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Assalamualaikum warahmatullahi wabarakatuh dan Salam Sejahtera.

Pertamanya, saya panjatkan kesyukuran yang tidak terhingga ke hadrat Ilahi, kerana dengan rahmat dan barakah-Nya, penerbitan jurnal bilangan satu tahun 2012 berjaya direalisasikan.

Menyentuh soal pembangunan infrastruktur negara, sudah pasti kita tidak dapat lari daripada isu pembangunan tanah yang merupakan perkara pertama yang perlu diselesaikan terlebih dahulu sebelum sesuatu pembangunan hendak dimulakan. Maka, sebagai Pentadbir Tanah, sudah pasti kita akan terlibat secara langsung mahupun tidak langsung dalam apa-apa bentuk pembangunan tanah. Ini sudah pasti menuntut pengetahuan dan kemahiran yang khusus terutama dalam menyelesaikan sebarang isu atau permasalahan yang berbangkit.

Oleh yang demikian, peningkatan ilmu pengetahuan dan kepakaran di kalangan pegawai-pegawai dalam pentadbiran tanah amatlah diperlukan bagi membantu pembangunan pesat negara. Tanpa tenaga kerja yang berpengetahuan dan berkemahiran tinggi, visi dan misi yang digagaskan oleh pemimpin negara tidak akan tercapai sama sekali malah sekadar menjadi angan-angan "Mat Jenin" sahaja. Antara faktor penurunan jumlah tenaga pakar dalam pentadbiran tanah di negara ini ialah kekurangan sumber rujukan dalam bidang pentadbiran tanah. Oleh yang demikian, penerbitan jurnal ini sedikit sebanyak dijangka dapat menjadi pemangkin kepada percambahan sumber ilmu dalam bidang tersebut.

Namun begitu, jurnal ini masih kekurangan artikel-artikel yang disumbangkan oleh pegawai-pegawai berpengalaman daripada pentadbiran tanah Malaysia. Justeru, saya menyeru kepada semua anggota Pentadbiran Tanah Negeri, sumbanglah artikel anda demi meningkatkan pengetahuan dan tahap profesionalisme generasi hadapan.

Sekian, terima kasih.

Mohd Shukri bin Ismail
Ketua Editor Jurnal Pentadbiran Tanah

STRATA TITLES (AMENDMENT) ACT 2007: UNCERTAINTIES AND SUGGESTIONS FOR REFORM

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Keywords: Strata Titles Act 1985, land parcel, Gated Community Scheme (GACOS), federalisation of Strata Titles Board, rent in respect of parcels, uncertainties, suggestions for reform.

I. INTRODUCTION

SUBSTANTIAL amendments to the Strata Titles Act 1985 (STA) have been made 4 years ago in response to the current needs of strata scheme management. The amendments that came into effect on April 12, 2007 in Peninsular Malaysia brought changes to about 51 provisions of the STA. The amendments include modification, deletion and substitution of provisions on various matters relating to the administration before and after issuance of strata titles together with new provisions introduced on matters relating to the operation of Computerization System of Strata Titles, the classification of low-cost building for purposes of issuance of strata titles and the transfer of ownership of strata titles. The multiple changes introduced by the 2007 legislative amendments are, *inter alia*, involving:

i. a new approach in processing applications for strata titles in respect of land parcels;
ii. the use of information communication technology for strata titles registration process; and
iii. complementing the Building and Common Property (Maintenance and Management) Act 2007 (Act 663) introduced by the Ministry of Housing and Local Government.

In summary, there are approximately 34 key changes introduced by the 2007 amendment. The insights of these amendments have been envisaged in a book entitled "Practical Guide in Subdivision of Land and Building for Issuance of Strata Titles". Nonetheless, there is a wide range of uncertainties encountered to implement and improve strata titles delivery system.

An analysis carried out on its practical performance has revealed that there are several omissions in the legal provisions which may lead to the production of disputed strata titles; uncertain processing procedures and competing authorities amongst stakeholders. For instance, these include the following issues:

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- Issuance of strata titles in respect of land parcels or GACOS that does not meet the legal provisions of the National Land Code (NLC);
- Creation of overlapping authority's between Federal Government and State Governments pertaining to establishment of Strata Titles Board;
- Imposition of separate rent, express condition and restriction in interest into each strata parcel upon registration of strata titles that does not meet the legal provisions of the NLC;
- Uncertain position of separate rent, express condition and restriction in interest for every strata titles registered prior to commencement of the amending Act on 12 April 2007;
- Uncertain position for creation of Management Corporation for low-cost building where the strata titles have been registered prior to deletion of its special provisions by the amending Act on 12 April 2007;
- Creation of a mandatory requirement that an application for strata titles shall include the issue of a provisional strata titles of a provisional block at the first time and every time such application is made at Land Offices (whereas in reality, not all strata schemes are developed in phases and require provisional blocks); and
- Creation of circumstances where any building that was completed before the commencement date of the new section 8 by virtue of the amending Act on 12 April 2007 shall be excluded from mandatory application for strata titles.

II. VALIDITY OF STRATA TITLES FOR GATED COMMUNITY SCHEME

"SUBDIVISION of land into land parcels" is a new concept of strata subdivision introduced by the amendment in 2007. According to the amendment, every land parcel created through this concept can be held under separate strata titles, whereby the existing land title to the land will continue to be valid and operative and placed under the custody of the Management Corporation. The differences between the "land parcel" under the STA and "subdivisional portion" under the NLC and the construction of the STA as part of the NLC will render the concept of "land parcel" redundant in the existing provisions of the NLC.

Every land parcel held under strata title is registered by using Form 4. Practically, it is similar to the concept of subdivisional portion through a process of subdivision of land under the NLC. Among the factors that differentiate the two concepts are; first, the land title where the land parcels stand is still valid and operative after strata subdivision is completed, whereby under the NLC's subdivisional concept, the original land title will cease to be operative upon the issuance of individual title to each subdivisional portion. Second, the requirement to pay "rent" of the said land title continues to be in

force after the strata titles have been issued for those land parcels. The 2007 amendment does not provide a clear picture as to whether the allocation of "rent" is in respect of the individual parcels. Therefore, it is not wrong to envisage that this situation may lead to double taxation on the property, one for rent of land parcel and the other as rent for land title.

It was said that the concept of land parcel introduced by the 2007 amendment is aimed at administering the Gated Community Schemes (GACOS). However, the problem which would arise within the land development for the GACOS involves the construction of buildings that would not be feasible to be subdivided into land parcels as provided in the STA. For instance, bungalow houses, semi-detached houses, double-storey houses and single storey houses, which were sold with no intention of issuing strata titles, will not come within the definition of land parcels under the STA. These types of properties are not capable of being subdivided into land parcels even though each is an individual unit as each is a landed property requiring issuance of separate title based on "subdivisional portion" under the NLC.

In addition, the formation of the Management Corporation under the STA is not identical to the Management Company usually established to manage the GACOS. Under the STA, all purchasers are shareholders of the common properties whereas under the GACOS, the common properties are vested in the ownership of the developer. Therefore, it is not possible to resort to the STA as a mean for controlling land use under the GACOS. On the other hand, as a protective measure, if the common properties are vested under the name of the developer, purchasers could face difficulties in enjoying and controlling the common properties in the GACOS.

The validity of strata titles issued in respect of land parcels seems uncertain. In view of the NLC, there is no recognition of title in continuation for a strata title obtained by subdivision of land into land parcel. Subsection 170(1) of the NLC provides as follows:

> "*(1) For the purpose of the issue of title in continuation under this Chapter to any land as a whole –*
>
> *(a) the register document of title to be prepared shall consist –*
>
> *(i) …*
>
> *(ii) …*
>
> *(iii) in the case of any parcel of a building held under subsidiary title, of a document in Form 4 in the First Schedule of the Strata Titles Act 1985; and*
>
> *(b) …* "

An application for issuance of strata titles by subdivision of land into land parcels is required to be made in Form 1A pursuant to section 10 of the STA.

The validity of approval for this subdivision as granted by the Director of Land and Mines is questionable. The legal provision in section 9(1)(g) of the STA has taken into consideration applications made in Form 1 only but not applications made in Form 1A.

III. POWER OF MINISTER TO APPOINT MEMBERS OF STRATA TITLE BOARD

PRIOR to the 2007 amendment to the STA, the power to appoint members of the Strata Titles Board was conferred to the State Authority. This is in tandem with the provisions of the Ninth Schedule (State Lists) of the Federal Constitution. However, the 2007 amendment amended the provisions of section 67A of the STA with the intention of vesting the powers to appoint the members of the Board to the Minister of Natural Resources and Environment at Federal level. Nevertheless, the *status quo* of the Board remains under the State Lists of the Federal Constitution whereby the power of the State Authority to make rules, practices and procedures of the Board under section 81 of the STA remains unchanged.

By virtue of section 81 of the STA, the State Authority has absolute power to establish the Strata Titles Board, not the Minister. In fact, the powers conferred to the Minister under section 67A by the 2007 amendment shall not supersede the provision of section 81 of the STA. In a situation where the provision of section 67A is inconsistent or in conflict with section 81, the provision of section 81 will prevail. Hence, this amendment may cause confusion.

IV. UNCERTAINTIES OF INDEFEASIBILITY OF STRATA REGISTER

THE book of strata register for a strata scheme is prepared in accordance with the procedures prescribed in sections 15 and 16 of the STA and it must be in Form 2, Form 3, Form 4 and Form 4A, if any, and enclosed with a copy of the certified strata plans for the land title where a strata scheme is developed. The amended statutory forms for preparation of this strata register, as shown in the First Schedule of the Act, involves Form 2 (Strata Register Index), Form 4 (Document of Strata Title) and Form 4A (Document of Provisional Strata Title) but excludes Form 3 without clear reasons.

Analysis of the amendments reveals that the newly added features contained in the new Forms are inaccurate under sections 15 and 16 of the STA. In addition, those features are not in accordance with the provisions in the NLC. For instance:

(i) Form 4

An analysis of the contents of Form 4 highlights the following problems:

- Rent

THE word "rent" was inserted into the statutory forms without clearly being supported with any enabling provisions under the 2007 amendment. It is the intention of the amendment to introduce a separate "rent" for each parcel to facilitate parcel owners to deal with their parcels. As the STA is construed as part of the NLC, the imposition of "rent" allocated for each parcel was observed to be contradicting with the provisions of sections 93, 94, 95, 96, 97, 98, 99 and 100 of the NLC. In fact these provisions fail to allow the imposition of "rent" for each parcel upon registration of the strata titles.

Section 14 of the NLC sets out that rent shall be prescribed in the State Land Rules before it can be imposed for each land title. However, the allotment of "rent" to the parcels in strata subdivision is not covered under the "general rule" of this section. Thus, the legality of imposing of rent for each parcel or strata title is uncertain and questionable.

In addition, there are no express provisions in the 2007 amendment to provide directions to the State Authority in this matter. This raises concern as to what are the proper legal procedures and mechanisms that is to be practiced by the State Authority if the aforesaid "rent of parcel" remains unpaid by the parcel owners. If the parcel concerned reverts to the State Authority due to non-payment of rent, the question arises whether the State Authority is capable of being appointed as member of the Management Corporation.

No adequate provisions were inserted to explain on the nature of "rent" to be imposed on a land title after successful registration of the strata titles since there is already rent imposed on the individual parcel.

- Express condition and restriction in interest

THE imposition of express conditions and restrictions in interest on the subdivided parcel is not clear. This is in contrary to the provisions of sections 104 and 105 of the NLC.

Without this feature, the existing conditions of land title will continue to be endorsed on the strata titles registered under the STA. This is due to the fact that the land title is still in operation even after the registration of the strata titles. This will cause a repetition in the process of registration of the strata titles. The express conditions and restrictions in interest of a land title are currently computer generated through the operation of Computerised Land Registration System (CLRS) under the Fourteenth Schedule of the NLC. By using this new format while registering the strata

titles, the process owner has to rewrite all the details of express conditions and restrictions of a land title and enter it into each strata title one by one. This is a copying process. It will cause delay in the registration of the strata titles which are usually in large numbers. This will not add value to the strata titles delivery system.

- "Title ID, version, copy, page"

THE element of "Title ID, Version, Copy and Page" is a permanent feature of the Computerized Land Registration System (CLRS) with the commencement of the Fourteenth Schedule of the NLC and the Computerization System for Strata Titles under the Fifth Schedule of the STA. It is generated by the use of computerized system. The 2007 amendment has absorbed these elements as forming part of the manner the strata titles documents in Form 4 or Form 4A has to be registered manually under the First Schedule of the STA. Obviously, it is contradicting with the procedures set out in the Tenth Schedule of the NLC relating to manually registered strata titles (i.e. by hand writing using pen and ink). In fact, the use of these elements is only accurate if it appears in the printed document of strata titles generated by the Computerization System for Strata Titles under the Fifth Schedule of the STA.

- Authentication of title – No space for registrar's signature and seal

The space for registrar's signature and seal in Form 4 has been omitted. Without this important legal feature pursuant to section 89 of the NLC, the strata titles registered after the commencement of this amendment may be disputed as it is made without the signature and seal of the Registrar.

(ii) Form 4A

An analysis of the contents of Form 4A highlights the following problems:

- Rent

THE word "rent" was not inserted into this form. In other words, this implies that any provisional strata titles produced under this new format will not be subjected to the imposition of "rent". This may not be the intention of the legislature.

- Express condition and restriction in interest

IT may be in contravention with sections 104 and 105 of the NLC. Section 104 provides that:

> *"Every condition or restriction in interest shall run with the land to which it relates, and shall bind the proprietor thereof for the time being and every person or body having or claiming any interest in the land, howsoever derived."*

Whereas section 105 provides that:

> *"(1) Every condition or restriction in interest imposed by or under this Act shall, except where it is otherwise provided by this Act or the context otherwise requires, commence to run from the date of alienation of the land to which it relates.*
> *(2) Every condition requiring continuous performance, and (unless the context otherwise requires) every restriction in interest, shall continue in force until the reversion to the State Authority of the land to which it relates; and every condition subject to a fixed term shall continue in force according to the tenor thereof."*

Similar to the strata titles registered in Form 4, the provisional strata titles registered under Form 4A in respect of provisional block are also construed as part of a land title. Thus, the significance in inserting this express condition and restriction in interest of the land titles into every document of strata title in Form 4 is questionable. It seems to be redundant with the express condition and restriction in interest contained in the strata register statement prepared in Form 3. Nevertheless, dealings with the provisional strata titles are prohibited. Are sections 104 and 105 insufficient to explain the continuous performance and effect of the condition or restriction in interest to all strata titles registered for any land title?

- Accessory parcel

IN view of Form 4A, this feature has no connection with the provisional strata title. Section 4 of the STA denotes that accessory parcel means any parcel shown in a strata plan as an accessory parcel which is used or intended to be used in conjunction with a parcel and not to be used in conjunction with a provisional block or provisional strata title.

- Share units of parcel

THIS is another omission in the Form. It is supposed to be "provisional share unit" and not "share units of parcel". This form is to be used for the registration of a provisional strata title in respect of a provisional block and not for the registration of a strata title in respect of a parcel.

(iii) Form 3

THE 2007 amendment has limited the contents of this form to "express condition and restriction in interest" only by deleting the words "memorials, endorsements and other entries" in section 15(2)(b)(i) of the STA. In fact, prior to this amendment, the "express condition and restriction in interest" was already allowed to be inserted into this form. This amendment serves no purpose.

On the other hand, the word "memorials, endorsements and other entries" in Form 3 were not amended or deleted by the 2007 amendment. Thus, in the actual process of strata titles registration, the requirement to insert "memorials, endorsements and other entries" continues to take effect on this Form despite it being removed by the 2007 amendment.

This situation gives rise to uncertainties in the use of the form, as to whether to follow the 2007 amendment or maintain the *status quo*. In this regard, the amendment to section 15 of the STA might not be followed by the Registrar of Titles because it may jeopardise the accuracy and integrity of strata register by registration. In addition, the 2007 amendment does not provide any provision to dismiss or eliminate the use of Form 3 upon registration of the strata titles.

(iv) Form 3

THIS form is an index for all Form 4 and/or Form 4A upon creation of a strata register. Any changes to be made in Form 4 and/or Form 4A shall also be entered into the same form. For example, if "rent" is imposed in Form 4, the similar information then shall be entered into Form 2. However, there is no column for "rent" provided in this form[2].

V. UNCERTAINTIES OF NEW SECTION 8

THE provisions of section 8 have been introduced into the STA through the amending Act A753 which came into force on 23 February1990. This provision however was replaced with new section 8 by amending Act A1290 which came into effect on 12 April 2007. Upon the commencement of this new section 8 for its application to all States in Peninsular Malaysia, the former provisions of

[2] Note:
Similar uncertainties have also occurred to every computerized statutory forms introduced by the new Fifth Schedule through the 2007 amendment for the "Computerization System of Strata Titles." The forms require further immediate amendments before any registration of strata titles could be legally executed in a regular manner – whether it is done manually or by use of a computerized system. If further amendments are not made, the entire strata titles by registration process may not be in conformity with sections 89 and 340 of the NLC regarding conclusiveness of the registration of the document of the title and the indefeasibility of title respectively.

section 8 was immediately no longer exist or applicable for the purpose of any legal action to compel the proprietors to apply for strata titles.

The words of law underlying in paragraph (b)(ii) of new subsection 8(2) refers to "the proprietor of any alienated land on which there is a completed building BEFORE the commencement date of new section 8" on 12 April 2007, and thus if at any time he has sold or agreed to sell any parcel in such building to any person BEFORE 12 April 2007, there will be no compulsory requirement for that proprietor to apply for strata titles.

In other words, no enforcement action could be taken to the cases of completed buildings before 12 April 2007. Thus, the new section 8 introduced by the amending Act fails to reflect the actual problems being faced at the operational level which is to protect the purchaser's interest for strata titles.

VI. SUGGESTIONS FOR REFORM

A. Resolve uncertainties of indefeasible strata titles

THE statutory forms introduced in the First and Fifth Schedules by the Strata Titles (Amendment) Act 2007 are unable to reflect the meaning of indefeasibility of strata titles that will be obtained upon registration. Amendments to the forms (i.e. Form 2, Form 2(K), Form 4, Form 4(K), Form 4A, and Form 4A(K)) are imminent and can be carried out under the authority of the Minister with the approval of National Land Council pursuant to section 84 (relating to the First Schedule) and section 4A(4) (relating to the Fifth Schedule) of the STA.

B. Facilitate dealings in respect of strata titles by paying special fee

QUIT rent for the land upon which a strata scheme is constructed must be paid before presentation of any dealings (transfer, charge, lease, and easement). This is also applicable in respect of each parcel owned by individual proprietors. As provided in section 45 of the STA, the obligation is imposed upon the Management Corporation to pay the full sum of rent for the whole lot and this amount could be disbursed from the management fund. If there are parcel proprietors who have failed to pay the rent payable for their respective parcel to the management fund of the Management Corporation, the Management Corporation may not be in a position to settle the entire rent due. This raises the difficulty in presenting an instrument of dealing in respect of an individual parcel for registration as it cannot be made until the rent for all lots are paid by the Management Corporation or in particular, by all the parcel proprietors.

This situation poses difficulty to all parcel proprietors despite them having paid their proportionate rent in respect of their parcels. They are being penalised for the errant behaviour of other inconsiderate parcel proprietors.

In order to facilitate dealings in respect of strata titles, it is proposed that the State Authority, with the directions given by the National Land Council in accordance with paragraph (g) of subsection 14(1) and subsection (1A) of the NLC, prescribe in the State Land Rules a "special fee" to be paid by the parcel proprietor upon presentation of instrument of dealings for registration in respect of his parcel. Instead of paying rent, a proposed "special fee" equivalent to the proportionate sum of rent payable by the parcel proprietor to the management fund of the Management Corporation is to be paid. It is proposed that section 301A of the NLC be amended by inserting a special proviso thereto.

Another suggestion to resolve this problem is to pay the quit rent directly to the relevant land office that is by adopting the practise similar to what is being practised by the local authority in payment of assessment for an individual parcel and not for the entire scheme like the quit rent payment. This will alleviate the problem faced by the parcel proprietors seeking to register a dealing over their individual parcel but unable to do so as they need to wait for the quit rent for all the parcels to be paid before a receipt can be issued by the land office.

C. Validate the issuance of strata titles in respect of land parcels

THE issuance of strata titles in respect of land parcels with the coming into effect of the 2007 amendment to the STA is not acknowledged by the NLC nor can it be construed as an integral part of titles in continuation to the land. There is no saving provision in the NLC to address the matter. Therefore, the legality of the strata titles remains uncertain.

In the circumstances, all related provisions in the NLC must be amended to resolve this issue. The proposed amendments are as follows:

i. Insert the words "or any land parcel" in section 170(1)(a)(iii) of the NLC;
ii. Insert the words "or Form 1A" in section 9(1)(g) of the STA.

D. Application for strata subdivision after approval of Certified Strata Plans by the Director of Survey

THE delay in processing the application and issuance of the strata titles can be avoided by:

(i) allowing the certified strata plans to be verified and approved by the Director of Survey prior to submission of the application to the Land Office;
(ii) asking the applicant to pay up-front any fees incurred at the time of submission;
(iii) encouraging the applicant to settle all matters and encumbrances pertaining to land and building prior to submission; and
(iv) furnishing the application with the name and address of the Management Corporation at the time of submission.

In this regards, it is proposed that appropriate amendments be made to the STA, particularly in respect of the conditions of application for strata subdivision provided under section 10 of the STA. Therefore, the equitability of share units assigned to the parcels will be examined by the Commissioner of Buildings pursuant to section 12 of Act 663, owing to its important input to the preparation of the proposed strata plans by the licensed land surveyor at the time when vacant possession is granted, and prior to the submission of application for strata titles being made to the Land Office.

In addition, it is suggested that appropriate amendments be made to the relevant law in force to allow the establishment of Management Corporation at the point of sale. Thus, the Joint Management Body (JMB) issue which distracting the smooth implementation of Act 663 can be resolved amicably by creating a single body corporate responsible for maintenance and management of strata scheme.

E. Coordinate provisions of STA and Act 663

SUBSECTION 3(2) of Act 663 empowers the Commissioner of Buildings to discharge his functions as stipulated in Parts VI and Part VII of STA. This provision provides that the Commissioner of Buildings must administer all matters pertaining to the management of subdivided buildings after the issuance of strata titles. The role of the Director of Lands and Mines in this matter is restricted to the stage of issuing of the strata titles.

It is recommended that Parts VI and VII of STA be repealed and incorporated into Act 663. This is to address the significant role of the Commissioner of Buildings who is the authority entrusted to oversee the management of the Management Corporation. This can iron out the differences and create uniformity in the management of strata titles problems in the following areas:

i. a uniform legislation governing the standard practice and procedures for issuance of strata titles under the jurisdiction of the STA; and

ii. a uniform legislation governing the standard practice and procedures for the maintenance and management of a strata scheme and placed under the jurisdiction of Act 663 at the stages of pre-issuance and post-issuance of strata titles.

The provisions of STA and Act 663 must complement each other for purposes of enhancing the strata scheme administration delivery system. In this regard, both statutes must be reviewed and amended to incorporate the following:

i. reinstating the authority to establish the Strata Titles Board to the State Authority in line with the express provisions of the Federal Constitution which has placed land matters under the State List and within the jurisdiction of the respective States;

ii. allowing the Commissioner of Buildings to execute the verification of the equitability of the share units assigned to the parcels as it is an integral component to the register of purchasers and it is a vital input to the preparation of proposed strata plans upon delivery of vacant possession;

iii. conferring the Commissioner of Buildings power to enforce the law on transfer of ownership of strata titles as provided in section 40A of STA which is integral to the jurisdiction of the Commissioner pursuant to subsection 3(2) of Act 663;

iv. allowing the Registrar of Titles to issue the Management Corporation with a certificate upon completion of registration of a strata register;

v. introducing new concepts on strata scheme development, such as:
   - the concept of Two-Tier Management Corporation and the formation of subsidiary Management Corporations;
   - new types of resolutions to be passed by the Management Corporation;
   - the concept of "collective sale" (i.e. en-bloc sale) for redevelopment of a strata scheme; and
   - allowing changes to the share units in certain circumstances that require equitable maintenance contributions of the parcel proprietors.

F. Introduce electronic system for managing administration of strata titles

THE NLC was amended in 2008 *vide* Act A1333 and this amendment introduced the Sixteenth Schedule to address matters in respect of the development of the Electronic Land Administration System (ELAS) or initially known as "e-Land". It is the intention of the amendment to enable all future registration of land titles to be generated and authenticated by the digital

signature of the Registrar of Titles. It is an integrated and web-based information communication technology application system which is embedded with high level security features. In addition, the registration of strata titles is considered and construed as part of that electronic system.

The legislative provisions in the Fifth Schedule (Computerization System of Strata Titles) to the STA introduced *vide* Act A1290 was aimed at developing an automation system for registration of strata titles to complement the existing Computerised Land Registration System (CLRS) under the operation of the Fourteenth Schedule of the NLC. However, the Fifth Schedule does not complement the Sixteenth Schedule of the NLC in providing an integrated electronic system for regulating the registration of strata titles.

Under the environment of the e-Land application system, the user of the strata titles system will be able to process an application for strata subdivision starting from the point of receiving of an application form, to processing of the form and routing it to the various units in the Land Office and relevant technical departments outside the Land Office for comments, if necessary. At this point, the system requires online integration with the relevant systems available in each department involved.

Users will be offered a complete electronic workflow ranging from the level of decision making process by the Director of Lands and Mines, in the absence of any contrary directive by the State Authority, to online reports and papers. Upon approval of the application by the Director of Lands and Mines, the system will generate a letter of approval to the applicant together with the amount of payment due and other necessary documentation and plans for the issuance of the strata titles for each parcel. Ideally, the system would be able to be integrated with the electronic registration of land titles operated under the Sixteenth Schedule of the NLC to facilitate the strata titles registration process. The purposes and functions of the electronic strata titles are to:

i. provide efficient record keeping of applications for strata subdivision and supporting documents;
ii. monitor and verify the status of applications for strata subdivision;
iii. integrate with the Land Revenue System for verification of payments due and payable on the land;
iv. integrate with electronic land titles registration system to facilitate the strata titles registration processes;
v. integrate with other application systems in e-Land to represent a complete solution for the Land Office Modernisation System;
vi. introduce computerised workflow in the processing and issuance of strata titles; and
vii. introduce physical, non-physical and data security mechanism as part of the e-Land security infrastructure for preventing fraud or improper dealings in the titles.

G. Need for comprehensive legislative provision for electronic registration system.

AS the STA provides that it must be read and construed with the NLC as if it forms part of it, it is proposed for the STA to be amended to introduce a new Schedule and number it as the Sixth Schedule so as to complement the Sixteenth Schedule to NLC.

VII. CONCLUSION

THERE are uncertainties in respect of procedures and practices in administering the strata titles post the 2007 amendment. The only way to ensure a real practical guide for the smooth implementation is to reform the law to make it certain and clear.

There shall be a need to reform the STA. In view of the possible reform agenda, it is proposed that they cover the following matters:

i. Extra ways to terminate strata schemes by relaxing the requirement for unanimous consensus;
ii. A new definition of common property;
iii. More restriction on who can exercise proxies and when to do so as well as limiting the number of proxies any person can hold;
iv. The review and updating the standard strata by-laws in Third Schedule of the STA;
v. More controls on building quality maintenance and fire safety compliance provisions; and
vi. Extending the land acquisition legislation in respect of acquiring the parcels of the existing strata schemes for public purposes.

It is hoped that the coverage in this article has sufficiently addressed the important developments that have evolved to ensure the strata titles law and procedures are able to meet the changing needs of the Malaysian real property market. From the more complex and esoteric issues about the true nature of the various property interests to more simple law reforms to deal with day to day matters, in either case, there can be no doubt that most stakeholders in the stratified property scheme are likely to encounter difficult issues relating strata titles law more often in the future.

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ELECTRONIC LAND ADMINISTRATION SYSTEM IN MALAYSIA: THE NEED FOR NEW ENABLING PROVISIONS

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Keywords: Electronic land administration, key concepts, spatial data, digital business rules, e-Search, e-Payment, e-Dealing, e-Submission, risks and critical success factors, change management, future improvements, integration, standard

I. INTRODUCTION

THE e-Tanah System is a computer system and a set of supporting rules and business practices within a legal framework that provides a reliable means of completing conveyancing and other land related transactions electronically. These arrangements are intended to replace the existing paper-based processes in land administration of the State Land Registries covering approximately 70% of transactions that are relatively common and routine. The development of e-Tanah Pilot Project in Penang is being co-ordinated by the Ministry of Natural Resources and Environment (NRE) through a special project team called Pasukan Projek e-Tanah (PPeT) and State Project Co-ordination Teams (SPCT) supervised by the e-Tanah Steering Committee (eTSC) which are represented by the federal government agencies and land administration representatives. The work is supported under the Ninth Malaysia Plan of Department of Director General of Lands and Mines (Federal) (JKPTG) which has undertaken to establish permanent governance arrangements and provide establishment funding to support the system during implementation and take-up. To assist State Land Registries in providing more efficient service delivery in land administration, e-Tanah will provide an electronic environment to:

- facilitate on-line payment of quit-rent of land title and other related fees (e-Payment);
- facilitate remote private title search electronically (e-Search);
- provide a centric customer counter service through the concept of 'Single Point of Contact' (SPOC) to collect transaction information that have been checked and verified for completeness and compliance;
- convert paper-based titles which is manually registered to electronic-based titles with bar-coded and electronic authentication of the Registrar's digital signature; and

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- lodge instruments or submission of applications with Land Registries through SPOC services and receive confirmation of their lodgement or submission and registration manually or by technological means.

e-Tanah System is likely to be owned by Federal government but it has to be operated as a mutual collaboration in each land administration of the State Government. e-Tanah will be an industry facility available to all State Land Registries to deliver a more efficient services to consumers.

II. EXISTING LEGAL FRAMEWORK

THE development of e-Tanah application system is a 'legislative-driven'. There is a definite need to provide and incorporate special provisions under the National Land Code (the 'Code') to provide legal force for electronic land administration and registration upon coming into operation of e-Tanah system in any land Registry.

The core business areas of the e-Tanah application system require an essential and immediate need to revise, amend or modify the existing provisions of the Code to ensure the system is developed and operated in accordance with supporting legal framework. Thus, the Code has been amended in 2008 by providing enabling provisions thereof. In legal term, the e-Tanah system is named as Electronic Land Administration System (ELAS).

Section 5D which was introduced in the Code by the National Land Code (Amendment) Act 2008 (Act A1333) provides in part, that the Minister (Minister of Natural Resources and Environment Malaysia), with the approval of the National Land Council, may appoint a date for the coming into operation of the ELAS in any Land Registry (in which it constituted by the office of the Registrar of Titles, the office of the Land Administrator, and the Disaster Recovery Centre (DRC)) in any State of the Peninsular Malaysia. However, that appointed date shall be notified in the Gazette of the Federation as an operation date of the ELAS in the respective State. With this enabling legal framework, it is pertinent to note that:

i. the operation of ELAS shall only be legally recognised in any Land Registry on a date appointed by the Minister and notified in the Gazette of the Federation with the approval of the National Land Council. Prior to this notification, the consent on appointing such date from the State Authority has to be obtained first for the purpose of subsection 5D(1). This is due to the fact that operation of ELAS involves land matters and its security of data construed as part of the State Authority's jurisdiction pursuant to State List of the Ninth Schedule of the Federal Constitution.
ii. this approach is quite similar to the method used on how the Computerized Land Registration System (CLRS) of the Fourteenth Schedule of the Code

has been commenced previously in any Land Registry of all States in Peninsular Malaysia. But, it is pertinent to address that the integrity and security of data in which it is virtually stored in the ELAS database shall be successfully tested, preserved, ascertained and accepted by the State Authority in respect of conferring the indefeasibility of titles or interests by registration as guaranteed under section 340 of the Code.

iii. by inserting this subsection, the terms 'Land Registry' under the operation of ELAS has a same definition as previously provided upon the commencement of CLRS. However, it is extended to include the DRC as a mandatory precaution in times of disaster under the implementation of ELAS.

Paragraph (c) of subsection 5D(2) is a new provision inserted into the Code to define the safe keeping of digital data and records under ELAS environment especially in the event of disaster. This is a legal approach to guarantee the sustainability of titles ownership and its security of tenure in the State in consequence of unexpected tragedy that may possibly occur under electronic environment. Basically, the DRC is a backup and recovery centre that shall be set up under the ELAS within the State but subject to any ICT prerequisites and requirements by the State Authority in correlation with section 375 of the Code. For example, the important of this paragraph (c) can be materialised at the following instances:

i. Under the Sixteenth Schedule, the Database is a backbone to hybrid electronic environment of ELAS. In this regard, all data (i.e. textual data and spatial data) stored in each Database of each State District Land Office (PTD-DB) has to be replicated into Consolidated Database set up at the State Director of Lands and Mines Office (PTG-DB) in which it stands for a back-up copies. In the event of any problem that occur at any point of time under operation of ELAS, the users may continue their respective daily duties at each PTD-DB by accessing information directly from the PTG Consolidated Database. All these data are replicated and stored in the similar manner on a real time basis to the DRC Database of the State.

ii. In the event of distraction that may occur in respect of direct accessing to the data and application system of PTG Consolidated Database (i.e. network distraction, or PTD server is malfunctioned or down etc.), the ELAS of PTD is still in operation as usual under their respective database or by using the DRC Database even though there will be no accessibility to the PTG Consolidated Database.

Subsection 5D(3) of the Act enables the ELAS to enter into arrangements with the State for the effective application and administration of the ICT system in force in the land Registry by provisions of the Sixteenth Schedule. In order for this enabling provision to be effectively administered, it is necessary

for the ELAS to be conferred with the provisions of the Code that has to be read with modifications, amendments, additions, deletions, substitutions or adaptations as provided in the Sixteenth Schedule as it is appropriate with the application systems and business coverage of the ELAS.

Towards achieving this purpose, it is important to understand how the pilot e-Tanah Software Application Systems work within the framework of the Sixteenth Schedule. Amendments, additions, deletions, substitutions or adaptations of the Code are desirably needed to support the electronic features introduced by the ELAS. The legal support to the system involves the following matters:

i. Electronic features relating to documents of titles – [paragraph (b) of subsection 5D(3)]:

- Statutory forms for electronic document of land titles shall be produced in Form 5Be, 5Ce, 5De, 5Ee, 11Ae or 11Be respectively as prescribed in the Sixteenth Schedule. Alphabet 'e' stands for electronic features of the ELAS system. The respective statutory forms shall be produced with barcode and authenticated by using digital signature instead of a normal signature and seal of the Registrar or Land Administrator. This involves every type of document of titles affecting land upon alienation or title in continuation upon amalgamation of land, subdivision of land, surrender and re-alienation of the land or other purposes permitted by the Code. This approach is a replacement of Form 5BK, 5CK, 5DK, 5EK, 11AK or 11BK which currently produced by CLRS upon the commencement of Fourteenth Schedule of the Code.

- The plan of the land on which the document of title relates shall be computer generated and printed in Form B1e in respect of final title or in Form B2e in respect of qualified title. Alphabet 'e' stands for electronic features of the ELAS system. This approach is a replacement of Form B1 or B2 which currently produced separately by CLRS upon the commencement of Fourteenth Schedule of the Code.

- Procedure for preparation and registration of any dealing in respect of land and any entry or endorsement of any note, memorial or memorandum or any correction or cancellation thereof on any document of title has a similar approach as previously introduced by CLRS under the Fourteenth Schedule of the Code. It is entirely adopted and applied with appropriate modifications into the ELAS application system with authentication by digital signature.

ii. Electronic features relating to document of temporary occupation licence or permit – [paragraph (b) of subsection 5D(3)]:

- Statutory Forms of computer document for every temporary occupation licence pursuant to section 67 of the Code, or known as TOL, and every Combined Temporary Occupation Licence and Permit for Removal of Rock Material pursuant to section 69 of the Code, shall be produced in Form 4Ae or Form 4Be of the Sixteenth Schedule, respectively. Alphabet 'e' stands for electronic features of the ELAS system. The respective statutory forms shall, upon production under the ELAS system, be authenticated by using digital signature instead of the normal signature and seal of the Land Administrator. This involves every type of document of TOL issued upon fresh approval or renewal as so permitted by the Code. There is no barcode introduced to these forms as TOL usually issued on yearly basis and the usage of barcode is therefore deemed uneconomical. This approach is a new electronic measure brought up by the ELAS and it is not available in any provision of the Code.

- In addition, statutory forms of computer document for every Permit for Removal of Rock Material pursuant to section 72 of the Code, and every Permit for The Use of Air Space Above State Land or Reserved Land pursuant to section 75C of the Code, shall be produced in Form 4Ce or Form 4De of the Sixteenth Schedule respectively. Alphabet 'e' stands for electronic features of the ELAS system. These involve every type of document of Permit issued upon approval as so permitted by the Code. There is no barcode introduced to these forms as such permits usually issued on yearly basis and the usage of barcode is therefore deemed uneconomical. This approach is a new electronic measure brought up by the ELAS and it is not available in any provision of the Code. The respective statutory forms shall, upon production under the ELAS system, be authenticated by digital signature instead of the normal signature and seal of the Land Administrator.

- The plan of the land on which the TOL or PERMIT relates shall be computer generated, printed and produced separately in Form L1, or L2, or P1 or P2 of the Sixteenth Schedule, respectively. This approach is a new value-added element introduced by the ELAS and it is currently not available in any provision of the Code.

iii. Electronic features relating to electronic payment procedures – [paragraph (b) of subsection 5D(3)]:

ELECTRONIC payment (e-Payment) or payment online is a subset of ELAS. The existing NLC does not provide any legal provision to legally bind this kind of

transaction even though the electronic environment has been used widely in banking system.

The e-Payment Module via ELAS is construed as part of its Public Portal. This module allows online public users to pay quit rent online through the internet. The module has the following functions:

i. Online payment;
ii. To provide interface to public users to pay quit rent online;
iii. To upload payment information done by public to e-commerce facilities of the respective states to facilitate and process payment by the respective e-commerce facilities in the states;
iv. To accept credit card payment by the public user; and
v. To allow user to check the status of payment of quit rent of a particular title or arrears in quit rent.

As a policy statement of the Code, this approach requires a new set of procedures in the Sixteenth Schedule and subsequently it has to be prescribed by the State Authority in the States Land Rules for enforcement purposes.

iv. Electronic features relating to electronic safe keeping of registers *via* ELAS system – [paragraph (b) of subsection 5D(3)]:

SECTION 375 of the Code provides the responsibilities to the Registrar for the safe keeping of:

i. every register of title maintained under the Code or previous land law;
ii. all instruments registered under the Code or previous land law; and
iii. all other instruments, and all books and other records required by the Code or previous land law to be filed or kept in land Registry.

In addition, nothing of those records is able to be removed from the land Registry Office except by an order of the Court or a Judge or under the direction in writing of the State Authority or State Director. Prior to the commencement of ELAS, the Registrars' responsibilities are meant at safe keeping of manual or physical records only.

However, through ELAS, the methodology of safe keeping would definitely include all digital data stored in the land database. In view of the ELAS which is developed based on hybrid system – every District Land Office shall have its own land database. The data that flows into those land databases shall also flow *via* system to the Consolidated Database located at the State Director of Lands and Mines Office. For security purposes, the same data shall then flow as a replication to the land database of the DRC of the State. In the event of disaster (man-made disaster or natural disaster or hardware disaster), the database of DRC shall be able to take over the functions of Consolidated

Database at the State Director of Lands and Mines Office. In respect of subsection 340(2) read together with section 375 of the Code, the flowing of data from one land database to another land database is virtually operated, and therefore it requires a very high level of security control for the safe keeping of digital records. In the ELAS, the land database is Register Document of Title (RDT), and thus, the indefeasibility of titles or interests therein must be preserved effectively in any circumstances.

v. Electronic features relating to the procedure for the maintenance of Presentation Book and Correction Note-Book – [paragraph (b) of subsection 5D(3)]:

THE procedure relating to maintenance of Presentation Book, pursuant to section 304 of the Code, by use of computer has been provided under paragraph 13 of Fourteenth Schedule of the Code. The similar approach is adapted into the Sixteenth Schedule with similar features.

However, the procedure relating to maintenance of Correction Note-Book pursuant to section 380 of the Code was not specifically stipulated under the provision of Fourteenth Schedule. For the purpose of ELAS, the procedure for maintenance of Presentation Book is therefore extended to be applied upon Correction Note-Book and construed as part of the Sixteenth Schedule.

vi. Electronic features relating to electronic searches procedures – [paragraph (b) of subsection 5D(3)]:

PART Twenty Seven of the Code provides that searches could be performed in two ways: Private Searches by virtue of section 384 and Official Searches by virtue of section 385 respectively. However, the provisions of the Code currently require the public or person or body to perform searches by attending at any land Registry.

For the purpose of ELAS, the electronic features introduced by the system are limited to Private Searches only. By electronic approach, the private searches can be performed not only during normal office hours as well as odd hours, provided there must be online services available. Therefore, section 384 of the Code has to be reviewed to meet this purpose as incorporated in the Sixteenth Schedule.

Paragraph (b) of subsection 5D(3) is a policy statement of the ELAS. On the appointed date of coming into force of ELAS as notified in the Gazette of the Federation under subsection 5D(1), the operation of CLRS under the Fourteenth Schedule of the Code immediately ceases to be operative in the respective land Registry. From that date, there shall be no turning back to the CLRS in any manner or whatever circumstances. It means that the

indefeasibility of title or interest shall be protected under the operation of ELAS with its output considered conclusive, guaranteed, certain and reliable upon registration, defeating any possible competing claims. It is a legal standing that the CLRS is no longer legally valid on or after the date of commencement of ELAS.

Subsection 5D(4) of the Code is, *inter alia*, meant at facilitating the possibilities for future expansion of ELAS under the Sixteenth Schedule as it is 'necessary, desirable or expedient'. These possibilities include the following:

i. To meet the needs for further improvement of land administration system inconsequence of its continuous evolution;

Figure 1 shows five stages in the evolution of land administration systems from a technology perspective. The first stage recognizes that historically cadastral systems were manually operated with all hard copy maps and indexes. At this stage the cadastre focused on security of tenure and simple land conveyance. The 1980s saw the computerization of these cadastral records with the creation of digital cadastral data bases (DCDBs) and computerized indexes. However this computerization did not change the role of the land registry or cadastre but it was a catalyst to start institutional change worldwide where the traditionally separate functions of surveying and mapping, cadastre and land registration started coming together.

Figure 1: ICT Perspective on Evolution of Land Administration in Malaysia and Legal Framework of National Land Code

At present, there is a significant refinement of web enabled land administration systems where the common driver is interoperability between disparate data sets which is being facilitated by the partnership business model. This is now the start of an era where basic land, property and cadastral information is now being used as an integrating technology between many different businesses in government such as planning, taxation, land development and local government. The examples are the Sistem Pangkalan Data Kadaster (SPDK) and the new e-Cadastre being developed by the Department of Survey and Mapping. These developments have also been a

catalyst for the development of "mesh blocks" which are small aggregations of land parcels that are now revolutionizing the way census and demographic data is collected, and managed. This era has also offered the potential for better managing the complex arrangement of rights, restrictions and responsibilities relating to land that are essential in achieving sustainable development objectives. This will also drive the re-engineering of cadastral data models that will facilitate interoperability between the cadastre and other fields, for example land use planning and land taxation.

There will be a new era when cadastral data is information and a new concept called *iLand* will become the paradigm for the next decade. *iLand* is a vision of integrated, spatially enabled land information available on the Internet. *iLand* enables the "where" in government policies and information. The vision as provided in the diagram is based on the engineering paradigm where hard questions on how is it going to be "designed, constructed, implemented and managed" are answered. In *iLand* all major government information systems are spatially enabled, and the "where" or location provided by spatial information are regarded as common goods made available to citizens and businesses to encourage creativity, efficiency and product development. The Land Administration System (LAS) and cadastre is even more significant in *iLand*. Fundamentally, modern land administration demands a land administration infrastructure that is capable of supporting those "relative" information attributes so vital for land registries and taxation.

ii. To legalise any new web-based application system, such as:
    - Electronic presentation (e-Presentation);
    - Electronic submission (e-Submission or e-Mohon which consists of e-lodgement);
    - Electronic dealing (e-Dealing);
    - Electronic auction or auction online (e-Auction);
    - Official searches as part of electronic services;
    - e-Attestation, e-Transmission, e-Strata; and
    - Others.

In view of the Malaysian Torrens system, the vital part of the ELAS is the ability of technology to ascertain the virtual indefeasibility of title or interest over land in which it was impliedly spelt out in the Sixteenth Schedule. Under ELAS arrangement, the indefeasible of title or interest is virtually alive in the electronic environment and constituted by:

i. The title or interest is obtained by electronic registration process under the Sixteenth Schedule of the National Land Code.
ii. The title or interest is incorporated therein by not less than seven core values of Torrens registration system:

2A There must be **identification of the land** (i.e. maps or plans in which land boundaries are identified).

2B There must be **identification of the owner** (which places a high value on privacy to guarantee the name on the title accords with the individual claiming ownership).

2C There must be **verification of the interest**, if any (which ensures the existence of the title claimed to the satisfaction of an official according to generally accepted legal and business norms).

2D There must be **identification of the interest obtained** (the time and mode of its acquisition – important for resolving competing claims).

2E There must be **increase of the proprietary protection** available to the interest. (Registration creates the interest and turns it into a property right protected against any other claim).

2F There must be **transaction facilitation** by verification of the title of the person conveying land. (In Torrens system, it is a search of a simple title. It virtually eliminates most of the transaction costs associated with sale, development and securitization of the land).

2G There must be **proof of registration** (i.e. a notation on the instrument, a receipt for registration fees, a print out of the computer record supported by electronic signatures, etc).

iii. The title or interest is free from any of the following consequences:

3A Fraud; or

3B Forgery; or

3C Misrepresentation; or

3D Unlawful acts.

The electronic register is everything. However, the success and smooth working of the electronic technology for title registration system by the ELAS largely depend upon:

- an accurate digital survey and delineation of the boundary lines and preservation of boundary marks, for an indefeasible title with a defeasible area and shifting boundary lines is wholly inconsistent with the basic principle underlying the system;
- general awareness on the part of the public that so long as a registrable interest in land is not registered or, at any rate, protected by caveat or a title acquired by an appropriate order of the Court under the Code in case

of dispute or other causes, which may stand in the way of effecting a memorial, the person claiming such interest acts at his peril;

- careful inspection of the electronic register and of the presentation record immediately prior to the execution of an instrument;
- presentation of the instrument (which must be carefully drawn up so as to avoid any clerical error in the name and description of the parties or of the land affected by the transaction) accompanied by such other necessary documents as may be required under the provisions of the Code, in the absence of which or in the case of error appearing in the instrument, registration may be suspended for a short period so as to enable the error to be rectified or necessary documents filed, as the case may be, or the instrument rejected altogether as being unfit for registration;
- prompt registration;
- great care of the part of attesting witnesses to ensure proper identification of the parties to the instrument or their duly constituted attorneys (and in such cases where the power of attorney is of fairly ancient vintage by obtaining satisfactory proof and, if necessary, a statutory declaration from the attorney that the power of attorney is still in force and has not been revoked by the death or mental incapacity of the donor in anticipation of any requisition by the proper registering authority to supply him with proof of continuance of the power of attorney) to prevent unauthorised, fraudulent or other improper dealings; and above all,
- an adequate and highly efficient staff in the registry so that presentation of an instrument for registration is immediately noted in the presentation record and a memorial thereof made with the least possible delay. The possibility of any error in effecting a memorial must be eschewed and, in that context, noting in the presentation record of the date and exact time of presentation of instruments for registration becomes highly significant, for priority is thereby preserved and indefeasibility of title assured.

Given the amount of fraud perpetrated within a paper system, the integrity of the Torrens system of State guaranteed title under section 340 of the Code shall be maintained in an electronic system. The writer's view of the Sixteenth Schedule is that it is possible to maintain a Torrens based electronic registration system provided safeguards aimed at minimizing the opportunity for electronic based fraud to occur are implemented. Some of these safeguards, such as limiting access to registered users, requiring certifications of authority and capacity from users and the use of public key infrastructure (PKI) systems for digital signatures, are present in the successful systems operating in other Torrens jurisdictions. Given the experience of other jurisdictions and the lessons learned from them, it should be possible for the State Authorities in Peninsular Malaysia to develop and implement a system that fulfils not only legal requirement but also maintains the confidence of users in a land registry system of title by registration guaranteed by the State.

III. THE NEED FOR NEW ENABLING PROVISIONS

Introduction of Electronic Dealings (e-Dealing or e-Urusniaga)

THE process of creating and lodging an electronic dealing is called e-Dealing. Under e-Tanah System in future, it is proposed that e-Dealing allows electronic submission of application for transfer, lease, charge or easement of the land. By legal definitions of statutory instruments under the Code, the successful electronic environment of land dealing (e-Dealing) requires enabling legal framework to be provided therein for the following prerequisites:

- There must be e-Title which can be generated by the system;
- There must be e-Form application system;
- There must be e-Attestation application system;
- There must be e-Certification by use of digital signature;
- There must be e-Stamping system;
- There must be e-Presentation application system; and
- There must be e-Registration system.

How the system works:

i. Creating and preparing an e-Dealing

An e-Dealing is created electronically using electronic templates in e-Tanah system where many details such as current owner's name are entered automatically onto the electronic template from the titles register. The workplace of e-Tanah system is a 'cyberfile' used to create and manage all aspects of each e-Dealing, including searching, preparing instruments and messaging. In this workspace, the conveyancers can view and manage online title dealings created by them.

ii. Pre-validation

Once prepared, an e-dealing can be pre-validated - checked to ensure that the dealing will pass registration if submitted in its present state. When an instrument is pre-validated, it will pass (but for signing) if it is correct. The status screen will show the status 'draft' for unsigned instruments and 'signed' for signed instruments. When the whole e-dealing is pre-validated, it will fail if any of the instruments remains unsigned. An incorrect dealing can be amended rather than having to wait until it is rejected and returned. Pre-validation can be done at any stage from when the dealing is prepared until submission.

iii. Attestation and Signing

To submit an e-dealing, the instruments must be attested and certified by the persons stipulated in the Fifth Schedule of the Code, and subsequently electronically signed using a digital certificate. Only conveyancers who are nominated on the e-Tanah A&I (Authority and Instruction) form can certify

and sign e-Dealings. They must have a digital certificate and appropriate privilege allocated within the firm.

iv. Stamping and release

Once both conveyancers are satisfied that the dealing can proceed, they can proceed for stamping through e-Stamping application system provided by Lembaga Hasil Dalam Negeri (LHDN). This allows for the instruments to be released. When all the instruments have been released, the dealing can be electronically submitted to the relevant Land Registry through e-Tanah System online.

v. Submission

The e-Dealing is submitted electronically to land Registry using e-Tanah online and a presentation priority date and time is assigned.

vi. Registration

Upon registration, e-Tanah system runs automated checks. If the dealing passes, it is registered by the Registrar immediately and the titles register is automatically updated without manual intervention by the Land Registry. The submitting conveyancer receives an electronic notice confirming registration. If the dealing is rejected, it is returned to the conveyancer through e-mail so that it can be modified and resubmitted.

Introduction of Electronic Submission (e-Submission or e-Mohon)

THE process of creating and submitting an electronic non-dealings matters relating to land under the Code is called e-Submission. Under the futuristic e-Tanah System, it is proposed that e-Submission allows electronic submission of application for matters such as caveat or prohibitory order involving the land. By legal definitions of statutory instruments under the Code, the successful electronic environment for making applications relating to land matters other than dealings (e-Submission) requires enabling legal framework to be provided therein for the following prerequisites:

- There must be e-Title which can be generated by the system;
- There must be e-Form application system;
- There must be e-Lodgement application system;
- There must be e-Certification by use of digital signature;
- There must be e-Presentation application system; and
- There must be e-Registration system.

How the system works:

i. Creating and preparing an e-Submission

An e-Submission is created electronically using electronic forms (e-Form) templates in e-Tanah system where many details such as current owner's

name are entered automatically onto the electronic form template from the titles register. The database of e-Tanah system is a 'cyberfile' used to create and manage all aspects of each e-Submission including searching, preparing application documents, lodgement of caveats and messaging. In this e-Tanah environment, the applicants can view and manage online land matters applications other than title dealings created by them.

ii. Pre-validation

Once prepared, an e-submission can be pre-validated - checked to ensure that the submission will pass approval or registration if submitted in its present state. When an application is pre-validated, it will pass (but for signing) if it is correct. The status screen will show the status 'draft' for unsigned documents and 'signed' for signed documents. When the whole e-submission is pre-validated, it will fail if any of the documents remains unsigned. An incorrect submission can be amended rather than having to wait until it is rejected and returned. Pre-validation can be done at any stage from when the electronic application is prepared until submission.

iii. Verification and Signing

To submit an e-dealing, the instruments must be verified by the applicants and electronically signed using a digital certificate. Only applicants who are nominated on the e-Tanah A&I (Authority and Instruction) form can certify and sign e-Submissions. They must have a digital certificate and appropriate privilege allocated within the firm.

iv. Submission

The e-Submission is presented electronically to land Registry using e-Tanah online and a presentation priority date and time is assigned.

v. Approval or Rejection

The e-Submission is approved electronically by the land Registry using e-Tanah internal integrated application system and acknowledgement to the applicant is conveyed through e-mail assigned. If the submission is rejected, it is returned to the applicant through e-mail so that it can be modified and resubmitted.

vi. Registration

Upon registration, e-Tanah system runs automated checks. If the submission passes the approval requirements, it is registered by the Registrar immediately and the titles register is automatically updated without manual intervention by the Land Registry. The submitting applicant receives an electronic notice confirming registration.

Introduction of Single Title System

AS provided by sections 158 and 159 of the Code, there are two (2) types of land title namely Registry Title – that is the register of grants and the register of State leases; and Land Office Title – that is the Mukim Registers.

In view of the centralized database for e-Tanah system in future, it is necessary to create a single title system which is in line with the concept of 'single point of contact' (SPOC) for land administration delivery system. In this regard, it is suggested that all Land Office titles to be merged or converted into a single title system, called as Registry title only. As such, there are provisions of the Code which have to be amended or repealed to meet this purpose.

This proposal essentially diverts the existing provisions of the Code towards the following consequences –

i. All existing Land Administrators and Assistant Land Administrators shall be required to be appointed and notified in the Gazette as Deputy Registrar of Titles in accordance with section 12(1)(b) of the Code –

> *"12. The State Authority may appoint for the State-*
> *(a) a State Director of Lands and Mines, a Registrar of Titles and a Director of Survey and Mapping;*
> *(b) so many Deputy Directors of Lands and Mines, Assistant Directors of Lands and Mines, Deputy Registrars of Titles, Deputy Directors of Survey and Mapping,…".*

ii. All existing District Land Offices have to be re-established as Branches to the State Director of Lands and Mines Office;
iii. All Land Office Titles maintained by the District Land Offices have to be converted into Registry Titles; and
iv. All data regarding the titles can be centralized at the Director of Lands and Mines Office whereby, registration of titles and dealings could be presented at any District Land Offices of the State.

Initially, there are few provisions relating to Land Office titles which have to be amended and partly repealed. For instance, provisions relating to application for order for sale affecting Land Office titles under sections 260 to 265 and other related provisions are no longer significant and have to be repealed. Alternatively, such applications by chargee would have to be filed in court in accordance with section 256 of the Code.

The proposed single title system would somehow reduce the category of titles into two categories only, namely grant for title which is held in perpetuity and Mukim lease which is held on lease basis. These categories of title may

lead to a better understanding of the public as well as facilitating the administration of land and its delivery system.

This proposal can be implemented in stages. It is advisable to create single title system by legal force and make it in parallel with On-line Registration under the e-Tanah System. Therefore, it is pertinent to amend the Code to provide a method whereby Minister may with the approval of the National Land Council declare any State to enforce a single title system by converting all Land Office Titles to Registry Titles under the operation of electronic title by registration (On-line Registration).

Introduction of Electronic Strata Titles (e-Strata)

THE process of creating and submitting an electronic application for subdivision of building under the Strata Titles Act 1985 (STA) is called e-Strata. Under the futuristic e-Tanah System, it is proposed that e-Strata allows electronic submission of application for subdivision of building into parcels, subdivision of land into land parcels, subdivision or amalgamation of parcels etc. By legal definitions of statutory forms under the STA, the successful electronic environment for making applications relating to strata matters require enabling legal framework to be provided therein for the following prerequisites:

- There must be enabling provisions to produce strata titles prior to vacant possession;
- There must be e-Title which can be generated by the system;
- There must be e-Form application system;
- There must be e-Submission application system;
- There must be e-Certification by use of digital signature; and
- There must be e-Registration system.

How the system works:

i. Creating and preparing e-Submission

The e-Strata is created electronically using electronic forms (e-Form) templates in e-Tanah system where many details such as current owner's name are entered automatically onto the electronic form template from the titles register. The database of e-Tanah system is a 'cyberfile' used to create and manage all aspects of each e-Strata, including searching, preparing application documents, lodgement of caveats and messaging. In this e-Tanah environment, the applicants can view and manage online land matters applications other than title dealings created by them.

ii. Pre-validation

Once prepared, e-strata can be pre-validated - checked to ensure that the submission will pass approval or registration if submitted in its present

state. When an application is pre-validated, it will pass (but for signing) if it is correct. The status screen will show the status 'draft' for unsigned documents and 'signed' for signed documents. When the whole e-strata is pre-validated, it will fail if any of the documents remain unsigned. An incorrect submission can be amended rather than having to wait until it is rejected and returned. Pre-validation can be done at any stage from when the electronic application is prepared until submission.

iii. Verification and Signing

To submit an e-strata, the application forms must be certified by the applicants and electronically signed using a digital certificate. Only applicants who are nominated on the e-Tanah A&I (Authority and Instruction) form can certify and sign e-Submissions. They must have a digital certificate and appropriate privilege allocated within the firm.

iv. Submission

The e-Strata is submitted electronically to Land Registry using e-Tanah online and a presentation priority date and time is assigned.

v. Approval or Rejection

The e-Strata is approved electronically by the Land Registry using e-Tanah internal integrated application system and acknowledgement to the applicant is conveyed through e-mail assigned. If the submission of application for strata subdivision is rejected, it is returned to the applicant through e-mail so that it can be modified and resubmitted.

vi. Registration

Upon registration, e-Tanah system runs automated checks. If the e-Strata application passes the approval requirements, it is registered by the Registrar immediately and the strata titles register is automatically updated without manual intervention by the Land Registry. The submitting applicant receives an electronic notice confirming registration.

This proposal can be implemented in stages. It is advisable to implement the e-Strata system in parallel with On-line Registration under the e-Tanah System. Therefore, it is pertinent to amend the STA to provide a method whereby the Minister may with the approval of the National Land Council declare any Land Registry of the State to enforce e-Strata system by converting all manual strata titles to e-Strata Titles under operation of Electronic Land Administration System for Strata Titles in accordance with the Sixteenth Schedule of the Code.

Automatic Extension of Leasehold

i. What is the difference between 'renewal of land leases' and 'extension of land leases'?

Application for renewal of land leases is an application by landowner to renew land title in respect of which the existing term has expired; whereas application of extension of land leases is an application to extend the term of existing land title.

ii. How to apply an extension of land leases term?

The landowner must submit an application in a prescribed form to the Land Registry where the land is located. A photocopy of the old title, print out of title and a plan showing the land are also to be submitted. The landowner is also required to furnish full details on the improvements found on the land such as buildings and cultivation.

iii. What are the possible options given to the land owner?

Under the leasehold extension policy arrangement by the State Authority, the landowners are possibly given the choice to take a 60-year or 99-year lease, payment for which may be made in instalments over 10 years.

iv. How the premium of this leasehold extension is calculated?

The premium calculation is based on a simple formula, taking into consideration the land usage, category of land and the market value, excluding the value of the building and improvement to the land.

v. Does the Code adopt the approach for automatic renewal or automation extension term of leasehold land in Peninsular Malaysia?

Basically, there is **no specific provision in the Code that allows automatic renewal or extension upon expiry of leasehold**. It is pertinent to note that the term 'lease' is derived from alienation of land by the State Authority and therefore, in order to obtain an extension or renewal of its term, the new leasehold for the said land shall be treated and granted through alienation process only. It cannot just simply be renewed or extended by the Registrar.

In view of the Code, an "extension or renewal of term of leasehold land" may be obtained through the following administrative approaches:

- The leasehold land must first be surrendered to the State Authority under section 197 of the Code;
- Accordingly such leasehold land will be reverted to the State Authority and becomes State land under section 199(1) of the Code (but it is not guaranteed by the Code that the applicant will get back his land. It depends on the discretion of the State Authority);
- The land owner subsequently apply for alienation of that land with new term of lease;
- The State Authority approves the alienation of that land with terms and conditions as may be prescribed in the State Land Rules, including new period of leasehold not exceeding 99 years – section 76 of the Code; and
- Subject to payments that have to be made by the owner (applicant), the new land title will finally be registered with new lease period.

In respect of section 79(2) of the Code, the State Authority in Peninsular Malaysia has not been conferred with the powers to automatically renew or extend the leasehold terms without going through the alienation process. In other words, the current procedure of the Code impliedly require that in order to obtain a new term of leasehold, the existing leasehold land has to be surrendered first and subsequently, the land become State Land and the State Authority then may re-alienate the land with new terms of lease to the person who is the registered proprietor thereof.

vi. How to complement this automatic extension of land leases under the Code?

The Code has to be amended to meet this purpose. By incorporating the new words of law into the Code, the existing landowner can apply for an extension of lease term at any time. He does not need to wait for the expiry of the lease. So if his bank requires a longer lease as security, he can apply to extend the lease to meet the requirement of the bank. The proposed amendment also brings along the assurance that the existing landowner gets the extension, not anybody else. This possible amendment has come about due to the sensitivity of a caring government after the matters were raised by the members of the public. The amendment of the Code is most significant for all existing leasehold land owners in the States of Peninsular Malaysia.

Do Away With Qualified Title (QT)

THE significant part of e-Tanah system lies in its external system integration with e-Cadastre. Under this arrangement, the Certified Plan for purposes of Final Title (FT) registration can be produced by e-Cadastre in one day timeframe. This implies that the Qualified Titles are now no longer vital to electronic environment of land administration.

The legal provisions for QT were originated in the Code to enable land to be alienated and the title issued thereto on a temporary basis due to the usual long waiting period for a final survey to be carried out before it can be converted into FT. If the e-Cadastre now is able to produce Certified Plan within one day, why must we have a QT rather than an FT? With this facility provided by technology, should we prefer QT without a proper final survey of the land? If the QT confers a similar degree of ownership rights as an FT, why don't we go for FT?

The intention to do away with QT has been initiated by the previous amendments of the Code. For instance, Act A1104 has amended the provisions of sections 79, 135, 140 and 146 including section 204B of the Code. In addition, new provisions of sections 183A, 184A and 185A were incorporated into Chapter 3 of Part Eleven of the Code. Consequently, QT would no longer be required to be issued upon alienation. Any application for subdivision, partition and amalgamation of land could not be processed for land held under QT. The amending Act encourages the Land Administrator or Registrar to issue FT without necessarily issued a QT in continuation as he thinks just and expedient to do so. This intention has been recently enhanced by Act A1333.

In order to implement this proposal under the environment of e-Tanah System, the whole Part Eleven of the Code have to be repealed and any references to QT in the Code have to be deleted. As a consequence of these amendments, there would be an increase in demand for the issuance of final title. A pro-active action as well as strategies to overcome the problem of existing qualified title must begin from now. The options available to convert the existing QTs to FTs are by setting up a special task force or through outsourcing.

Streamlining The Statutory Forms Into Electronic Environment

THE statutory forms available in the First Schedule of the Code are required to be customised to make it simple, systematic, easy to use and user-friendly. Under the proposed development of e-Form in the e-Tanah system, the concept of single contact point of forms has to be designed and it should be able to accommodate as many types of applications as possible. This approach can be materialised by avoiding various types of forms for every single type of application as presently prescribed in the Code. Thus all the checklists used by the Land Registry's staff should be an effective tool to trace any prerequisites for submitting of applications.

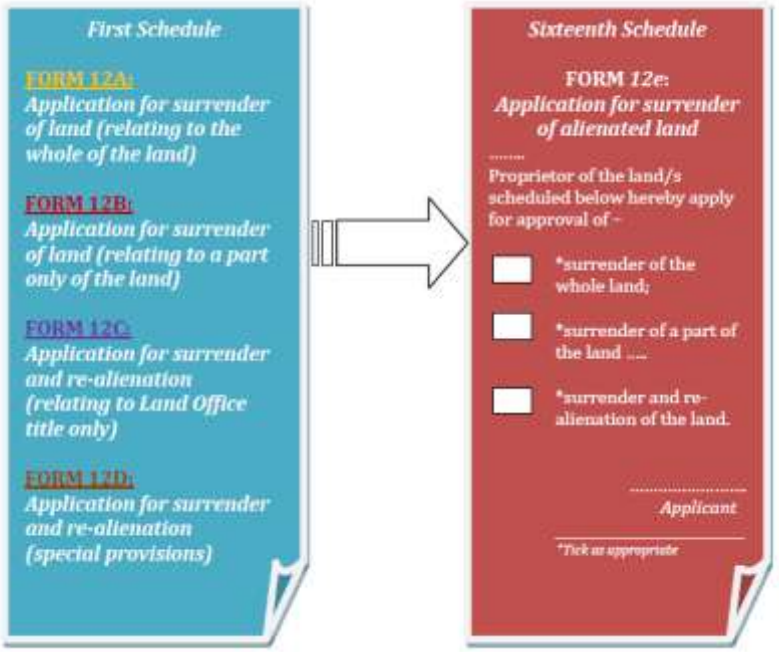
For instance:

i. the format for attestation clause in Form 13B in which it's construed as part of the land dealing forms such as transfer (Form 14A) or charge (Form

16A/16B) and some other related forms, is deemed to be complicated and difficult to understand for a layperson who intends to fill up the form. The forms are suggested to be drafted and printed in a standard template and size for easy binding. The First and Tenth Schedules (section 436) and the Sixteenth Schedule of the Code have to be amended and modified to meet this purpose.

ii. All types of statutory forms for surrender of alienated land in the Code can be merged into a single format in which it will accommodate all types of applications. This approach can be materialized as illustrated below:

Figure 2: Why New Enabling Provision Is Necessary?



The future land administration in Peninsular Malaysia envisages that the Land Registry of the State will embark on a project to introduce an optional system of electronic registration of applications. As a matter of fact, this work began several years ago upon commencement of Computerized Land Registration System (CLRS) under the Fourteenth Schedule of the Code and has, from the outset, fully involved representatives of key stakeholders. Researches, dialogues and consultations have demonstrated that there is a desire for an electronic alternative to paper registration and that clear benefits can be seen.

In these transactions, the existing conventional instruments of land dealings will continue to be used but, instead of being on paper, it will be in

electronic form. These electronic forms will be generated within a secured system maintained by Land Registry and will contribute to a process which will be faster and cheaper than paper registration.

The introduction of electronic registration should assist the Land Registry to enhance electronic service delivery to customers in accordance with both the e-Government initiative and the Malaysian Government Transformation Programme.

Electronic land registration is therefore an essential enabler to achieve the goal of making land transactions easier for all, and will see the development of a service which enables members of the legal profession and mortgage lenders to lodge documents online.

Similar electronic registration systems are being developed in other Torrens jurisdictions such as Australia, New Zealand and Singapore. The development of this service should lead to a number of potential benefits including:

i. Reductions in the cost of processing applications, which may lead to reduced fees for customers who opt for electronic registration;
ii. Improved quality of submitted documentation, leading to fewer rejections and less duplication of effort for Land Registry's staff and the staff in solicitors' practices;
iii. The potential for faster registration; and
iv. Reduced storage costs for customers who opt to obtain electronic documents.

At present the provisions of the Code underpinning registration on the Title Register (Register Document of Title) restricts property transactions to paper processes. The Title Register can be converted into electronic form under operation of the Sixteenth Schedule of the Code but the barriers to full electronic registration lie in the means of communicating input to and output from the Title Register. These barriers can be addressed by amending statutory provision requiring certain prescribed transactions to be in writing.

IV. SECURITY FEATURES OF ELECTRONIC LAND REGISTRY – DOES INTEGRITY OF INDEFEASIBLE TITLE IS MAINTAINED BY THE e-TANAH SYSTEM?

ONE of the hallmarks of the Torrens System is the principle of indefeasibility of title, that is, once title is registered, absolute security of that title is guaranteed to the registered proprietor. This is the "keystone" of the Torrens system. The move towards a system of electronic submission of instruments in the Land Registry will see changes to lodging and registration practices. The fear is that allowing internet access to the land registry system may open greater possibilities for computer related fraudulent practices and potentially threaten

the security and integrity of the title. It is acknowledged that fraudulent practices have developed in the paper based Torrens system but the use of technology could potentially open up opportunities not only to commit the same types of fraud evident in the paper system but also to invent new methods for defrauding individuals particularly through identify fraud.

Identity fraud refers to the "unlawful taking of another person's details without their permission". It "generally involves a person falsely representing himself or herself as either another person or a fictitious person" and using that assumed identity to commit a crime. In the paper world, an important element required for the perpetration of identity fraud is the physical proximity between the victim and the thief, with the thief relying on personal information obtained from stolen wallets, stolen mail etc. to create or assume a false identity. With the internet and electronic data storage systems, the ease in which an individual can 'steal' such personal information is increased. The reason for this is that in electronic systems, physical proximity is no longer an issue:

> *Individuals who use electronic services either actively, by inputting their details on the internet, or passively, by using electronic services that contain their details such as bank cards, supermarket loyalty cards or library membership cards, are exposing themselves to the threat of a criminal anywhere in the world stealing their identity by means of a computer network. (R. Massey, 2003)*

The problems of identity fraud and the security and integrity of electronic databases are particularly pertinent to an electronic registration system where all dealings are done online and the titles are held in a computerised format in an electronic database. These two problems have the potential to undermine the underlying premise of which the Torrens system is based – a guaranteed indefeasibility of title.

> *In the past, sophisticated paper-based systems were present to reduce the opportunities for fraud involving conveyancing transactions. As we move into on-line registration of titles and electronic transactions, new opportunities arise for people within organisations as well as for external customers to misrepresent themselves and to manipulate electronic transactions for financial gain. (Graycar & Smith, 2002)*

Given the potential for increased identity fraud in an electronic environment, the security features of electronic land systems are critical to the maintenance of integrity within the system and its reliability.

i. Access to the system

Generally, access to the system requires the establishment of a user account with the system. For instance, access to Landonline in New Zealand is done *via* a digital certificate. An individual can only obtain and

use a digital certificate when associated with a firm that has bought a license to use Landonline. At the time of application for the license, the firm will be prompted to provide the names of the people who will be using the Landonline functions available under that licence. These staff members listed on the application form must each have individual Digital Certificates.

In British Columbia, Electronic Filing System (EFS) filings are done through BC Online. Thus users must have an account with BC Online in order to use the EFS system. Further, each individual using EFS within that account is required to have his/her own user ID. The BC Online user IDs are created at the time of setting up the BC Online account.

In Singapore the law firm wanting to use Singapore Titles Automated Registration System (STARS) will need to have a lodgement account before instruments can be lodged. Users within that firm who wish to have access to STARS must each have a user account. These accounts come with a user ID and a password which uniquely identify the individual who have made access to or is accessing the system. The appointed administrator within the law firm manages the user ID and password. If the user is a lawyer, the ID will be linked to the Netrust Digital Certificate. All users who need to use STARS must login to the system with their user ID and password. However, users who need to sign instruments (lawyers) must log in using the user's Netrust card via the "Netrust user" login. Other users who do not need to sign instruments login via the "Regular user" login.

The question of access in Malaysian e-Tanah System for public users at this point of time will be similar to what has been practiced in Singapore. However the actual method for accessing the system by the public users is not yet finalised due to the fact that the proposed online application systems for e-Dealing and e-Submission are now depending on the requirement for legislative review. It is pertinent to note that restricting access only to authorised users would make it easier for the system administrator to monitor and track usage of the system as well as to maintain an audit trail of the users in the system. This would be more difficult to achieve in a system that is open for all to use.

ii. The electronic signature infrastructure used by the system

Public key encryption administered under a PKI system is commonly used as a method for signing documents electronically. Public key encryption is an encryption technique using two sets of mathematically related keys – the public key and the private key. Both keys are mathematically related to each other.

However, it is impossible to deduce the private key from the public key because both keys consist of very large prime numbers. The public key can be made available to the world at large whilst the private key must be kept private. To encrypt a message, the sender uses his/her private key to encrypt the message (first encryption). The intended recipient would then use the sender's public key to decrypt the message. However, since the public key is made available to everyone, to ensure confidentiality and that only the intended recipient can decrypt the message, the sender would add a second layer of encryption using the recipient's public key (second encryption). Thus to decrypt the message, the recipient must first use his/her private key to decrypt the second encryption, and then use the sender's public key to decrypt the first encryption. In this way public key cryptography can be used to provide proof of the integrity and authenticity of the message (i.e. it has not been tampered with).

The difficulty with public key cryptography is that it does not prove the sender's identity. When a person receives a digitally signed message from a sender, how would that person know that the public key of the sender contained in the digitally signed message is really the sender's public key? An impostor (X) could have generated a public/private key pair, signed the message, stating that it is from A. The recipient of the digitally signed message, if he/she believes X, would then assume that the message came from A. The recipient would use X's public key in the message to decrypt the digital signature, thinking that it is A's public key.

In this regard, public key infrastructure can be used to solve this problem. Systems developed to manage private/public keys are referred to as PKI. PKI seeks to ensure that the system for distribution of the keys is made reliable. The PKI systems around the world generally utilise the services of a trusted third party to perform this function. The trusted third party is generally called a certification authority (CA). Its main function is to verify the relationship between the identity of the sender and the public key of the sender through the issuance of certificates. The certificate issued by the trusted third party certifies that the public key is indeed the valid public key for that sender. The recipient upon receiving an encrypted message will receive the sender's public key and also a certificate from the CA certifying that that public key is correct and valid.

For example, the New Zealand e-Dealing model uses a form of PKI infrastructure with Land Information New Zealand (LINZ) as the registration authority and a third party vendor called beTRUSTed as the certification authority. The Certification authority provides the PKI infrastructure service responsible for generating digital certificates. To certify and sign an instrument the solicitor must use his/her digital certificate.

To obtain a digital certificate, Landonline users must apply to the LINZ Registration Authority using an online form on the Landonline web site. Proof of identification must be successfully completed before a digital certificate is issued. The proof can be supplied in three forms which must be current. The options are:

- a passport;
- a driver's licence; or
- a firearms licence.

The proof of ID form must be completed on paper. A solicitor, court registrar, Justice of the Peace or a Notary Public or any person authorised to take declarations pursuant to the Oaths and Declarations Act 1957 (NZ) will need to cite this form for verification. The verified proof of ID form must be faxed or mailed to LINZ acting as the registration authority.

Once the application has been approved, the applicant is notified *via* email. The email contains the activation codes necessary to generate the digital certificate. During this registration process, the private and public keys are also immediately created from the local internet browser in the applicant's workstation.

The private key that is generated during registration is the un-revealed key pair and hence must be kept private. The public key is the revealed part of the key pair. When the public key is generated, the public key is automatically delivered to the Certification Authority (beTRUSTed). It is then signed and returned to the subscriber as a digital certificate. A copy of the public key is also kept by the Certification Authority and is posted to the Certification Authority Master Directory. The public key is used to verify a digital signature and hence it is made freely available to LINZ who receives digitally signed transactions from the subscriber.

The Singapore STARS system uses digital signatures in a PKI environment with Netrust as the CA. To sign documents electronically, lawyers will require a digital certificate, issued by Netrust Pte Ltd. To register for a Netrust Digital Certificate the following is required:

- Identification document of applicant (identity card, passport or work permit for foreigners);
- Photocopy of front and back of identification document; and
- Netrust digital personal certificate application form or for a Corporate Netrust digital certificate, a corporate certificate application form.

For a corporate Netrust digital certificate, the following is also required:

- Letter of authorization, authorizing the applicant to apply for the card;
- Photocopy of the letter from Law Society of Singapore confirming either:
  - the law firm's registration (with the law society); or
  - the law firm's registration code;

- Alternatively, if the company is registered with Registry of Companies and Businesses, a photocopy of its certificate.

Malaysian e-Tanah system had decided on the appropriate technological framework for the use of electronic signatures similar to Singapore's experience. Under e-Tanah environment, it appears that Land Registry envisages that the electronic signatures will be based on some form of PKI. The e-Tanah system uses digital signatures in a PKI environment with DigiCert as the CA. To sign documents electronically, users of e-Tanah system will require a digital certificate, issued by DigiCert. To register for a Digital Certificate the following is required:

- Identification document of applicant (identity card, passport or work permit for foreigners);
- Photocopy of front and back of identification document; and
- DigiCert digital personal certificate application form or for a Corporate DigiCert digital certificate, a corporate certificate application form.

From the above it can be seen that all three jurisdictions use digital signatures through PKI as their electronic signature infrastructure. This is not surprising as it is generally considered that cryptography is the solution for maintaining a degree of security over information, public key encryption being the most secured form of cryptography. Improvements in technology might see the introduction of new forms of encryption techniques, or the increase usage in biometric systems such as fingerprint verification, retinal and iris scanning, DNA verification and voice/facial verification. However at this point in time, public key cryptography appears to be the most viable solution to protecting the security of information in electronic transactions.

This is not to say that public key encryption is immune to attacks against the system. Public key systems require that cryptographic key pairs be issued to individuals who are able to establish their identity to an appropriate degree of assurance. However it is quite possible for fraudsters to produce false documentation to circumvent the system. Other issues to consider in a PKI environment include the manner in which cryptographic keys are generated and given to the users, and the security of the private key. If the individual is allowed to generate the key pairs, it is possible for that individual to retain a copy of the private key for later illegal use. Where private keys are stored in the individual's computer, their security may be compromised if there are inadequate access mechanisms such as poor use of personal identification numbers (PIN) or passwords. Fraud can still be perpetrated if another person obtains the private key and PIN or password.

No system, be it electronic or paper, can be full-proof against fraud. The key to minimising the occurrence of fraud is continued vigilance by all parties involved in a land transaction:

- The certification authority in enforcing proper identification checks so that key pairs are issued to authentic users of the system;
- Law firms should establish internal rules and protocols with regards to digital certificates use and misuse; and
- Solicitors should ensure that the security of their digital certificate and password are not compromised.

iii. Restrictions on signing documents electronically

The second security feature of the systems is the restriction on parties who can sign electronically. In New Zealand only solicitors with current practising certificates and licensed land brokers can certify and sign e-Dealings. This is similar to the situation in Singapore where only lawyers can electronically sign caveats, withdrawal of caveats and extension of caveats and British Columbia, where only Juricert authenticated lawyers or notaries can electronically sign instruments.

In Malaysia, the Code provides special provision under Sixteenth Schedule for the Registrar to authenticate the registration of title by using digital signature, but no special provision has been enacted for practitioners to sign electronic documents on behalf of their clients. However, when the e-Dealing and e-Submission of the e-Tanah system is in operation, it is anticipated that more than 80% of conveyancers might be reluctant and express fears over the signing of electronic documents on behalf of their clients. The main concerns are fraud, risk of misunderstanding between conveyancer and client, and dealing with unusual ways of executing documents.

Will limiting the ability to sign documents to practising solicitors improve the security of the system? One advantage may be that it would be easier to maintain security in such a 'closed' system. In terms of checking the identity of the solicitors and the issuing of key pairs, the certification authority could work closely with the law society who would provide the certification authority with a list of current practising solicitors. It would also be easier to maintain an audit trail and tracing fraudulently signed documents back to the solicitor who has been issued the key pair. Finally, limiting the ability to sign to solicitors allows law firms and the law society to impose rules and obligations on the solicitors to maintain the security of the key pairs and to prevent abuse and misuse.

In this point in time, given the infrastructure and cost involved in issuing key pairs and digital certificates and in maintaining a PKI system, the practical solution is that only a certain class be allowed to digitally sign

documents, the most obvious choice being solicitors. Furthermore, in jurisdictions such as British Columbia, Ontario and New Zealand, the conveyancing practice prior to the introduction of electronic lodgement was for lawyers to sign land title documents on behalf of their clients. In such jurisdictions, it was simply a matter of implementing this practice in the electronic system.

iv. Protocols for updating the land register

In Singapore, British Columbia and Ontario, the electronic system is limited to the electronic submission of documents and does not encompass electronic registration and the making of any entry in the register by a user external to the land title system. Manual intervention in the form of the Land Titles Office staff examining and processing the electronic document is still required. In Ontario, staff at the Land Titles Office must certify the document before it is officially "registered". If the document is a transfer or other change of ownership document, the ownership field of the register must be updated by the Land Titles Office staff.

In Malaysia where the proposed e-Dealing of e-Tanah system leads to automatic registration without manual intervention, conveyancers have the statutory responsibility of providing specified attestations to electronic instruments before the instruments can be lodged for registration.

It has been the practice for conveyancers in Malaysia to provide attestations verifying that the documentation being submitted is appropriate to permit the Registrar or Land Administrator to register the dealing instrument based on the documentation submitted. This attestation includes correctness of the documentation, identity of the parties, execution of the documents and all matters leading to a change in the status of ownership or interest in the land in question. The difference between the paper based transaction and transactions under e-Dealing is that in the paper environment, staff at Land Registry manually check all documents lodged before the Register Document of Title (RDT) is updated. With e-Dealing, the attestation and signing of an instrument leads to an automatic and instantaneous entry onto RDT when the document is submitted, thus placing a high level of responsibility on the proprietors and conveyancers to ensure that the attestations are correct for the purposes of registration. It should be noted that failure to provide correct attestation does not affect the validity of the registration. Once the attestations incorporated in the instrument are provided and the instrument lodged and registered, indefeasibility of title rests on the registered proprietor, regardless of the correctness of the attestations. Thus if conveyancers are not vigilant in providing correct attestations or ensuring that the information contained in the electronic instrument is correct before it is

lodged and then automatically registered, mistakes in the register would occur.

There are however certain in-built features within the e-Tanah online system designed to minimise errors from occurring:

- The pre-validation feature: Once prepared, an e-dealing can be pre-validated, that is, checked to ensure that the dealing will be fit for registration if submitted in its present state.
- The templates used to create an e-Dealing have certain pre-defined fields such as the owner's name and address. These details are inserted onto the e-Dealing automatically by the system, using the information available from the electronic database maintained by the Land Registry.
- On lodgement of dealing, the e-Tanah online system itself runs automated checks and if the e-Dealing contains any errors, the e-Dealing is sent back to the workspace of e-Tanah system so that it can be modified and re-submitted.

V. PROPOSED CHANGES TO THE NATIONAL LAND CODE

IT is proposed to change the Code particularly the Sixteenth Schedule by providing:

i. That the Minister may appoint a date, with the approval of National Land Council, for the coming into operation of single title system in any Land Registry;
ii. That any application relating to non-dealings matters of alienated land may be electronically submitted to any Land Registry of the State upon coming into force of e-Tanah System;
iii. That a registration application may be made by electronic communication where it is in respect of a type of dealing which is authorized by Registrar's direction and falls within a geographical area so authorized;
iv. For authorized users to make registration applications using the electronic system and to make provision for the electronic system to capture data and titles; and
v. For any consequential amendments necessary to other related laws and the State Land Rules to facilitate electronic registration.

VI. PROPOSED CHANGES TO THE STRATA TITLES ACT 1985

IT is proposed to change the STA by providing:

i. For the proposal to issue strata titles prior to vacant possession;
ii. That the Minister may appoint a date, with the approval of National Land Council, for the coming into operation of Electronic Land Administration System for Strata Titles in any Land Registry;
iii. That any application for strata titles may be submitted electronically to any Land Registry of the State upon coming into force of e-Tanah System;

iv. For authorized users to make registration applications using the electronic system and to make provision for the electronic system to capture data and titles; and
v. For any consequential amendments necessary to other related laws and the State Strata Titles Rules to facilitate electronic registration.

VII. CONCLUSION

Computerisation of land registration systems is an inevitable consequence of the global penetration of information technology into daily transactions. This change has already occurred in countries such as New Zealand, Canada and Singapore, with proposals being put forward in e-Tanah system in Malaysia. It has been globally commented that the maintenance of the integrity and security of title is crucial to the success of an electronic land titling system. To achieve this, safeguards aimed at minimising the opportunity for electronic based fraud to occur must be implemented within the electronic land system. From the above analysis, it can be seen that some of these safeguards, such as limiting access to registered users and the use of PKI systems for digital signatures, are present in the successful systems operating in other Torrens jurisdictions. Using these systems as an example, it would be possible for Malaysia to successfully develop an electronic land titling system incorporating these safeguards so as to uphold the confidence of users in a land registry system of title by registration guaranteed by the e-Tanah system.

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THE DEPARTMENT OF THE DIRECTOR GENERAL OF LANDS AND MINES (FEDERAL): THE NEED TO REVIEW THE FUNCTIONS OF THE FEDERAL LANDS COMMISSIONER IN THE FEDERAL TERRITORIES OF KUALA LUMPUR AND PUTRAJAYA

ANESH GANASON[1]

Keywords: Federal Lands Commissioner, functions, federal land management.

I. INTRODUCTION

THE Federal Lands Commissioner was established in 1957 in accordance of the Federal Lands Commissioner Act 1957 (Act 349). The purpose of establishing this position is to assist the Federal Government to hold lands in the States of the Federation for Federal Government funded projects.

The Federal Constitution has drawn out several provisions regarding the relationship of the Federal and State Governments under Part VI of the Federal Constitution (Articles 73-95E). Articles regarding lands required by the Federal Government for public purposes have been ironed out through Articles 83-86. It gives special treatment to the Federal Government if it requires any lands in a particular State. It becomes the duty of that State to acquire or reserve that land for the purpose of the Federal Government after agreeing to terms and conditions set for. These requirements are stated clearly in Articles 83-86 of the Federal Constitution. These lands acquired by the Federal Government can be reverted to the State or dispose to any individuals or corporation the Federal Government deems fit if it is no longer required by it with the approval of the Federal Government and not through any operation of law relating to land administration. This condition is clearly stated in Article 86 of the Federal Constitution.

Nevertheless things changed in 1974, when the Federal Constitution was amended through the Constitution (Amendment) (No. 2) Act 1973 (Act A206) with the establishment of the Federal Territory of Kuala Lumpur and again with the Constitution (Amendment) Act 2001 (Act A1095) with the establishment of the Federal Territory of Putrajaya. The concept of relationship between Federal and State Governments in the Federal Territories differs from the other States due to the special status of these territories, thus the functions of the Federal Lands Commissioner (FLC) differs. Misconceptions and age old practices have diverted the interpretation of law and

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implementation of procedures in the day to day functions of the FLC when it comes to executing the authority in these Federal Territories.

II. MANAGEMENT OF FEDERAL LAND

UNDER section 4 of Act 349, the FLC may acquire movable or immovable properties:

> *"Powers of Corporation*
>
> *4. The Corporation may enter into contracts and may acquire, purchase, take, hold and enjoy movable and immovable property of every description, and may convey, assign, surrender and yield up, charge, mortgage, demise, reassign, transfer or otherwise dispose of, or deal with, any movable or immovable property vested in the Corporation upon such terms as to the Corporation seems fit."*

With this provision, the FLC has all the rights of a registered proprietor stipulated in section 92 of the National Land Code (NLC).

The FLC has control over of reserved lands for public purposes in various States in accordance to section 62 of the NLC. These reserves are recognized as Federal Reserves and are protected under Article 85(5) of the Federal Constitution and the FLC with the consent of the Federal Government has all the rights to use or dispose it to anybody it deems fit without the consent of the respective State Authorities.

With these powers of managing lands for the Federal Government, it has been the practice of the FLC's office to render services for application of alienation for land from various State Authorities in accordance to Article 83 and 85 of the Federal Constitution and section 76 of the NLC and the First Schedule of the respective State Land Rules. The act of acquisition of alienated land is practiced by invoking Article 83 of the Federal Constitution *via* the Land Acquisition Act 1960.

Acquiring vast amount of land through decades has created a large land bank for the Federal Government. Some acquisitions of lands have been left idle and not developed because of change of managements or policy directions. In a way it might seem to be a waste of resources and improper planning by various agencies but with the introduction of matching relevant unused lands to other interested agencies have made it possible for these idle lands to be developed. In some cases, these lands are leased for a short term tenancies of three years to avoid encroachment and as a way to safeguard the lands without the need of fencing or providing security guards. The most extreme efforts are the privatization of these lands for the development of semi-commercial or mega public projects that are funded by private initiatives.

These efforts are in accordance to the law and it is protected by the Federal Constitution. But these actions vary when it is implemented in the Federal Territories of Kuala Lumpur and Putrajaya. The modifications of the NLC through the Federal Territory (Modification of National Land Code) Order 1974 [P.U. (A) 56/1974] for Kuala Lumpur and Federal Territory of Putrajaya (Modification of National Land Code) Order 2001 [P.U. (A) 213/2001] for Putrajaya makes the position of the Federal Government and the FLC as a different entity when it comes to management of land within these territories. These anomalies shall need to be addressed to avoid confusions and challenges by interested parties in the Court of law.

III. ANOMALIES IN PRACTICES

WITH the creation of the Federal Territories of Kuala Lumpur in 1974 and Putrajaya in 2001 through the amendments of the Federal Constitution *vide* Act A206 and Act A1095, the application of the NLC had to be modified for its application in these new territories. These were done through the Modification Orders P.U. (A) 56/1974 for Kuala Lumpur and P.U. (A) 213/2001 for Putrajaya. These modifications provide the enabling provisions of the NLC to be executed in these two territories.

With the establishment of these two territories, the concept of Federal and State relationships stipulated in the Federal Constitution had to be relinquished because the Federal Territories were under the jurisdiction of the Federal Government. This has been stated in section 4 of Act A206 for Kuala Lumpur:

> *"Jurisdiction over Federal Territory*
>
> *4. The Federation shall exercise sovereignty over the Federal Territory and all powers and jurisdiction in or in respect of the Federal Territory shall be vested in the Federation."*

And for the Federal Territory of Putrajaya it is stated in section 4 of Act A1095:

> *"Jurisdiction over Federal Territory of Putrajaya*
>
> *4. The Federation shall exercise sovereignty over the Federal Territory of Putrajaya and all powers and jurisdiction in or in respect of the Federal Territory of Putrajaya shall be vested in the Federation."*

With the coming into force of these amendments, the applications of Articles 83-86 have to be altered and read differently. The element of State and Federal relationships does not exist in the Federal Territories. The modification orders of the National Land Code 1965 through P.U. (A) 56/1974 for Kuala

Lumpur and P.U. (A) 213/2001 for Putrajaya had modified the reference of "State Authority" in the NLC into "the Government of the Federation" and "State land" as "Federal Land". Legally all lands in the Federal Territories are Federal lands and the identification of State reserves or Federal reserves which have been the practice in other States in accordance to Article 85(5) of the Federal Constitution shall not apply.

The office of the FLC still maintains the practice of application of alienation of land and reservation for the Federal Government in the name of the FLC in the Federal Territories of Kuala Lumpur and Putrajaya with the belief that when the lands are alienated to the FLC or reserved under the FLC, then the status of the land becomes a Federal Land. It is submitted that these acts contradict with the interpretation of the modifications of P.U. (A) 56/1974 and P.U. (A) 213/2001 that all land in the territories are Federal Land. This practice also creates a doubt whether the FLC is acting on behalf of the Federal Government or acting as an independent corporation executing its power to hold land as its own in accordance to section 4 of Act 349.

The question of the need of the Federal Government to hold lands in these Federal Territories under titles and reserves can be a subject of discussion. When all lands in the Federal Territories are Federal lands, why there is a need to reserve lands for public purposes which will be held in the context of Federal reserved for all activities stipulated in List I of the Ninth Schedule of the Federal Constitution? There is no need to distinguish between State and Federal reserved because State land does not exist in these territories. This has been the case since these territories were carved out from the State of Selangor. The common beliefs that these territories are considered as States and have their own sovereignty apart from the Federal Government have contributed to this misconception.

The practice of disposing reserved lands in the Federal Territories of Kuala Lumpur and Putrajaya in the form of short term tenancy through the Kuala Lumpur Tenancy and Enforcement Committee Meeting held monthly at the office of the FLC may seem to be contrary to section 63 of the NLC with the application of Act A206 and Act A1095 because the FLC has no power to approve tenancy or lease on reserved lands.

Section 63 provides for reserved lands to be leased for a period of not more than 21 years:

"63. Power to lease reserved land.

(1) The State Authority may, on an application made by the officer for the time being having the control of any reserved land, or by any other person or body who has first obtained the approval of that officer,

from time to time grant leases of the whole or any part thereof for any period not exceeding twenty-one years.
(2) Any lease granted under this section shall be in Form 4E; and any such lease shall have effect subject to such express condition or other provisions as may be contained therein and, so far as not inconsistent therewith, to any other conditions or provisions which may be prescribed."

The rights of the Federal Government to dispose lands reserved for Federal purpose in accordance to Article 86 of the Federal Constitution cannot be applied in this matter because the NLC as applied in the Federal Territories by virtue of the amendments to the Constitution (Act A206 and Act A1095) stipulates that all State lands in the Federal territories are Federal Lands. The FLC on behalf of the Federal Government loses its special positions in that context. When there is no difference in the status of the reserves, the application of the NLC has to be adhered when leasing of reserved land in the Federal Territories.

Under the NLC, section 63 is the only provision that provides the power to lease and it is approved by the State Authority. So with the modification of the NLC by P.U. (A) 56/1974 and P.U. (A) 213/2001, the State Authority in the Federal Territories is the Federal Government. With this in place, one may wonder how the FLC obtains power to lease reserved lands through this Committee since it seems that it does not have the *locus standi* to do so.

The power of the Federal Government in the context of land in the Federal Territories can be defined under Article 39 of the Federal Constitution where the executive power of the Federation may be exercised by the Cabinet or delegated to a Minister by the Cabinet. This provides that the power of the Federal Government is delegated to the Land Executive Committee to exercise all powers under the NLC in the Federal Territories. It can be observed that the establishment of Kuala Lumpur Tenancy and Enforcement Committee was by a Cabinet Decision and with the interpretation of the proviso of subsection 13(1) of the NLC; any power delegated by the State Authority maybe exercised by the State Authority itself:

"13. Delegation of powers of State Authority to State Director, etc.
(1)……..

Provided that-
(i)……;
(ii)……;
(iii) the giving of a notification under this section with respect to any power or duty shall not prevent the State Authority from itself

exercising that power or performing that duty in any case where it appears to the State Authority expedient to do so."

This does not mean that the Cabinet Decision on the establishment of the Committee can be seen as a delegation of power to the FLC because the FLC in the first place has no *locus standi* on these reserved lands as he is only a controlling officer on these reserves and does not have full rights on the land to approve leases on these reserves.

If this practice is to continue, it is submitted that the Federal Government has to delegate its functions of approving lease on reserved lands in the Federal Territories to any other officers mentioned in section 12(1) of the NLC by virtue of section 13(1) and it has to be through a Federal Gazette and not bya Cabinet Decision. Nonetheless, the FLC is not mentioned as an officer in section 12(1) of the NLC as modified by P.U. (A) 56/1974 for Kuala Lumpur and P.U. (A) 213/2001 for Putrajaya. Therefore with these inconsistencies, it can be said that the procedures and practices for leasing of Federal lands in the Federal Territories carried out by the office of the FLC can be challenged in the court and ratification has to be done soon.

IV. CONCLUSION

THE focus of this article is to make a preliminary observation of the current practice of the office of FLC in dealing with the management of Federal lands in the Federal Territories of Kuala Lumpur and Putrajaya in accordance to the Federal Constitution and the NLC. There might be some misinterpretation of the statutes or continuing of age old practices from previous administration that might not portray the true intent of the legislations. These could lead to long legal battles and disputes that could tarnish the image of the Office and the Federal Government.

This article was intended to get feedbacks from other officers in the Department of the Director General of Lands and Mines and land administrators on these issues brought forward and to ratify the procedures. The feedbacks will be adopted by the writer in improving the recommendation to the Government in enhancing land administration by transforming the roles of the Federal Lands Commissioner.

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THE DEPARTMENT OF THE DIRECTOR GENERAL OF LANDS AND MINES (FEDERAL): LEADING THE LAND ADMINISTRATION IN MALAYSIA TOWARDS THE FUTURE

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Keywords: land administration system, land legislation, transformation.

I. INTRODUCTION

LAND is considered a major aspect in development besides funding, technology and human capital. Providing an effective and secured legislation and cost friendly procedures are qualities needed to lure investments to this country. Malaysia is proud to say that she has both of these qualities.

The Department of the Director General of Lands and Mines (Federal) (DGLM) roles are laid down in the National Land Code (NLC). The functions of the Department are to coordinate and provide consultation to the State Land Administration regarding improvements of land administration and amendments of legislation. One must understand that land matters are the functions of the State Governments which is enshrined in the Constitution. DGLM as an agency established under a Federal Law which is the NLC has no power to dictate the State Administration on land matters but rather suggest improvements and provide avenues to enhance the working processes in improving service delivery. The Department is headed by a Director General of Lands and Mines who is appointed by His Majesty the Yang di-Pertuan Agong by virtue of the Federal Lands Commissioner Act 1957 and section 6 of the NLC. He is assisted by two Deputy Director Generals and a staff of 1000.

Many have come to a conclusion that the DGLM is the head of all land administration in Malaysia. This is a misconception and one should understand that the State Department of Lands and Mines and the Land Offices report to the State Authority. As mentioned earlier, DGLM coordinates in improving legislation and introducing new methods toward improving land administration procedures.

II. TRANSFORMING LAND ADMINISTRATION SYSTEM

LAND administration in Malaysia is perceived as bureaucratic, complex, lengthy and eclipsed with corruption. This has been the stigma of land

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administration since the introduction of the NLC in 1965. Land administration has moved from a manual based system and at the moment entering into an electronic system. We hope in the near future an integrated system will be established where, by a click of a button a client can obtain any information relating to cadastral, registration, valuation and planning. Figure 1 shows the transformation of land administration systems in Malaysia.

Figure 1: Paradigm of Land Administration in Malaysia

Land administration has transformed from a manual system where the information retrieving was done manually with the usage of hardcopy files. These practices were a nightmare to proprietors when it comes to dealing with their properties. As time passed by and the country moved from an agriculture based to an industrialized based, the need to speed up the process of registering properties was a concern.

The Computerized Land Registration System (Sistem Pendaftaran Tanah Berkomputer) (SPTB) was developed by DGLM and MAMPU in 1995 and was introduced in all the States in Peninsular Malaysia. SPTB automated the procedures of land registration systems. The objective of the system was to provide a cost effective and secure land registration system through the computerization of registration procedures and dealings. The current version 3 is being used throughout the Peninsular Malaysia. Using Oracle as a platform, the system provides eight service areas or modules to the users. The modules are registration (dealing or non-dealing), title registration, search, registration notes, application, payment and utility features. This was the first step in enhancing land administration when DGLM spearheaded the need to move from a manual land administration system to an automated land administration system.

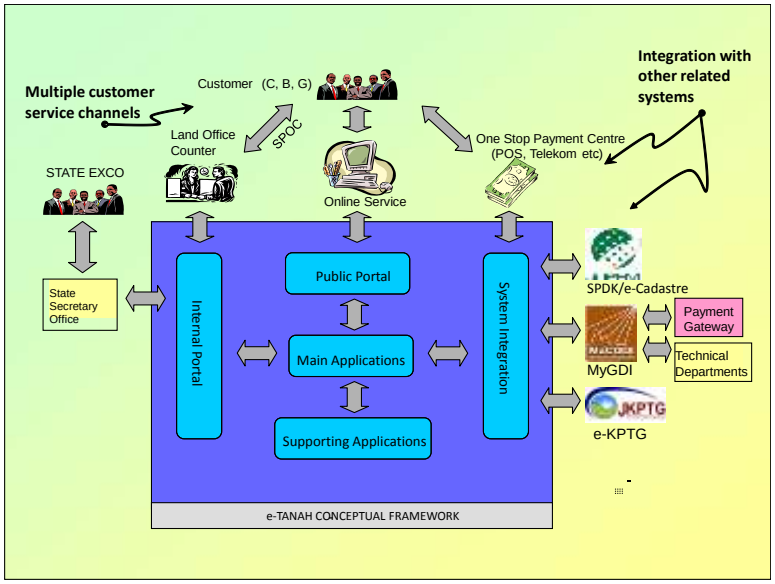
In addition to SPTB, other isolated and independent systems were also developed to support separate functions within the land administration. These systems include e-Consent, which was developed to support the flow of applications and consents from various authorities. The Computerized Land Revenue System (Sistem Hasil Tanah Berkomputer) (SHTB) was developed to support an integrated database of collection of revenue in the form of land taxes.

In regards to the concept of e-Government and the Prime Minister's tagline of "1Malaysia: People First, Performance Now", the land administration had

anticipated this call way before, with the development of an electronic based land administration system in Penang as a pilot project which is called e-Tanah to facilitate easier and user friendly system in land dealings. This system is expected to improve the working mechanics of land administration. It will provide the integration of all databases of land registration, approval and revenue into a single system which will integrate with the e-Cadastral system developed by the Department of Survey and Mapping Malaysia (JUPEM). The new system will benefit from the awareness of the usage of internet to reduce cost and improve the security of dealings with the use of electronic signatures or other security features like biometric identification and bar-coding all instruments of dealings and issue document of titles.

DGLM has provided assistance and consultation to the Ministry of Natural Resources and Environment (NRE) in the needs of the land administration and the aspects of security of title and rights of proprietors with the introduction of this system. The introduction of e-Tanah throughout the nation will be a step forward for the nation towards the concept of I-land (Integrated Land Information System). Figure 2 provides the concept of the e-Tanah system.

Figure 2: Conceptual Framework of e-Tanah



III. TRANSFORMING LAND LEGISLATIONS

THE move from a manual environment towards an electronic based land administration and the need to accommodate those changes has to be supported by legislation. The legislation that we have today is still based on the manual environment. The ability of a system to work, guarantees security and legality is conferred by provisions of law.

The introduction of an electronic system in land administration will not only include the registration aspect but the aspect of electronic forms, presentations, submissions, attestations, electronic stampings, certifications, electronic searches and payments. All of these will be completed on the World Wide Web that needs to provide the security and privacy of the users of the system which interlinks various departments, conveyance lawyers and banks. So an adequate legislation that caters for these innovations has to be laid down concurrently with the establishment of an electronic system.

In 2008, DGLM amended the NLC to introduce the Sixteenth Schedule to provide an enabling provision within the legislation to anticipate this crossover of land administration system. DGLM has identified these needs and the further research to simplify the forms, procedures and security aspects of introducing an electronic system is being carried out since 2009 and a complete amendment to the NLC will be tabled in the future to cater a working electronic land administration system in Malaysia.

Currently, in order to provide an immediate enhancement in land administration, DGLM has come out with various administrative measures in reducing the time of registration and in the aspect of security. DGLM has remodelled a work flow called the 'single piece flow' based on the practice of the Sarawak Land and Survey Department to suit Land Administration in Peninsular Malaysia to reduce the time of registering transfer of land in a period of two days. In terms of security, DGLM has introduced the biometric system and the MyKad real time readers at all presentation counters in the Land Offices and State Department of Lands and Mines as ways of reducing identity fraud. The purpose of registering 'runners' of legal firms at the land offices is to identify individuals involved in carrying out the presentation of instruments and to assist the police and land administration in tracking down land fraud culprits.

IV. TRANSFORMATION OF LAND ADMINISTRATORS

THE need to change does not work only by transforming the system and legislation. Human capital is the most important aspect in the need to change. The legislation and the working of a system only come to live when it is used and practiced by people.

DGLM is playing a major role in transforming the mind set of land administrators to adapt to changes for the sake of providing better services in land administration. Platforms such as the Land Administrators Conferences, the Malaysian Directors' of Lands and Mines Meetings and various seminars are important to fish for ideas and discuss proposals for improvements in land administration.

The lack of recognition of land administrators as professionals has led to the decrease in the number of experts in land administration. In the future, it is proposed that DGLM will act as a think tank in providing tools for higher education institution in performing researches with the assistance of land administrator and DGLM staffs. Research journals and new applications will be implemented in the state administration with legal effect with amendments to the NLC regarding the scope of the functions of the DGLM in improvement of land administration service delivery. Formulating policies on land administration based on research will achieve better results.

DGLM will be the leading agency in professing the use of an electronic based system in registration of titles with integrated information sharing that link cadastral data, identity information, court orders, local authority development plans and valuation details. Besides that, DGLM will assist in enhancing the security aspects of the data in the register of titles with the assistance of research done by benchmarking against international standards.

Creation of smart partnership with local and international higher education institution through the National Institute of Land and Survey (INSTUN) will assist in providing training modules that will mould land administration to be more aware of the needs in land administration. DGLM could work with the Public Service Department to make it compulsory for all public servants that will be posted to the land administration to attend a land administration course at the Institute for a specified time frame. The trainees will be accredited with certificates or diplomas to create the sense of professionalism in land administration.

V. CONCLUSION

THE need for change in land administration is echoed by the efforts taken by DGLM with the assistance and cooperation of the State Land Administrations. It may be a long way ahead but the small steps taken today may change the future. Rushing into the bandwagon of change could create setbacks when those efforts are implemented. So a careful research and planning need to be carried out and followed. DGLM is there to lead the way by providing the leadership and assistance in the way forward into a much people-centric land administration.

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LAND ACQUISITION IN RESPECT OF A STRATA TITLE

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Keywords*: Land acquisition, building, parcel of subdivided building, enabling legal framework.*

I. INTRODUCTION

THE government intervention over land development is directly exercised under the power of land acquisition as stipulated under the Land Acquisition Act 1960 (Act 486) and provided under Article 13 of the Federal Constitution. This Article stipulates that no person may be deprived of property save in accordance with law and no law may provide for compulsory acquisition or for the use of property without adequate compensation. With reference to the clause regarding land acquisition by the Federal Government, Article 83 of the Federal Constitution set out detailed procedures for land compensation. Therefore, using the power contained in the Land Acquisition Act 1960, the government can acquire land for public purposes with adequate compensation as determined under the Act. Adequate compensation, therefore, as stated under the provision of Article 13(2) of the Federal Constitution refers to the amount of compensation which is decided, considering all principles stated under the First Schedule of the Land Acquisition Act 1960. Even though the State Authority, under the provision of Land Acquisition Act 1960, has the power to possess any private land, it does not allow the authority to violate one's right onto their private properties (Omar & Ismail, 2005).

II. DOES ACQUISITION OF LAND MAY INCLUDE A PARCEL OF SUBDIVIDED BUILDING HELD UNDER STRATA TITLE?

IN view of Land Acquisition Act 1960, the term "land acquisition" has been envisaged within the direction of Article 83(5) of the Federal Constitution. By this direction framework, it is pertinent to point out that the Land Acquisition Act has described that:

- "acquisition" means compulsorily acquisition of alienated land by the State Government under the provisions of the Land Acquisition Act 1960;
- "land" means alienated land within the meaning of the State land law, land occupied under customary right and land occupied in expectation of title;

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- "State land law" means the law for the time being in force in the State relating to land and land tenure and the registration of title thereto and the collection of revenue therefrom; and
- "building" includes any house, hut, shed or roofed enclosure, whether used for the purpose of human habitation or otherwise, any wall, fence, platform, sewerage system, underground tank, hoarding, dock, jetty, landing-stage, swimming pool, bridge, railway line, and any other structure, support or foundation related to the building.

The definition of "land" indicates that the land [even though there will be subdivided strata building(s) stands therein] can be acquired under the provisions of the Land Acquisition Act. In the case of land that is being developed for a strata scheme, the question of compensation in accordance with Article 13(2) of the Federal Constitution may adequately be payable to the Management Corporation, which is established in that land, under the Strata Titles Act 1985.

However, section 34 of the Land Acquisition Act provides that:

"34. (1) This Act shall not be applied for the purpose of acquiring a part only of a building if –

(a) such part is reasonably required for full and unimpaired use of the building; or

(b) the person interested in such building desires that the whole thereof shall be acquired:

Provided that such person may at any time before the Land Administrator has made an award under section 14 by notice in writing withdraw or modify his expressed desire that the whole of such building shall be so acquired.

(2) If any question arises as to whether any land proposed to be taken under this Act does or does not form part of a building which is reasonably required for the full and unimpaired use thereof within the meaning of this section, such acquisition shall be determined by agreement between the parties; and in default of any such agreement, the Land Administrator-

(a) shall refer the determination of such question to the Court; and

(b) shall not take possession of such land until after such question has been determined."

It is the writer's view that the provisions of this section shall be read together with the interpretation of "building" in section 2 of the Land Acquisition Act. Therefore it can reach a **flexible meaning of 'building' which currently includes 'any house' or 'other structure in which it relates' that may possibly be extended as to include any parcel of the subdivided building held under strata titles**. Unfortunately, in the absence of supporting

procedural provisions described by the Land Acquisition Act, this moderate yet extreme definition will not constitute a conclusive effect as to allow the land acquisition in respect of parcels held under strata titles. The present statutory forms [Form A to Form Q] and the principal provisions of the Land Acquisition Act did not provide a clear direction for acquisition of land as to include any parcel of the subdivided building. These can be evidenced by the following:

i. in the absence of amendments to the related provisions of the Land Acquisition Act, reference to the words "survey lot no." or "area of lot" appeared in the related statutory forms means reference to the affected alienated land including land in which the strata building stands. The interpretation of "lot" under section 5 of the Code explains this.

ii. there is no adequate provision in the Land Acquisition Act or the Strata Titles Act to describe the effects, consequences and obligations of the acquired strata parcel to the State Authority. For instance, does reference to acquired "strata parcel" be defined as a "State parcel" in extension to the meaning of State land? Does the State Authority will be an ordinary parcel proprietor and consequently become a member to the Management Corporation (MC)? As a member of the MC, does the State Authority will be obliged with duties to pay maintenance contributions to the management fund of the MC? Does the State Authority responsible with the assessment rates of the acquired parcel? Does the 'acquired strata parcel' will be deemed as 'a limited common property' accessible by general public in a strata scheme? If so, does the MC may afford to control the maintenance of these types of common property – the limited common property of acquired strata parcel in the subdivided building and the existing common properties enjoyable by the parcel proprietors in the same lot?

iii. there is no adequate provisions in the Strata Titles Act or the Land Acquisition Act to describe the consequential effects of the acquired parcel to the share units for every register document of strata title and the strata register (comprised of Form 2, Form 3, Form 4 and Form 4A if any, and Certified Strata Plans) as a whole. For instance, which authority should grant order for variation of the registered share units in the strata register? How to make an endorsement of Form K of Land Acquisition Act into strata register and the affected strata title if the Form is only applicable to the possession of the land? Does statement of strata register in Form 3 of the Strata Titles Act is affected once such endorsement is entered in the Register Document of Strata Title to the parcel in question?

III. CONCLUSION

OVERALL, any acquisition of land in respect of a parcel in subdivided building in which it is held under strata title can be materialised in accordance with provisions of section 34 of the Land Acquisition Act, provided that:

(a) there shall be an adequate enabling legal framework which has to be made under section 69 of this Act; and

(b) there shall be an adequate enabling legal framework for this purpose which has to be made under Part III of the Strata Titles Act 1985 and the rules connected therewith.

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PERHATIAN

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