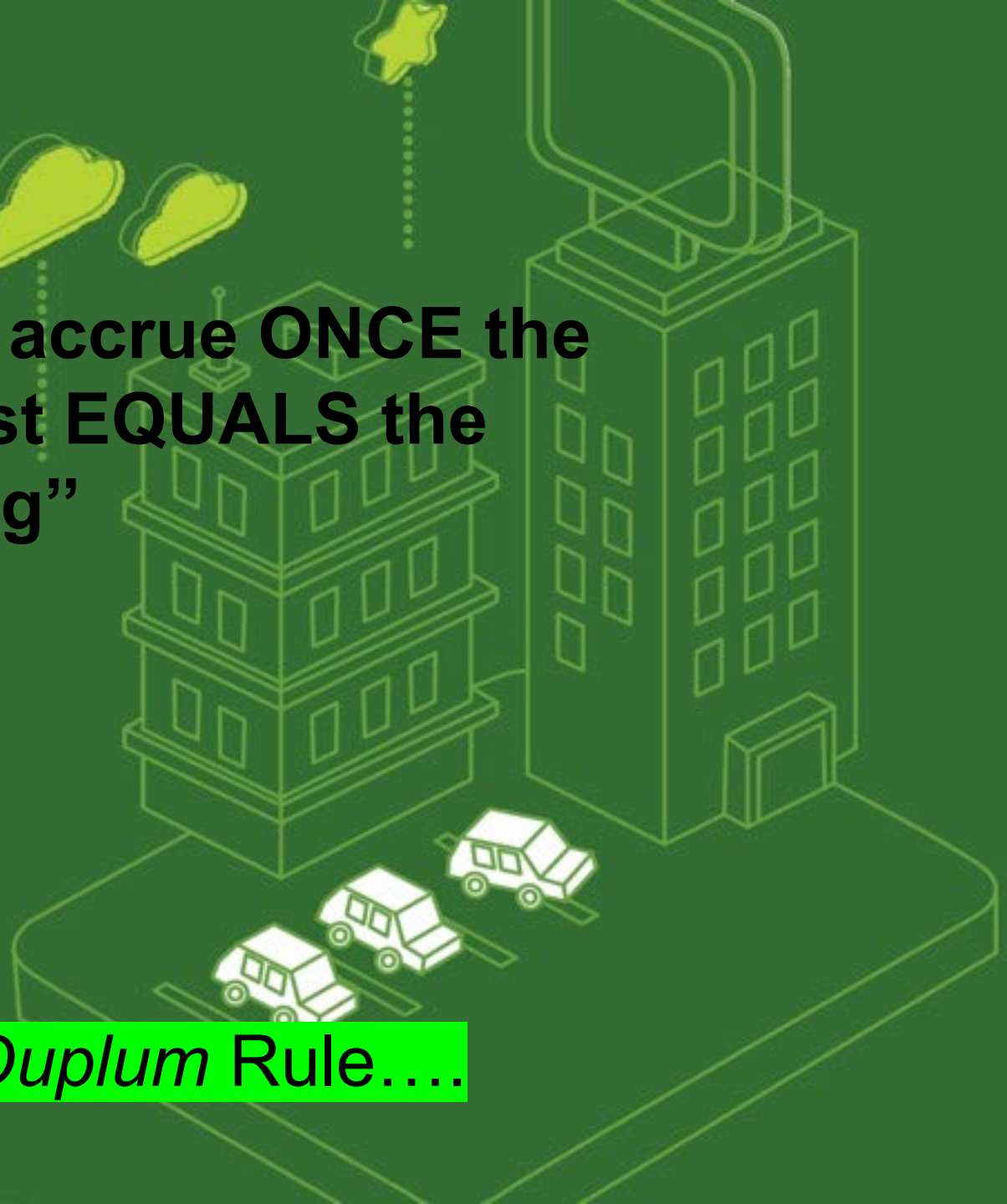


In Duplum Rule…

What is the *In Duplum* Rule?

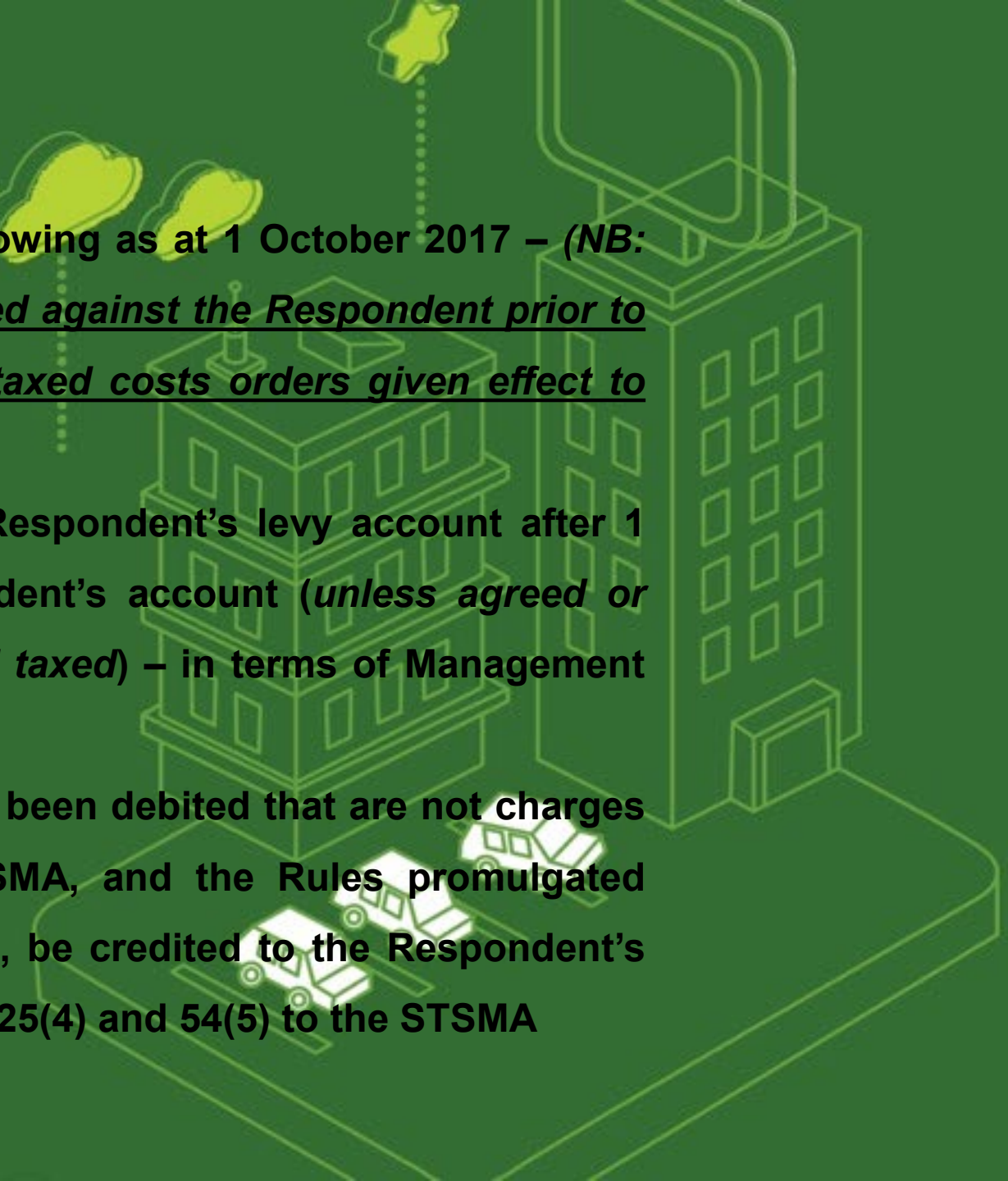
- ‘’Arrear interest ceases to accrue ONCE the sum of the accrued interest EQUALS the capital amount outstanding”

EXAMPLE:
Capital amount – R 100
Interest – R 100
Interest stops accruing!



Remember: Common Law *In Duplum* Rule….

CSOS Findings…



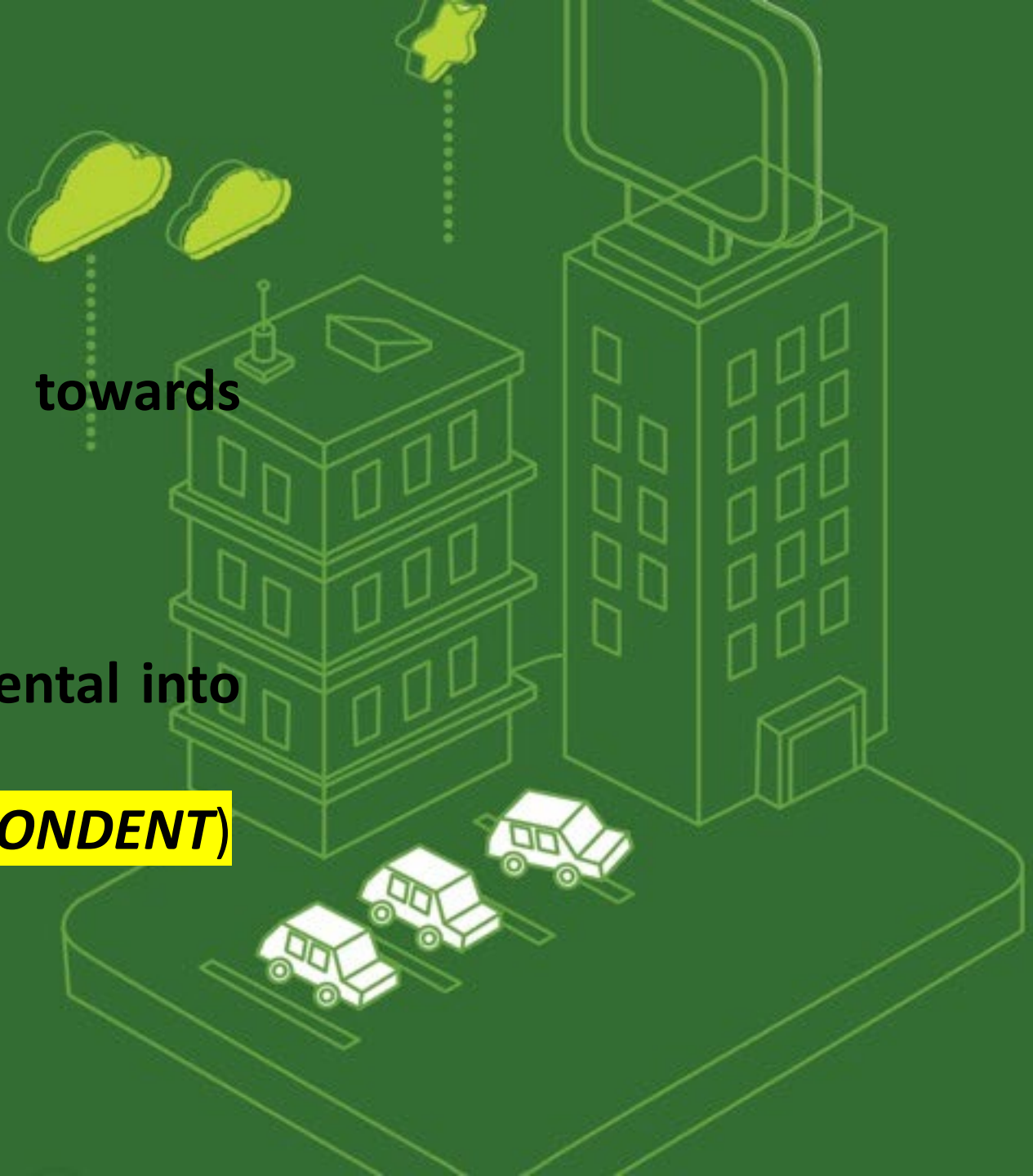
- **Writing off all amounts reflected as due and owing as at 1 October 2017 – *(NB: <u>Any judgments that the Applicant has obtained against the Respondent prior to this date can still be executed against, and taxed costs orders given effect to separate from this Adjudication order</u>)***
- **Requiring that all legal fees debited to the Respondent's levy account after 1 October 2017 be removed from the Respondent's account (*unless agreed or ordered in terms of a judgment of Court, and taxed*) – in terms of Management Rule 25(4) to the STSMA**
- **Requiring that all ancillary amounts that have been debited that are not charges or contributions levied in terms of the STSMA, and the Rules promulgated thereunder, or without the member's consent, be credited to the Respondent's levy account – in terms of Management Rules 25(4) and 54(5) to the STSMA**

ADJUDICATION ORDER…..



- Consequently, the Applicant is ordered and compelled to do a reconciliation of the Respondents' levy account for the period 1 October 2017 to October 2020, commencing with a ZERO BALANCE AS AT 1 OCTOBER 2017, in order to take prescription into account
- No legal fees must be debited to the Respondent's levy account after October 2017 in terms of PMR 25(5) unless the legal cost have been ordered by a Magistrate, Judge or Adjudicator and taxed in terms of PMR 25(4)
- Interest on the Respondent's levy account must be recalculated and charged on arrear amounts owing (if any) in accordance with the Applicant's Trustees resolutions in terms of PMR 21(3)(c) and shall cease to accrue/be debited to the Respondent's levy account once the interest equals to the capital outstanding at the time

RENTAL ATTACHMENT ORDER



FACTS:

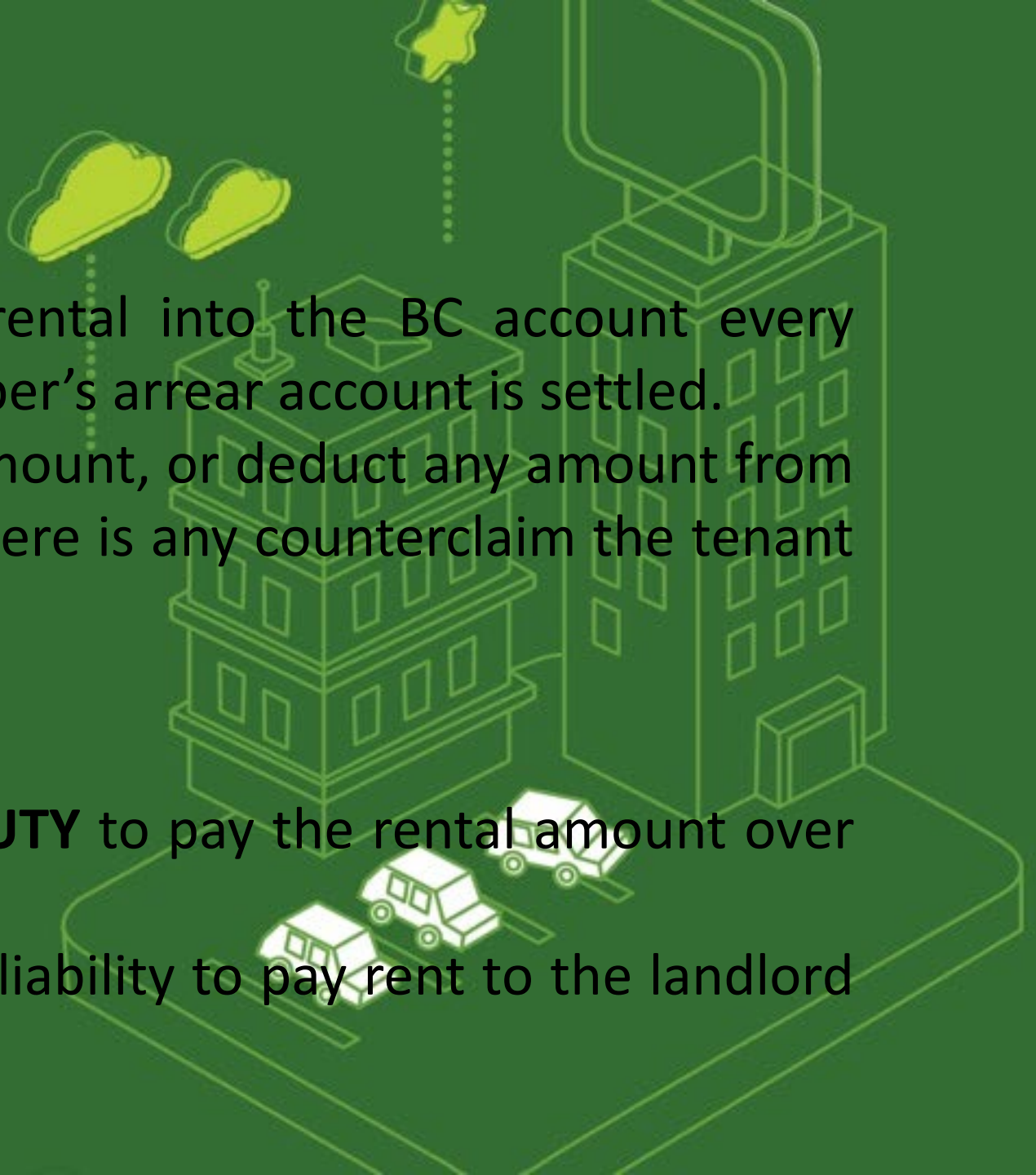
- ❑ Member not paying contributions towards the scheme

PRAYERS FOR RELIEF

- ❑ BC asks for the tenant to pay the rental into the BC account

(TENANT MUST BE CITED AS A CO-RESPONDENT)

CSOS Findings……



- The tenant **MUST** pay the entire rental into the BC account every month **UNTIL** such time as the member's arrear account is settled.
- The tenant **MUST NOT** off-set any amount, or deduct any amount from the rental amount paid monthly if there is any counterclaim the tenant might have against the landlord

What does this mean?

- That the tenant now has a **LEGAL DUTY** to pay the rental amount over to the BC and NOT the landlord.
- The tenant is **DISCHARGED** from his liability to pay rent to the landlord as per the lease agreement

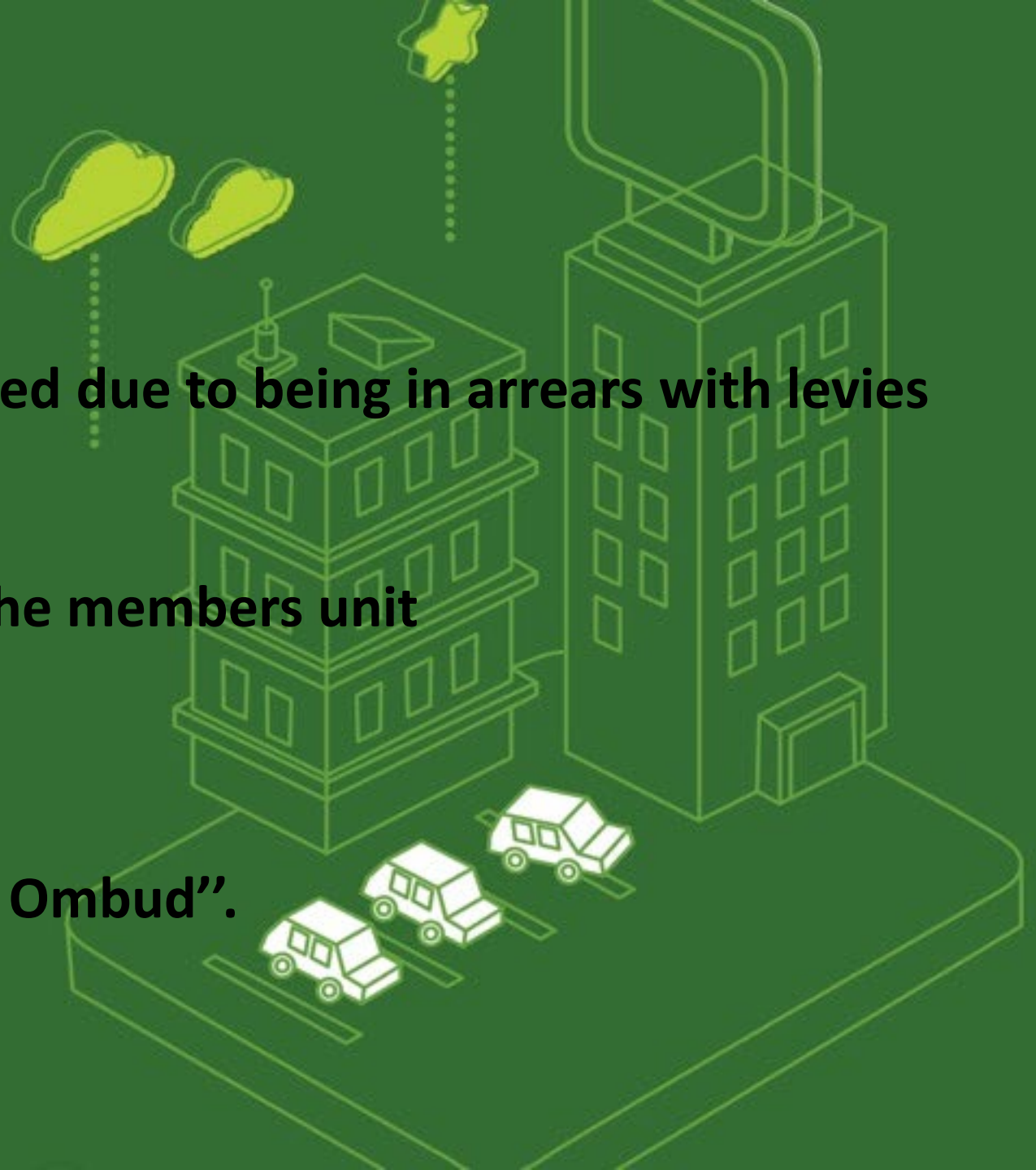
MUST THE TENANT NOW CONTINUE TO PAY EVEN THOUGH THE ARREAR AMOUNT HAS BEEN SETTLED?

NO!!!!

- **The BC will again lodge a dispute with the CSOS if the member again fall into arrears**
- **The tenant only pays the rental to the BC until such time as the levy arrears of the unit-owner is settled, and then he/she resumes paying the unit-owner**



DISCONNECTION…….



FACTS:

- ❑ Member's electricity was disconnected due to being in arrears with levies

PRAYERS FOR RELIEF:

- ❑ To restore the electricity supply to the members unit

RELIEF FALLS UNDER:

- ❑ Section 39(7)(b) of the CSOS Act:

“Any other order proposed by the Chief Ombud”.

CSOS Findings……..



Is this an urgent matter?

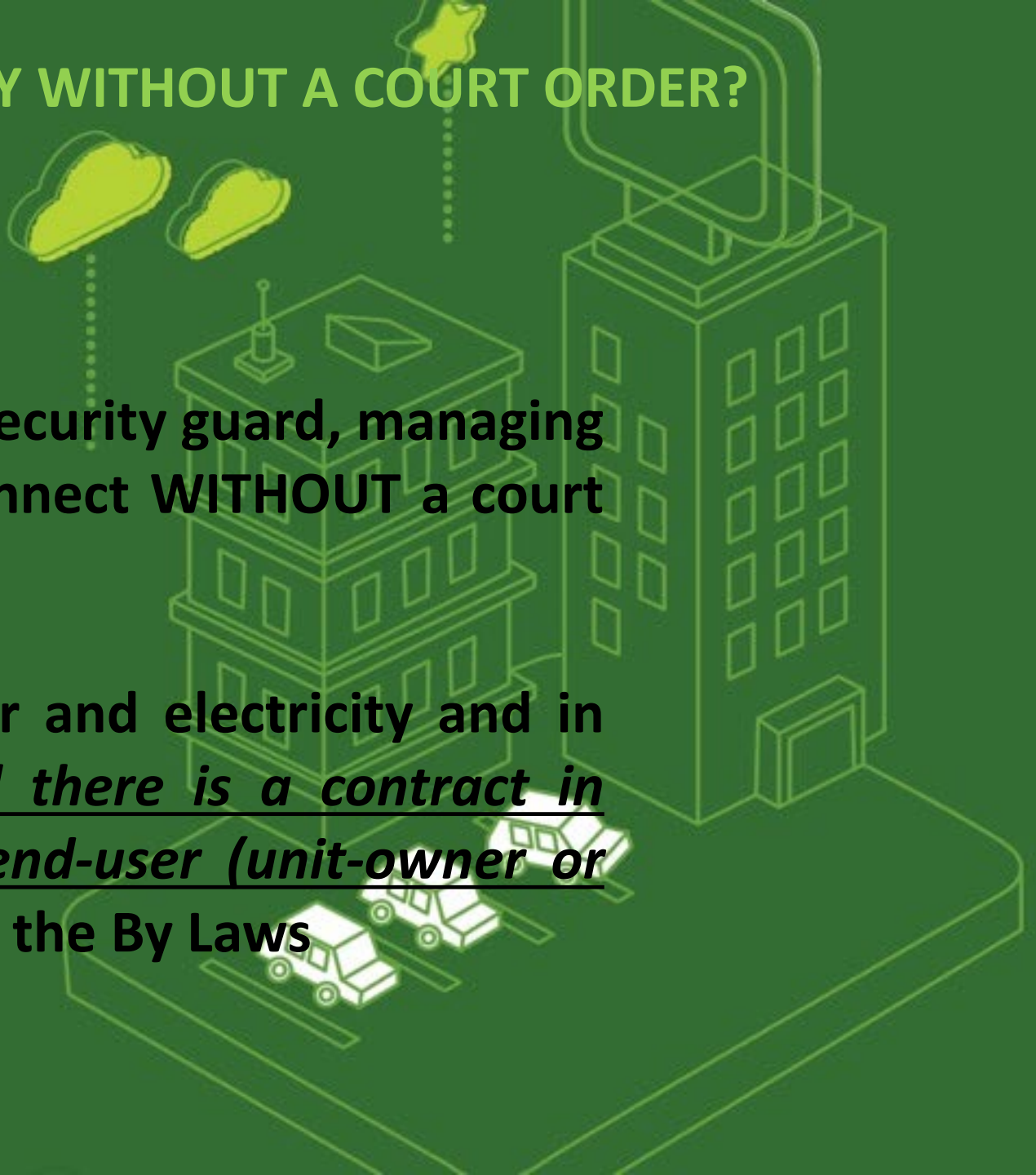
YES!!

In terms of the CSOS Practice Directive on Dispute Resolution

How do urgent matters work, and the time-frames?

- ❑ The application is lodged at CSOS
- ❑ The fee is paid IF there is no waiver issued for member
- ❑ Regional Ombud IMMEDIATELY makes contact with the scheme to RESTORE electricity
- ❑ Depending on outcome…. Adjudication will be heard the very **NEXT DAY**
- ❑ **Adjudication Order outcome within 48 hours or less**

CAN I LEGALLY DISCONNECT ELECTRICITY WITHOUT A COURT ORDER?



YES AND NO!!!!

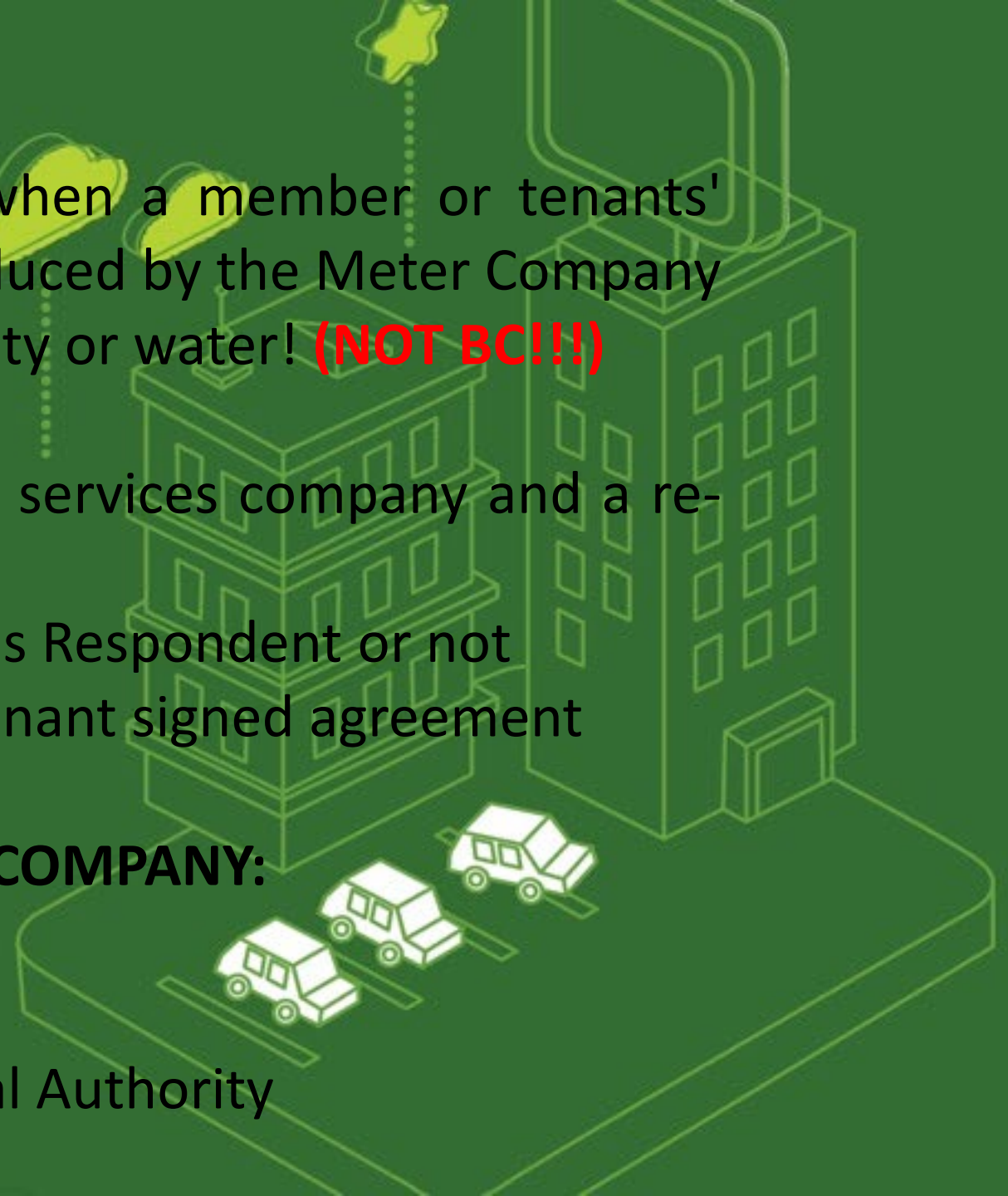
NO: **if you are a BC and instructs the security guard, managing agent, caretaker or a trustee to disconnect WITHOUT a court order**

YES: **Third Party is a reseller of water and electricity and in affiliation with the municipality, *and there is a contract in place between the reseller and the end-user (unit-owner or tenant)* - there MUST be adherence to the By Laws**

DISCONNECTIONS CONT……

The CSOS does **NOT** have jurisdiction when a member or tenants' water or electricity is disconnected or reduced by the Meter Company who is registered as a re-seller of electricity or water! **(NOT BC!!!)**

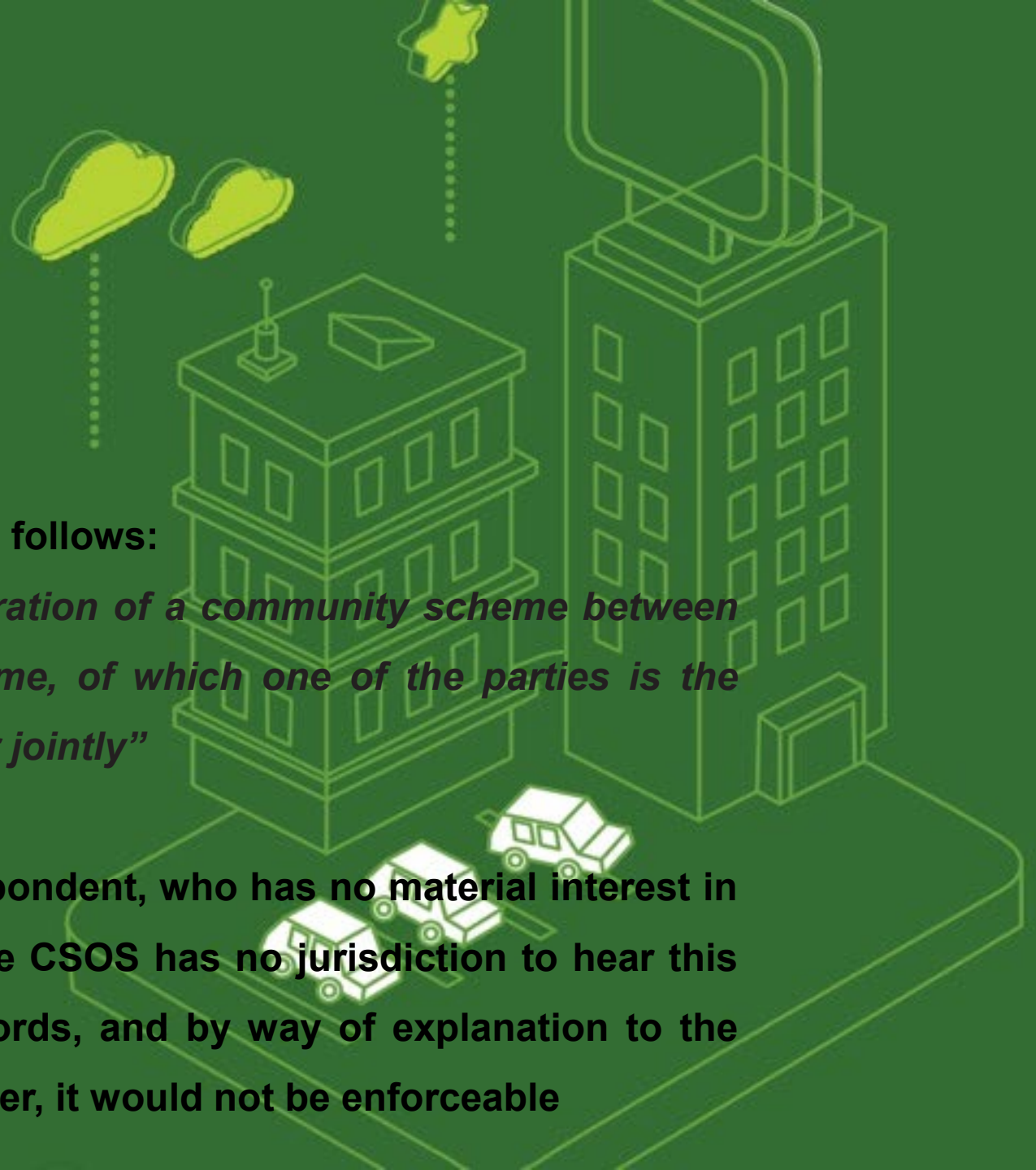
1. If the Respondent is a meter reading services company and a re-seller registered with ERASA
2. **Irrespective if that** company is cited as Respondent or not
3. Irrespective of whether member or tenant signed agreement



SERVICES OFFERED BY METER READING COMPANY:

1. Bill the BC
2. Receive money
3. Pay over the contributions to the Local Authority

DISCONNECTIONS CONT……



❑ CSOS REJECTS:

- ❑ **Section 1 of the CSOS Act defines a "dispute" as follows:**

Dispute "*means* *a dispute in regard to the administration of a community scheme between persons who have a material interest in that scheme, of which one of the parties is the association, occupier or owner, acting individually or jointly"*

- ❑ **The Applicant has cited a third party as the Respondent, who has no material interest in the scheme in which the Applicant lives, and the CSOS has no jurisdiction to hear this dispute or make a finding therein – in other words, and by way of explanation to the Applicant, if the Adjudicator were to make an order, it would not be enforceable**

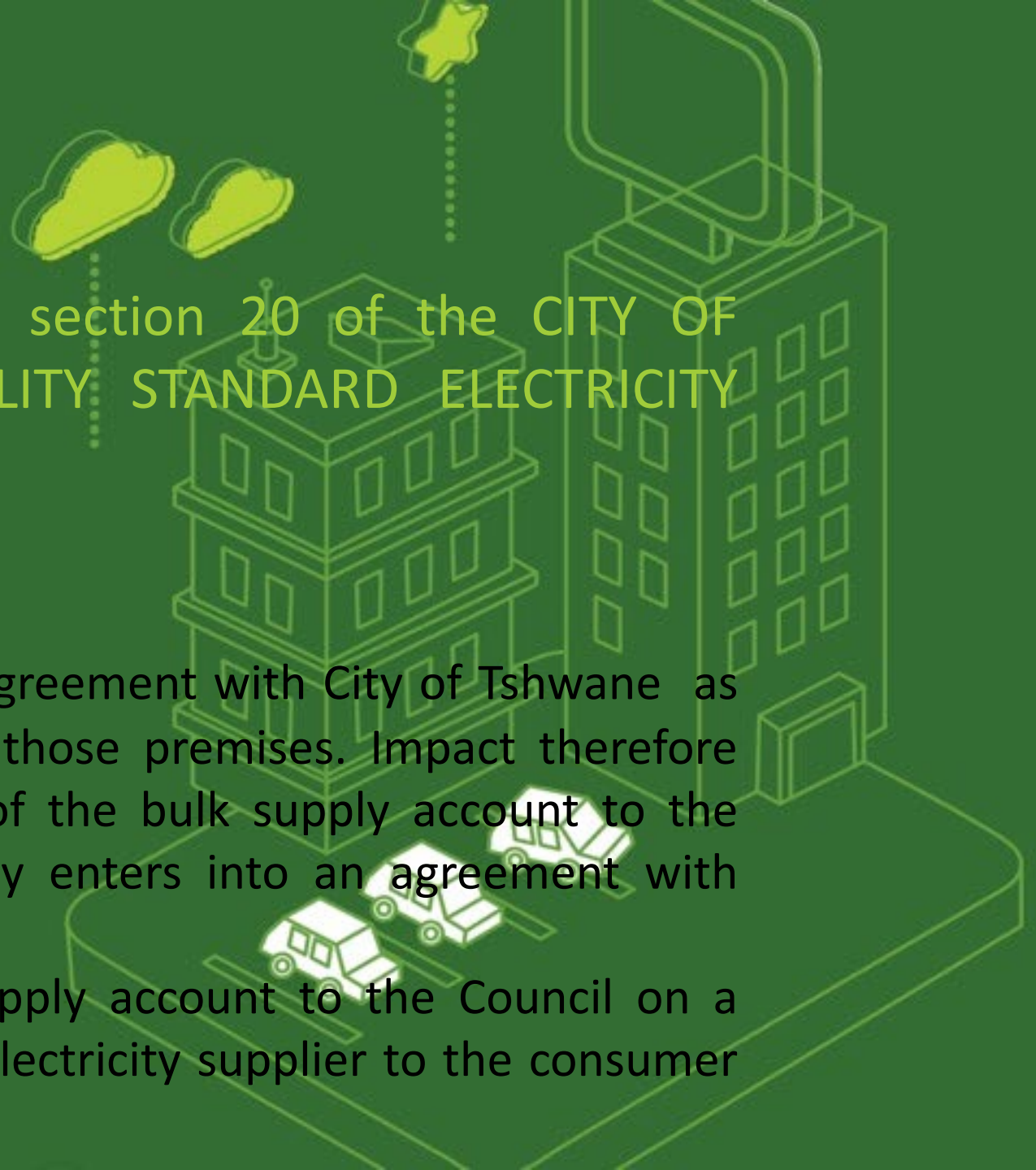
DISCONNECTIONS CONT……

LEGISLATION OF CITY OF TSWANE = section 20 of the CITY OF TSHWANE METROPOLITAN MUNICIPALITY STANDARD ELECTRICITY SUPPLY BY-LAWS.

HOW IT WORKS?

The meter reading company enters into an agreement with City of Tshwane as the bulk consumer of electricity / water at those premises. Impact therefore becomes responsible for monthly payment of the bulk supply account to the Council. In turn, the meter reading company enters into an agreement with individual tenant, & and bills the tenant

The meter ready company **PAYS t**he bulk-supply account to the Council on a monthly basis, and essentially, becomes the electricity supplier to the consumer within the premises!

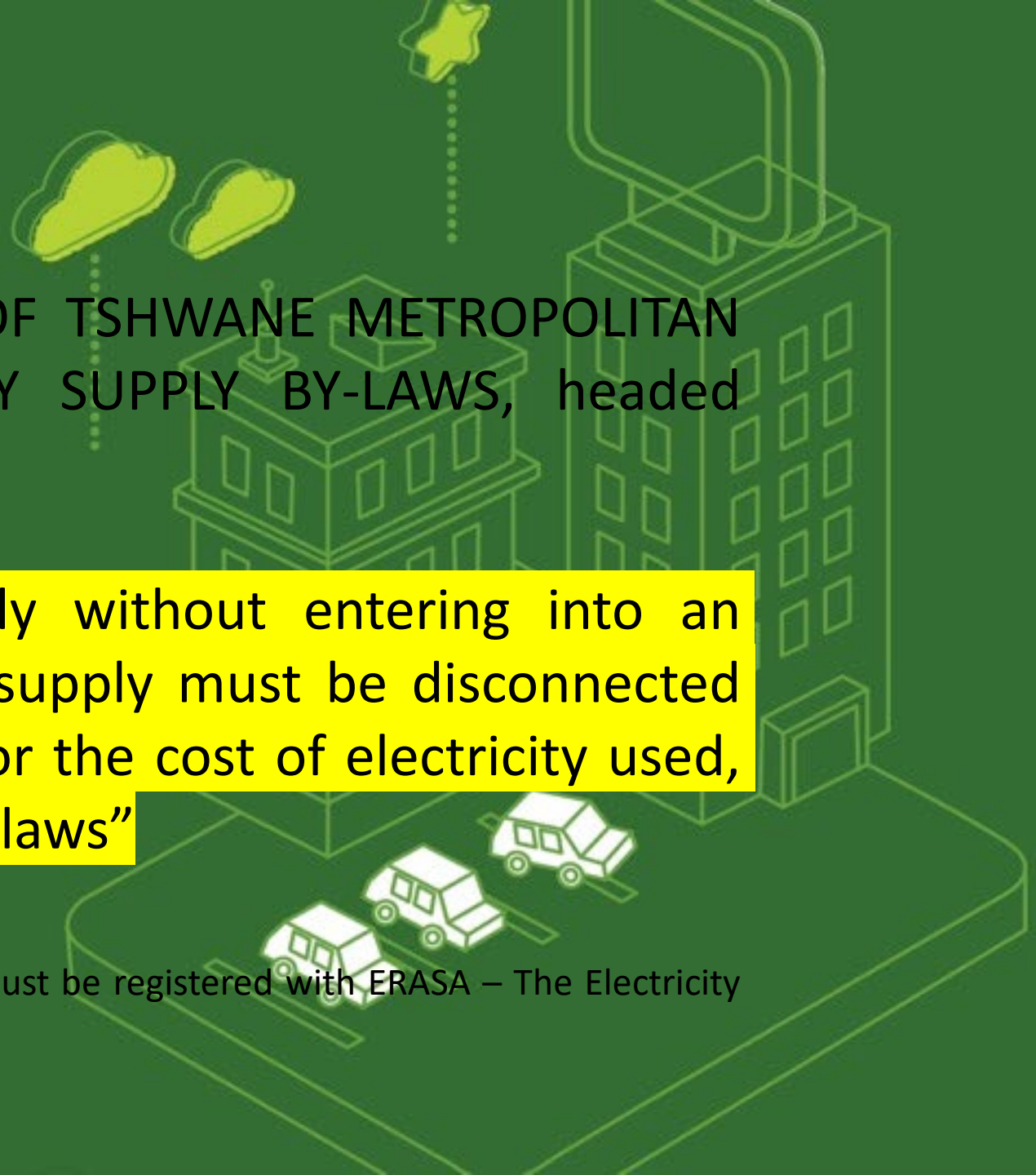


DISCONNECTIONS CONT……

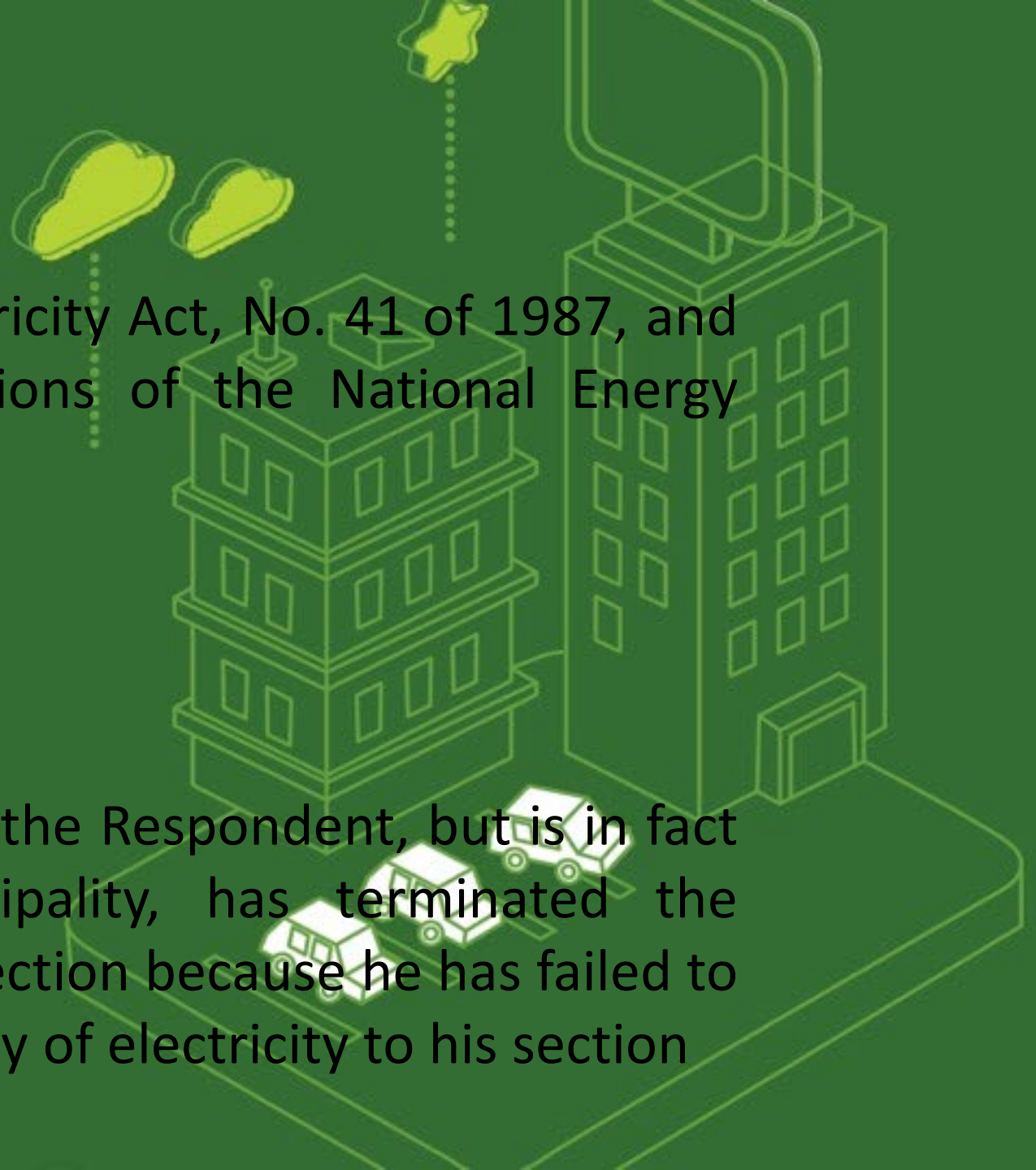
In terms of clause 4(1) of the CITY OF TSHWANE METROPOLITAN MUNICIPALITY STANDARD ELECTRICITY SUPPLY BY-LAWS, headed "GENERAL CONDITIONS OF SUPPLY….

If a person uses an electricity supply without entering into an agreement with the Municipality, the supply must be disconnected immediately, and the person is liable for the cost of electricity used, as provided for in section 18 of these Bylaws"

REMEMBER: meter readers who become on-sellers must be registered with ERASA – The Electricity Resellers Association of South Africa!



DISCONNECTIONS CONT……



- The aforesaid is in terms of the Electricity Act, No. 41 of 1987, and permissible in terms of the provisions of the National Energy Regulator of South Africa (NERSA)

- **CONCLUSION…..**

- A third party, who is not an agent of the Respondent, but is in fact an agent of the Tshwane Municipality, has terminated the electricity supply to the Applicant's section because he has failed to enter into an agreement for the supply of electricity to his section

THANK YOU

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