



JURNAL

PENTADBIRAN TANAH

VOL. 1 BIL. 1 2011

ISSN 2231-9190

KANDUNGAN:

Dari Meja Ketua Editor	i
Land Administration In Peninsular Malaysia: A General Overview <i>Mohd Shukri Ismail</i>	1
Malaysia's Land Policy Framework <i>Mohd Shukri Ismail</i>	16
Land Development Issues And Latest Initiatives Undertaken By JKPTG To Improve Service Delivery System Of Land Administration <i>Mohd Shukri Ismail & Anesh Ganason</i>	31
Land Administration System In Malaysia: Single Title System: A Stimulant To Land Administration Reform <i>Anesh Ganason</i>	45
Perekayasaan Urusan Penyerahan Balik Tanah Bermilik Di Bawah Kanun Tanah Negara 1965 <i>Mohd Shukri Ismail & Anesh Ganason</i>	53
National Land Code 1965: Electronic Land Administration System In Land Registries <i>Mohd Shukri Bin Ismail</i>	64
Measures Undertaken To Safeguard Against Fraud In Land Dealings <i>Mohd Shukri Ismail</i>	85
The Strata Titles Act 1985 And A Proposal For En-bloc Sale: The Malaysian Approach <i>Mohd Shukri Ismail</i>	100
Promosi Daftar Pindah Milik 1 Hari JKPTG	117
Pencapaian Inisiatif Daftar Pindah Milik 1 Hari	118

Jabatan Ketua Pengarah Tanah dan Galian Persekutuan
Kementerian Sumber Asli dan Alam Sekitar
Putrajaya



SIDANG EDITORIAL

PENAUNG

Y.Bhg. Dato' Azemi Bin Kasim
Ketua Pengarah Tanah dan Galian Persekutuan

PENASIHAT

Y.Bhg. Dato' Mazbar Bin Abu Bakar
Timbalan Ketua Pengarah Tanah Dan Galian (P)
Y.Brs. Tuan Haji Mustafa Kamal Bin Ajib
Timbalan Ketua Pengarah Tanah dan Galian (KP)

KETUA EDITOR

Mohd Shukri Bin Ismail
Pengarah, Seksyen Kajian Penyelidikan dan Pembangunan

URUS SETIA JURNAL

Yusri Bin Zakariah
Anesh a/l Ganason
Mohd Solehuddin Bin Hanafiah
Rahayu Binti Maspan
Nazratul Ain Binti Mohamad Ali
Seksyen Kajian Penyelidikan dan Pembangunan

PENERBITAN

© Jabatan Ketua Pengarah Tanah dan Galian (Persekutuan), 2011

Hak Cipta Terpelihara. Tiada mana-mana bahagian jua daripada penerbitan ini boleh diterbitkan semula atau disimpan dalam bentuk yang boleh diperoleh semula atau dihantar dalam sebarang bentuk atau apa jua cara sama ada secara elektronik, mekanikal, fotokopi, rakaman atau sebaliknya tanpa mendapat keizinan terlebih dahulu daripada Sidang Editorial Jurnal Pentadbiran Tanah, Jabatan Ketua Pengarah Tanah dan Galian Persekutuan (JKPTG).

DARI MEJA KETUA EDITOR

Assalamualaikum warahmatullahi wabarakatuh dan salam sejahtera.

Alhamdulillah, jutaan kesyukuran saya panjatkan ke hadrat Ilahi kerana tanpa rahmatNya, impian untuk merealisasikan Jurnal ini tidak akan sekali-kali berjaya. Dengan izinNya juga, diharapkan agar jurnal ini dapat diterbitkan secara berterusan di masa hadapan.

Idea penerbitan jurnal ini tercetus setelah meneliti dan mempelajari betapa pentingnya penyampaian maklumat bagi menambah baik forum ilmu di kalangan Pentadbir Tanah. Pada masa ini, masih tiada lagi medium yang dapat dimanfaatkan oleh para idealis pentadbiran tanah untuk berkongsi idea dan pengalaman mereka. Sebagai sebuah Jabatan penyelarasan dan perantara hubungan di antara Kerajaan Pusat dan Negeri, saya merasakan adalah menjadi keperluan untuk JKPTG menyediakan ruang interaktif perkongsian ilmu seperti jurnal ini. Melalui pendekatan ini, kita akan dapat memperkayakan ilmu pentadbiran tanah yang boleh membantu pembangunan perundangan tanah yang lebih responsif dan lestari, di samping inovasi proses kerja yang lebih mantap serta mampu melahirkan kepimpinan pentadbir tanah yang lebih berilmu, berkebolehan dan profesional.

Selain itu, saya juga merasakan bahawa penerbitan Jurnal ini akan dapat membantu meningkatkan pembinaan kapasiti para pegawai dan anggota pentadbiran tanah. Jurang pengalaman pentadbiran tanah kini dilihat semakin melebar berikutan semakin bertambahnya bilangan pegawai dan anggota baru yang kurang berpengetahuan telah dilantik, sementara warisan keilmuan pegawai-pegawai lama yang berpengalaman semakin merosot disebabkan kebanyakan mereka telah atau akan bersara dari perkhidmatan. Melalui penerbitan jurnal ini, para pentadbir tanah – sama ada masih dalam perkhidmatan atau – yang telah bersara bolehlah berkongsi pengetahuan dan pengalaman dengan memberikan sumbangan penulisan mengikut kepakaran dan pengetahuan masing-masing. Pendekatan ini bertujuan memastikan kelestarian budaya ilmu dalam pentadbiran tanah akan berterusan di masa depan.

Pendek kata, ilmu pengetahuan dan pendidikan adalah ‘tiang seri’ dalam pembentukan budaya kecemerlangan sepertimana yang diilhamkan dalam misi transformasi kerajaan. Justeru sebagai langkah pengisian misi tersebut, saya berharap agar penerbitan jurnal ini akan mendapat sambutan serta dimanfaatkan untuk faedah masyarakat, pentadbiran tanah dan negara.

Sekian, terima kasih.

BUDAYA MEMBACA, BUDAYA MULIA

Mohd Shukri bin Ismail

Ketua Editor Jurnal Pentadbiran Tanah

LAND ADMINISTRATION IN PENINSULAR MALAYSIA: A GENERAL OVERVIEW

MOHD SHUKRI ISMAIL¹

Keywords: Land Administration, Land Tenure, Spatial Data, e-Government, Electronic Land Administration System, Evolution of land information systems.

I. INTRODUCTION

PENINSULAR Malaysia consists of a federation of States in which each state is responsible for its own land issues. All States operate a Torrens system of registration, administered by the State District Land Offices (PTD) and coordinated by the State Department of Land and Mines (PTG). Alternatively, controlling the cadastral surveys is the responsibility of the Department of Survey and Mapping, Malaysia (DSMM) which is a federal department. Cadastral survey work is carried out by DSMM within Peninsular Malaysia while is supported by licensed land surveyors, whom are primarily in charge of engineering and subdivision surveys (Cadastral Template, 2003)².

The main purposes of the Malaysian land registration and cadastral system in land administration are providing security and simplicity to all dealings with land under the authority of the State Government. In this system, the title is conclusive proof that the person mentioned therein is the owner of the land described. Therefore there exist appropriate infrastructure and land administration systems to support formal markets.

Components of land registration system practised in land administration of Peninsular Malaysia are:–

- **Land Title Registration**

For example, the alienation under final title should be done at the time of the registration of the Register Documents of Title (RDT) at the Land Office or the Land Registry. The Issue Document of Title (IDT) would be issued to the registered proprietor of the land. Both the RDT and the IDT have affixed to them and appropriately sealed, a plan of the land, certified as correct by or on behalf of the State Director of Survey (Cadastral Template, 2003).

¹ Director of Research and Development Section, Department of the Director General of Lands and Mines Federal, Malaysia; mohdshukri@kptg.gov.my

² Cadastral Template (2003). Malaysia Country Report. Retrieved from: <http://www.geo21.ch/cadastraltemplate/countrydata/my.htm>

• **Cadastral Survey and Boundaries Determination**

Only after the cadastral surveys have been performed can other transactions including subdivision or amalgamation of that parcel of land may apply. The valid titles require an accurate description of boundaries and therefore cadastral survey plays an important role in the system. According to the law the parcels should be surveyed and demarcated on the ground before the issuance of final title (Cadastral Template, 2003). The definition of parcels should be determined by officially emplaced and mathematically coordinated boundary marks, as opposed to by topographical features. In Peninsular Malaysia the 'fixed' boundaries are used for final titles, however, 'general' boundaries are used for temporary titles issued prior to final titles (Cadastral Template, 2003).

The State Government land administration system provides a suitable environment for the land market and a sound base for freehold and leasehold land management generally doing this by–

- Providing security of tenure (achieved by registering interests in and, in many cases, guaranteeing title to land);
- Registering the size, extent and spatial relationships of land parcels through survey;
- Developing land policy in form of legislative instruments;
- Controlling land use and development through planning schemes;
- Managing and administering the State land;
- Providing an impartial and equitable base for property valuation to serve the fiscal requirements of rates and land tax; and
- Providing public access to land administration information including tenure, survey, mapping, valuation and other related data.

Within a national momentum towards e-Government services, land administration has tended to remain a government responsibility. There are four main arguments for retaining government control over the functions of cadastral surveying and land registration. These are: systematic and accurate records of boundary definition and ownership of land are of general public interest; government guarantee of indefeasibility of title (but not boundaries) to private land; the need for systematic and accurate recording for land taxation purposes as a source of important state revenue; and, government needs to protect and administer State and other public land to ensure against encroachment.

II. MALAYSIA'S LAND POLICY

THE term "policy" can be seen as an abstraction of reality and is defined as a group of decisions taken by authoritative decision makers which can at least analytically be linked to some degree of coherence and which are concerned

with the selection of prime goals and the means to achieve them (Gray et al, 1983)³. Land policy therefore provides the boundaries and parameters which provide the framework, direction and continuity of decisions made for the function of land in the implementation of national development plans which involve regional, state-wide and local plans.

Some countries have espoused land policies in comprehensive documents for implementation. Others formulate land policies from statutes, statements and guidelines to form loose frameworks for implementation. **In Malaysia, land policy has been the result of various successive legislative documents which have been created to overcome numerous land related issues. Thus an explicitly documented national land policy is absent in Malaysia. This is perhaps somewhat due to the fact that since land is a State matter, each State has the prerogative of drawing up its own land policy.**

The Constitution of Malaysia provides for the doctrine of private ownership of property including land. The National Land Code (NLC) supports this through the creation of a comprehensive and organized system of land ownership, registration and dealing which ensures the indefeasibility of title to land.

As stated above, the right of land being a State matter is provided in the Constitution. This would mean that there are as many land policies as there are States. Where the third tier of government exists i.e. Local Authorities, there exist further “localized” land policies which are in turn controlled by State Land policies.

Article 91 of the Malaysian Constitution provides for the establishment of a National Land Council comprising of State representatives with a Federal Minister as a Chairman. The main function of this Council is to formulate a national policy for the promotion and control of the utilization of land throughout the country for mining, agriculture, forestry of any other purpose in consultation with the Federal and State Governments and the National Finance Council. It is mandatory for the Federal and State Governments to follow the policy formulated. The Council has in the past formulated broad based policies on squatters, land speculation and use of land for industries.

These policies however, have been kept confidential and there is no known assessment of their effectiveness. As land is a State matter it can be expected that each State will want to decide on what it can do with its land first rather than be subjected to a national policy. Thus adoption of the land policy would be difficult if not impossible. Indeed, policy analysts have noted that the policy so formulated is merely directory in its affirmative aspects in so far as no method is known by which the legislative bodies of the State Government could

³ Gray, C.J., Stringer J.K., and Williamson, P., 'Policy Change: An analytical framework. Annual PSA conference, University of Newcastle , April 1983.

be required to enact specific legislative measures (Sheridan and Groves, 1967)⁴.

The Federal Government is provided with considerable constitutional powers to undertake national development planning (Shafrudin, 1986⁵; Government of Malaysia, 1957 (as amended): Article 92). At the top of the hierarchy of development planning in Malaysia, the national development policies set out the broad social and economic objectives adopted by the Government. These plans are supported by the outline perspective plans which amplify the national objectives for social and economic change and establish the long range targets.

These national development plans establish the following (Singh, 1988)⁶:-

1. The social and economic direction in which the country is to move.
2. The socioeconomic and physical perspective of the country within which implications of day to day decision can be considered.
3. A control mechanism for the public sector, through the allocation of finance to implement its programmes.

In Malaysia there are four levels at which attempts are made to coordinate activity within the development planning framework. At the highest level, the politico – administrative level, the Parliament, the Cabinet of Ministers and the National Action Council (a coordination and evaluation unit) formulate political, socio-economic and administrative policies.

At the next level is the National Development Planning Committee (NDPC). This committee will consult the National Land Council, National Finance Council, The Federal and State Governments before it formulates, evaluates, revises national policy and implements the national development budget before it makes recommendations to the National Action Council. The committee comprises of various representatives of Ministries and autonomous bodies. This establishes a link between Ministries and agencies under the jurisdiction of the NDPC such as the Economic Planning Unit (EPU), the Implementation and Coordination Unit ICU, and Inter Agency Planning Groups (IAPG).

The third level of the hierarchy consists of Federal Ministries and various autonomous bodies which are responsible for preparing and proposing sectoral strategies and programmes. The EPU evaluates the sectoral proposals submitted by these bodies and plays the part of the processing agent and makes recommendations to the NDPC. This arrangement makes it easy for the NDPC to act as the mediator between the 'higher' politico – administrative level and the 'lower' implementation level.

⁴ Sheridan, L.A. and Groves, H.E. 1967, *The Constitution of Malaysia*. Oceana Publications, New York.

⁵ Shafruddin, B.H. 1986. *The Federal factor in government and politics of Peninsular Malaysia*, Oxford University Press.

⁶ Singh, Gurjit, 1988. *The implementation of Urban housing programmes Under the New Economic Policy: A case Study of Kuala Lumpur*, M. Phil Dissertation, University of Cambridge.

At the fourth level of the framework i.e. the State, Federal Territory and Local Authority level, the sectoral policies and programmes which have been decided are translated into more detailed instruments for implementation. The State Governments thus in theory at least perform a regulatory function and ensure that the Local Authorities within its boundaries carry out the programmes (Singh, 1990)⁷.

Malaysia's land policy comprise of legislative instruments, statutory organizations and statutory controls. Some of these instruments are summarized below:-

- The National Land Code 1965;
- The National Land Code (Penang and Malacca Titles) Act 1963;
- The Strata Titles Act 1985;
- The Malay Reservations Enactments;
- The Town and Country Planning Act 1976;
- The Local Government Act 1976;
- The Federal Territory Planning Act 1982;
- The Land Acquisition Act 1960;
- The Environmental Quality Act 1974;
- The State Land Rules;
- The Sabah Land Ordinance Chapter 68, and including;
 - Land (Subsidiary Title) Enactment 1972;
 - Town and Country Planning Ordinance Cap 141;
 - Land Acquisition Ordinance Cap 69;
 - Country Land Utilization Ordinance 1962
- The Sarawak Land Code Chapter 81, and including;
 - The Land (Control of Subdivision) Ordinance;
 - The Town and Country Planning Ordinance;
 - The Natural Resources Ordinance

In a multiethnic society that exists in Malaysia, land policy and planning systems are implemented within a broader framework, which is supervised by the Government. Malaysia's experience in this regard has been varied as it moves from an agrarian economy to that of one which characterizes a rapidly industrializing country. By reference to National Land Code 1965 ("the Code") which came into force on 1 January 1966, there are some form of land policies and land planning systems which are implemented to correct physical, economic, social and spatial imbalances.

This land policy which incorporated in the Code is intended to address the pressures on land resources and the following areas:

⁷ Singh, Gurjit, 1990. Towards a theory of Implementation in Urban Planning for Public Housing based on the Kuala Lumpur experience, paper presented at the International Workshop on Asian Urban Land Policy, Kuala Lumpur 1990.

1) Human Rights:

Equitability and protection of property rights.

(2) Cultural:

Protection of traditional values; integration between cultural values and economic realities.

3) Land Tenure:

Guarantee of ownership and security of tenure, land allocation and access.

3) Land Use and Taxation Management:

Strengthening planning control and principles; land under-utilisation; inappropriate land use; strengthening management of land for sustainable development.

4) Land Markets and Valuations:

The land markets and valuations shall function properly - that is, for the benefit of the entire society.

5) Land Administration:

Although land records are expensive to compile and to keep up to date, a good land administration system should produce benefits, many of which cannot in practice be quantified in cash terms. These benefits are:-

- i. Guarantee of ownership and security of tenure;
- ii. Support for land and property taxation;
- iii. Provide security for credit;
- iv. Develop and monitor land markets;
- v. Protect State lands;
- vi. Reduce land disputes;
- vii. Facilitate rural land reform;
- viii. Improve urban planning and infrastructure development;
- ix. Produce statistical data; and
- x. Support environmental management;

It is the purpose of the Code of ensuring uniformity of land law and land policy with respect to land tenure, registration of titles relating to land, transfer of land, leases, and charges in respect of land, and easements and other rights and interests in land. In this regards, the policy is part of an integrated government initiative, not a stand-alone policy, in accordance with the long-term vision of the National Development Policy (NDP). That is, it forms part of a coordinated public policy framework, requiring that the doubt and contention that has dogged land matters be replaced by positiveness and certainty, thereby inspiring confidence and encouraging development towards the vision of the NDP and in particular the vision of this policy.

III. LAND ADMINISTRATION FUNCTIONS

THE term “land administration” is used in this paper to refer to its nature set out by the National Land Code as to the processes of recording and disseminating information about the ownership, value and use of land and its associated resources. Such processes include the determination (sometimes known as the “adjudication”) of rights and other attributes of the land, the survey and description of these, their detailed documentation and the provision of relevant information in support of land markets⁸.

In this context, an understanding of the broader aspects of land management is essential to proper land information management but is not its essence. Land administration is concerned with three main commodities—the ownership, taxation and use of the land—within the overall context of land resource management.

As a Federation of States, Malaysia maintains decentralized land administration offices in each State jurisdiction. There is no prescribed organizational structure common to all states; land administration is a state government responsibility performed under different levels of government departments such as District Land Offices, State Director of Land and Mines Offices and Departments of Survey and Mapping. Embedded in these departments are the state’s cadastral mapping system within controlled of the federal agencies – that is Department of Survey and Mapping, land registry and titles office within controlled of the State’s District Land Offices and Director of Land and Mines Offices, and Federal own-lands management within controlled of the Federal Land Commissioner, Department of Director General of Land and Mines (Federal). Combinations of these services can be found in each state, integrated through sharing understandings. Today this is assisted by the computerisation of spatial and non-spatial information.

A. Land Tenure and Cadastral Systems

1. *Non-spatial Information Systems*

Subject to enabling legal framework of the National Land Code, all States in Peninsular Malaysia are currently implementing manual and computerised non-spatial information systems in their land Registries. These includes –

- Manual Intervention System for pre-registration matters in land;
- Computerized Land Registration System (CLRS) for registering dealings and non-dealings in land; and,
- Computerised Land Revenue Collection System (CLRCS) for collecting land revenue, including by way of payment online.

2. *Spatial Information Systems*

⁸ UN-ECE (1996), Land Administration Guidelines With Reference to Countries In Transition, New York and Geneva.

The cadastral systems in Peninsular Malaysia are historically based on registering transactions with land generated by a land market. The role of the cadastral system is to support the registration of land for legal ownership, registering the rights, restrictions and responsibilities pertaining to land through precise surveying methods. The integrity of each cadastral system is consistent allowing the core spatial data set in spatial data infrastructures to play a fundamental role in broader land administration activities. Computerisation of spatial data establishes the e-cadastre system recently as an integral tool in many areas. These include facilitating:

- in a legal capacity, the registration of ownership of land;
- in a fiscal capacity, valuation of land sales and taxation; and
- more widely, in multipurpose functions in land management and planning for local authorities, emergency response, statistical data capture, environmental risk assessment, and business planning.

Cadastral systems are basically created by surveying land parcels in the field and recording the corresponding land ownership titles in the land registry. There is generally a 1:1 relationship between these two main units, which is each land parcel, is related to one land ownership entry in a folio in the land register. By definition of land title registration, components of cadastral systems in Peninsular Malaysia are consisting of:

- Textual component: the land register identifies real property parcels, which includes all land parcels concentrating on those held privately in ownership and identifies owners' rights, restrictions, and responsibilities, ownership, easements and mortgages.
- Spatial component: cadastral maps show all land parcels graphically corresponding to the registered title with plan numbers and unique identifiers in a fully computerised system. Cadastral maps consist of fixed and general boundaries, about 90% and 10% respectively:
 - Fixed boundaries are those with legally surveyed measurements used to precisely identify most parcel boundaries determined by cadastral surveys such as a subdivision.
 - General boundaries (graphical) are not survey accurate and are based on natural or artificial physical features, such as high water mark, or walls and buildings as found on building or strata subdivisions.
 - State lands management has management and administrative responsibility for state owned lands. Details of State lands, including land parcels leased or disposed to the public, and reserves lands, are kept less formally than land registry records.

Additional legal, valuation, local authority, utilities and planning activities are involved in land administration, and are heavily reliant on the

fundamentals of the cadastral system. In particular collection of local government rates, land tax and stamp duty (payable on transfer, charge and lease of land) relies on land parcels and are major revenue raisers for the State economies. Land titles and registry offices in each State's jurisdiction are stored vast amounts of paper records and now computerise almost all land titles registrations.

3. *Land Registration Process*

The Torrens system is a system of title registration where the law guarantees that the person shown on the title displayed in a land register is the registered proprietor. The register is conclusive evidence that the person named therein, as the proprietor of an interest in the land is the legal owner of that interest. Interests in land can only be created, varied or changed by registration (with some exceptions).

These standards are summarised as two fundamental principles of the Torrens system in Peninsular Malaysia; namely the Mirror Principle and Curtain Principle. However, Peninsular Malaysia does not apply for Insurance Principle as the third principle of the Torrens System.

The Mirror Principle ensures that the register reflects legal interests in the land. The Curtain Principle means that once a registration occurs unregistered interests affecting the land are not enforceable against the registered owner. It is not necessary to look behind the title to investigate previous interests.

The Torrens system as conceived had four qualities: speed; simplicity; cheapness; and suitability to the needs of the community. It is remarkably successful despite the complexities of common law and the cadastral survey system.

There are three components in a Torrens title. The parcel section of the land identifies the boundary, giving it a unique identifier and describing the metes and bounds (usually graphically by reference to a plan of survey). The proprietorship section identifies the owner, and the encumbrance section identifies any other interests in the parcel such as a charge, caveats, an easement or a restriction as to use. In the paper based system, the registered proprietor holds an Issue Document of Title of the Register Document of Title held by the land registry. The paper-based titles are being phased out as the administrations convert to computer based systems under CLRS and accordingly, to electronic based land title under Electronic Land Administration System in future. The Peninsular Malaysia new electronic land titles are available when the Electronic Land Administration System comes into operation in land Registry.

4. *Cadastral Surveying*

Historically cadastral surveying was not part of the statewide cadastral mapping process. Surveys of individual land parcel boundaries are carried out to a high mathematical precision and connected into neighbouring land

parcels. When the e-Cadastre comes into operation, the States will permit cadastral plans to be submitted to the Land Registry in digital form to facilitate updating of the digital cadastral mapping system. Acts and Regulations regulate standard cadastral procedures in each jurisdiction.

Professional licensed land surveyors or registered undertake cadastral surveying. Applicable Acts and Regulations specify the duties and responsibilities of registered cadastral licensed land surveyors, establish a Board of Surveyors and set qualifications for registration. Processes such as surveying related to land subdivision currently can only be performed by a licensed/registered surveyor.

5. *Land Transfer Process*

The land administrations are now intended to move the land transfer process as part of the land market towards being completely on line. In respect of e-Government vision, the whole land transfer process from initial vendor's titles, through financial settlement to registration of the transfer is to be trailed as an online process before being fully released for general use. When this ultimate vision is comes into operation in land Registry, the current paper-based processes of land transfer will no longer in use.

The land market operates almost totally within the private sector with the only exceptions being the operation of the Land Registry Offices and the oversight of cadastral surveys by licensed land surveyors in each state. The major players in the land market are land owners, land developers and planners, land surveyors, conveyancers (lawyers and others), real estate agents and financial institutions. Where a subdivision takes place prior to transfer of ownership, those involved in addition to the above, include local government authority in planning and engineering and service authorities (water, sewerage, gas, electricity, telecommunications , drainage, etc.).

B. Land Taxation Systems

All land in Peninsular Malaysia is subject to an annual tax known as 'Quit Rent' which is collected by the State Government. The tax structure is based on the State Land Rules and is determined by the size, location and use of the land. This form of tax has little influence in encouraging the development of vacant land as tax on vacant land is low⁹.

Property tax or 'Assessment Tax' is another form of tax levied on property within a local authority which is collected by the local authority. The tax levied is determined under the provisions of the Local Government Act and varies from one local authority to another. The more improved or built up a property is the higher the assessment tax. Assessment tax is a form of revenue to the local authority to provide for public services and facilities.

⁹ Singh, Gurjit (1994), Land Laws, Land Policies and Planning in Malaysia, Paper No.8 of Urban Management Programme (UMP-Asia), UNDP.

The Real Property Gains Tax Act 1976 ensures that profits made from the sale of land are taxed. This is to prevent property speculation and it is not designed to tax unearned increment in land values or to increase the supply of land for development.

C. Land Use Control and Land Development Systems

The planning scheme controls land use and development within a local municipality. It contains State and local planning policies, zones and overlays and other provisions that affect how land can be used and developed. The planning scheme will indicate if a planning permit is required to change the use of the land, or to construct a building or make other changes to the land. Every municipality has its own planning scheme.

The council of local government must take into account both the State and local planning policies when making a planning decision. It makes most of the planning decisions that affect its municipality. For example, it decides whether or not to grant a planning permit for a new use or development, and what permit conditions are appropriate.

Today in Peninsular Malaysia, all municipalities are covered by land use planning controls, which are administered by State and local government authorities. Legislation governs such controls through the Town and Country Planning Act 1976 and the Local Government Act 1976. Those who do not obey the laws about the land and development can be prosecuted.

At the State level, the Government's strategic land-use planning is based on a sound analysis of issues and trends that can be monitored and reviewed regularly, with an integration of the transport, environmental and social aspects of development.

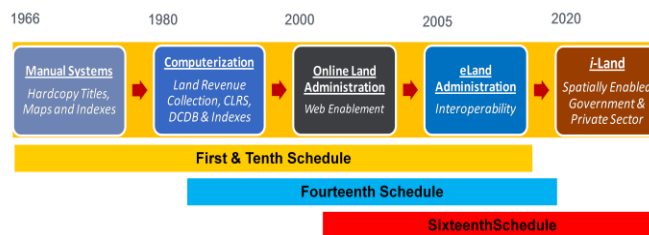
Such strategies are reflective of the broader community and are therefore based on extensive community consultation. The State Government's approach relies on creative and effective partnerships with local government, local communities, business, industry and other organisations and interest groups.

IV. EVOLUTION OF LAND INFORMATION SYSTEMS

FIGURE 1 below shows five stages in the evolution of land administration systems in Peninsular Malaysia from technology perspective. The first stage recognizes that historically land titles registration was manually conducted and cadastral systems were manually operated with all maps and indexes hard copy. At this stage the cadastre focused on security of tenure and simple land trading. The 1980s saw the computerization of these cadastral records with the creation of digital cadastral databases (DCDBs) and computerized indexes. Accordingly the computerized land registration systems have come into force in 1995 to 2001 in all State land Registries of Peninsular Malaysia. However this computerization did not change the role of the land registry in respect of integrated land titles registration system; but it was a catalyst to start

institutional change nationwide where the traditionally separate functions of surveying and mapping, cadastre and land registration started coming together by systems integration¹⁰.

Figure 1



At the present time 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, local government. Examples of this are the Sistem Pangkalan Data Kadaster (SPDK) and the new e-Cadastre being developed by the Department of Survey and Mapping. On the other development, the proposed web-based land titles system in land Registries is called as “e-Tanah System” which stands for Electronic Land Administration System.

These developments have also been a catalyst to offer the potential for better managing the complex arrangement of rights, restrictions and responsibilities relating to land that are essential to achieving sustainable development objectives. This is also driving the re-engineering of cadastral data models and the land administration business processes that will facilitate interoperability between the cadastre, land use planning and land taxation for example.

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 shown diagrammatically above is based on the engineering paradigm where hard questions receive “designed, constructed, implemented and managed” solutions. 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. Modern land administration demands such a land administration

¹⁰ M. Shukri, I., 2010. National Land Code 1965: Electronic Land Administration System in Land Registries, paper prepared for Land Resource Management Post Graduate Programme, Universiti Putra Malaysia.

infrastructure as fundamental if land information is to be capable of supporting those “relative” information attributes so vital for land registries and taxation.

Thus, it is the e-Tanah objective to enhance efficiency and effectiveness of delivery system in Land Registry of Peninsular Malaysia. The e-Tanah system is aims at integrating all survey and title processes via system integration; to provide them in digital form; to reduce the costs of both provision and compliance; to utilise technological development, and to meet the growing community demand for improved quality and delivery of services and information.

V. THE WAY AHEAD

THE origins of the land administration systems in Peninsular Malaysia that are in operation today lie in the 19th Century or earlier. Only the technology to deliver them has significantly changed. If full advantage is to be taken of the technology and a truly ‘joined-up’ service is to be delivered in tandem with the Malaysian Government Transformation Programme, then some radical reforms are called for. The first of these is to adopt a more holistic view of land and to create a multi-disciplinary forum in which land issues can be seen in perspective.

The present fragmentation between Federal agencies and State Government departments and between different professional organisations must cease. Land as a whole is greater than the sum of its parts. The treatment of land rights, land usage, land taxations and land values as entirely separate entities handled by entirely separate organisations leads to a misuse of resources. To achieve sustainable development one must consider all aspects of the land and how they inter-relate.

Land registers in land Registries need to reflect the way that property is used in order that appropriate services can be provided and citizens can be aware of their full rights. The integrated Electronic Land Administration System is a model for change as a preliminary step in the right direction. Information needs to be readily available with regard to the disposal of land and the existence of potentially contaminated land in consequence of development activities.

The second necessary reform is to ensure that all the institutional arrangements for an information based society are in place. Some of these arrangements require new laws or clarification of existing laws relating to the ownership, copyright, privacy, liability and exploitation of land related data. In particular there may need to be new legislation to permit electronic conveyancing and to facilitate the sharing of data between the public and private sectors.

Every State land administration needs to develop its own land information system but based on its vision of the way forward. The State governments of Peninsular Malaysia in particular cannot afford to waste their resources,

especially their land, and for them an integrated approach to their land administration system is an essential investment that will help to sustain their future. It is pertinent to point out that *'whatever is attempted must be designed as much for the future as for the present. Maintenance is more important than initial system creation for without it, the system will become an historical monument and a folly at that. Not only must external changes be recorded within the system but also the system must itself be capable of change as the levels of sophistication both of the hardware and software and of the people operating them grow. If Land Administrations in Peninsular Malaysia are to make a quantum leap forward, if the growth of land information systems has the impact on societies that it is hoped that they will, if in fact better land information can lead to better decisions about the use of land and resources and better management of that most fundamental resource, then there is a heavy responsibility on those giving aid and assistance to get it right. The affluent can afford the occasional failure. The weak land administration cannot'*.

Overall, what is needed is a change of attitude towards land and land administration as a whole, a sharper focus on information as a commodity, and binding commitment to keep that information up to date. Land administration systems must evolve to provide a modern framework within which the demands of sustainable development can be met. Given greater awareness of the issues, this should not be too difficult to achieve.

VI. CONCLUSION

The modern land administration paradigm is about protecting government land, allocating rights over State land, regulating the land market, and providing access to information and service delivery. Today, 'land administration' refers to the role of government in securing land ownership for the community, providing access to public land, protecting identified values and public open space, and establishing information systems based on where land is, what it is used for, and its value (be it in ringgit terms through the market or community values through public purposes).

Due to the inherent wealth of Peninsular Malaysia relatively expensive and cadastral land registration systems were allowed to evolve in the individual jurisdictions. These systems work well and underpin a secure land transfer system supporting an active land market. Furthermore, although Peninsular Malaysia cadastral systems were not designed as part of a wider land administration system, they now form its foundation and are becoming increasingly important within the wider spatial information environment.

Peninsular Malaysia was an early adopter of the benefits of technology in improving its land administration systems and functions. In the mid-1980s Computerized Land Revenue Collection Systems was created to deliver land information by use of computer. However, in retrospect, the technology then available could not deliver the Government's ambitions. In addition, the

organisational arrangements remained fragmented and worked against improved integration of service delivery.

Land rights creation in Peninsular Malaysia and its evolution from 1957 to the present day illustrates how 'the relationship between humankind and land in almost every society is dynamic and varies for almost every situation. Other parts of Malaysia and its near neighbour Singapore and Thailand are now adopting this more complex form of organisation for government land administration. This indicates that network oriented organisations may be the best form of organisation to meet the demands of international drivers for change and the increasingly complex economic and societal needs for land administration systems in this country.

MALAYSIA'S LAND POLICY FRAMEWORK

MOHD SHUKRI ISMAIL¹

Keywords: Legislative instruments, land policy framework, issues and challenges, implementation strategies.

I. INTRODUCTION

ALL countries will have some form of land policy and land planning systems which are implemented to correct physical, economic, social and spatial imbalances. In a multiethnic society such as that which exists in Malaysia, land policy and planning systems are implemented within a broader framework, which is supervised by the Government. Malaysia's experience in this regard has been varied as it moves from an agrarian economy to that of one which characterizes a rapidly industrializing country.

This paper will attempt to outline Malaysia's land policy instruments in view of the National Land Code 1965 (Act 56 of 1966) and highlights the overall framework of defining the formulation of National Land Policy.

II. BACKGROUND

IN Malaysia just like in any other capitalist economy, ownership of land is also ownership of the means of production. Rural land is the base for the production of food and urban land is the base for the production of living space.

The various races in Malaysia's plural society propagate various attitudes towards the ownership of land through their customary practices and commercial decisions. These attitudes operate within a broader framework where the institution of private ownership of land exists. Ownership of urban land and therefore access to business opportunities have indeed become a major issue in South East Asia's plural societies (Evers, 1984)². The existing land laws in Malaysia and the system of registration which guarantees indefeasibility of title allows land to be leased, transferred and mortgaged. This eventually leads to the ability of land to be used as a symbol of wealth creation.

In the rural areas vast tracts of land are owned by corporations for the cultivation of merchantable agricultural produce alongside smallholders who own land for commercial production of crops and self sustenance. Individual

¹ Director of Research and Development Section, Department of the Director General of Lands and Mines Federal Malaysia; mohdshukri@kptg.gov.my

² Evers, Hans – Dieter, 1984, Urban Land Ownership, Ethnicity and Class in South East Asia, Journal of Urban Regional Research.

State Governments in Malaysia place a heavy emphasis on the use of land and since land is a State matter the degree of urbanised land is an important revenue generator to the State.

Increased urbanisation has put pressure on the use of land and this has led to the problems of squatters, traffic congestion and increased land values. Conflict between landlords and squatters prevail as rural – urban migrants compete among themselves for urban land to take part in the higher income opportunities in the urban areas. In essence the poor in cities are shifted around and relocated through the dynamics of urban property development.

In Malaysia, perhaps more in any other South East Asian country, there has been a tendency towards rural/urban residential and occupational specialization by ethnicity. Thus there were the policies such as the New Economic Policy (NEP), National Development Policy (NDP) and national development plans including 1Malaysia's Vision, and New Economic Model (NEM) to reduce the imbalance by 'restructuring society'.

There are therefore three crucial issues on land that prevail in Malaysia: firstly, public power over land which involves planning, development control, compulsory, purchase, public development and land taxation; secondly, the land market includes legal and fiscal frameworks for commercial transactions such as buying, selling, leasing and mortgaging and thirdly, institutional structures that exist to control the use of land and this includes local and central public authorities and the general regulatory framework for decision making in the field of urban land (McAuslan, 1982)³.

A substantial part of the national development will inevitably be in the form of physical development on land. Therefore, the success of the national development policies and strategies in Malaysia will depend largely on complementary land legislation, which formulates land policy and physical planning framework.

Thus, Malaysia's land policy comprise of legislative instruments, statutory organizations and statutory controls. Some of these legislative instruments are summarized below.

The National Land Code 1965

It is the main land law in Peninsular Malaysia. The law was made effective from 1st January 1966. From this date a uniform system of land tenure was created for the twelve States in Peninsular Malaysia.

The National Land Code is based on the Torrens system of land registration and it was the result of the International Bank of Reconstruction and Development's effort in consolidating the various land laws prevailing in the country (IBRD, 1955)⁴. The NLC achieved two objectives (Sihombing, 1989)⁵:

³ McAuslan, P., 1982, The Urban Land Question, Habitat International Vol 6 No 5/6.

⁴ IBRD, The Economic Development of Malaya: The Report, Washington DC 1955.

⁵ Sihombing, J. (1989) Land Law from 1928 to 1966 in the Federated Malay States, in the Centenary of the Torrens System in Malaysia eds. Ahmad Ibrahim and Sihombing J.

- (i) it has established a uniform clear cut system of land tenure and dealing in place of a confused system and,
- (ii) it has incorporated all those new provisions required to adapt the new system to the social and economic changes.

The National Land Code (Penang and Malacca Titles) Act 1963

Penang and Malacca were part of the Straits Settlements and were ruled by the British Crown. The early land law in these States, therefore, were based on the English System of Grants in Penang and a mixture of English, Malay and Dutch tenures in Malacca. By the 1960's the system of land tenure remained somewhat confusing. To overcome this, the National Land Code (Penang and Malacca Titles) Act was passed in 1963. The transfer of land titles from the former systems to the Torrens System began in 1965.

There are special provisions in the 1963 Act that deal with Customary Land in Malacca. Customary Land in Malacca which is subject to the category 'agriculture' can only be transferred, charged, leased to a Malay who was born in Malacca or whose descendents were born in the State. However, in the case of customary land in Malacca that is subject to the category 'building' or 'industry' the above restrictions do not apply. The land policy here under customary tenure is to ensure such land remains in the hands of the Malays (the indigenous populace).

Within Malacca, tracts of Malacca Customary Land are situated within prime's areas of towns. Due to their limitations on ownership by non-Malays, development has by passed these parcels. Realizing this, the Malacca State Government has created a Malacca Customary Land Company that will function to develop customary land in Malacca. An interesting feature of the scope of this Company is that it will be able to sell the developed customary land to non-Malays on tenures of 30 years leasehold and less. An Amendment of Section 108 (1) (a) of the Act has been tabled to Parliament.

On the subject of customary land, it is also pertinent to mention here that customary land also exists in the state of Negeri Sembilan and is governed by the Customary Tenure Enactment Chapter 215. Under this law dealings in respect of customary land can be effected only in the favour of female members of the same tribe. On death land is to be transmitted to the female heirs.

The Sabah Land Ordinance Chapter 68

The Sabah Land Ordinance Chapter 68 (Government Printer, 1930) provides the framework for land policy in Sabah. It is also based on the Torrens system of land registration. Categorization of land is into two board categories namely "Town Land" and "Country Land". The four pillars of land ownership in Sabah are:—

- (a) The State holds the allodial estate and all others hold land in fued from the State.

- (b) Ownership of estates in land comprises surface rights only. Minerals and materials are reserved to the State.
- (c) Possession is the root of titles especially in claims of native customary rights.
- (d) Ownership of land is inheritable.

The Ordinance also deals with lands held by natives under customary tenure. There are provisions for the issue of communal titles for common use and benefits of natives. The special features of native titles are:-

- (a) Native titles are issued with a term in perpetuity. This is nearest to a freehold title;
- (b) Native titles are issued strictly to natives;
- (c) Native titles are restricted for agricultural purposes only.

The Ordinance prohibits the dealing of native land with non-natives. However, any native desirous of selling his or her native titled land to a non-native must surrender the titles to the State for fresh alienation of a lease subject to a premium and enhanced quit rent charges. The object of the restriction is to keep such lands in the hands of natives and to prevent the entry of non-natives in areas where their presence is not desired.

The Sarawak Land Code Chapter 81

Land policy in Sarawak was successively evolved by the Brooke family which introduced the Torrens system of land registration into Sarawak through various Land Orders. Land law in Sarawak today is governed by the Land Code Chapter 81 (Government Printer, 1958).

Land in Sarawak is classified into the following types:

- (i) Interior Area Land is land not falling within other classifications and which is not a Government Reserve. This land can be declared a Native Area Land only if the area consists of unalienated Mixed Zone Land.
- (ii) Native Customary Land comprises land over which natives are entitled to exercise customary rights. This also covers lands which had been acquired by natives on the basis of a communal nature. Any area of State Land can be declared a Native Communal Reserve for the use of the native community. Native Customary Land also comprises Interior Area Land over which a native has been permitted to acquire customary rights with the permission of the District Officer. This is to prevent the possibility of excessive jungle clearance by the natives. Native Area Land is land held by a native under a document of title but does not include Mixed Zone Land. Any land can be declared Native Area land only if it consists of unalienated Mixed Zone Land.

- (iii) Mixed Zone Land is land which is such by virtue of prior law or which becomes such by virtue of a declaration by the Minister under the Code.

Any privileges or rights under the Native Area Land, Native Customary Land or Interior Land can only be acquired by a native of Sarawak.

The non-native is therefore limited to occupying and dealing with Mixed Zone Land. There is a prohibition on foreigners owning land. This extends to any person not a Malaysian citizen who is a permanent resident in the State and foreign companies, societies, associations, trusts or other bodies not registered in Malaysia. There is also an absolute prohibition on the issue of a document of title to an area of over five thousand acres.

State Land Rules

Section 14 of the National Land Code provides for the State governments to draw up individual State Land Rules. These Rules outlined the various procedures pertaining to land in the particular State.

These also include procedures for the application for land from the State, permit applications to remove rock material and the rates for conversion premiums for the conversion of land use categories. The State Land Rules have to be in conformity with the National Land Code, however, where applicable, since land is a State Matter, provisions of previous land ordinances for the particular State are also applicable.

Town and Country Planning Act 1976

In 1976 two pieces of legislation were enacted to overcome the deficiencies of land use planning for Malaysia which was experiencing rapid change and development. The Town and Country Planning Act 1976 (Act 172) stipulates that every local authority shall be the local planning authority for the area of the local authority. This gave the primary physical planning responsibility at the local level to local governments which were given a consolidated legal framework via the Local Government Act 1976.

The Federal Territory of Kuala Lumpur has its own planning legislation in the form of the Federal Territory Planning Act 1982 (Act 267). Essentially the Act is similar to the Act 172, however in the place of the local planning authority, the Commissioner (or Mayor) is given wide discretionary powers to administer the provisions of the Act.

Act 172 and its associated regulations is an adoptive act providing the strategic and spatial implications of land use planning with local spatial implications. It is the effective medium of translating broad government

policies into physical policies which are land based but have wide social and economic implications (Singh, 1988)⁶.

The State is responsible for the general land use policy in all local authorities within the State. Within the framework of the national policy each State carries out its land use planning functions through State Planning Committees and Local Planning Authorities.

The process of land use control through the Act 172 is the preparation of the Structure Plan a policy document which is approved by the State and a detailed Local Plan which is a map based plan outlining physical details translating the policies in the structure plan. The local planning authority produces both plans.

Land Acquisition Act 1960

The Malaysian Constitution provides in Article 13 that no person may be deprived of property save in accordance with law and no law may provide for compulsory acquisition or use of property without adequate compensation. Under the Land Acquisition Act 1960, the State Government could acquire land for a specific public purpose. By virtue of an amendment in 1973, land could also be acquired for mining, residential, commercial or industrial purposes.

For the government this is a method of land assembly. Public purpose projects are also a means through which broad sectoral policies of the national development policies are translated into physical projects for the benefit of the population. There have been many public purpose projects which have brought development and basic facilities to the rural areas.

The existing law provides for a cumbersome framework for acquisition of land. Compensation is paid for all land taken. However, where an element of betterment is present there have been instances where adequate compensation in the form of nominal sums has been paid. Where aggrieved parties are not satisfied with the compensation received there are mechanisms for appeal to the courts. The framework allows the government to take possession of the land even though the compensation is being appealed in court. This is to ensure that public projects are not delayed.

Section 3 of the Act was amended to provide for the compulsory acquisition of land for any purpose deemed beneficial to the economic development of Malaysia or to the public or any class of the public. The reason given by the government for this amendment was that Government could not conform to Article 86 (1) of the Constitution which gives the right to Government to alienate land to anyone who is qualified as the Act does not provide for the alienation of compulsory acquired land to third parties.

⁶ Singh, Gurjit, 1988. The implementation of Urban housing programmes Under the New Economic Policy: A case Study of Kuala Lumpur, M. Phil Dissertation, University of Cambridge.

The Environmental Quality Act 1974

While land use control remains the prerogative of local authorities, the Federal Government influences land use through the Department of Environment (DOE). The Environment Quality Act 1974 and the Environmental Quality (Prescribed Activity) (Environmental Impact Assessment) Order empowers the DOE to request for an Environmental impact Assessment (EIA) for certain projects and activities.

As the requirement for an EIA covers a wide range of projects and activities, the EIA has become a major element in the approval of projects and activities. This has become even more critical in today's age of environmental degradation. Recently, the Government indicated that it would be amending the Act to include provisions which will ensure that the EIA requirements will cover a wider net of projects.

The Strata Titles Act 1985

The Strata Titles Act was enacted in 1985 (Act 318) and the State Strata Titles Rules are essentially govern the administration of strata titles for subdivided buildings and subdivided lands in respect of Gated Community living. The Rules also outline the obligations of the property developer to ensure that strata schemes are properly managed before the management corporation is formed. This is in line with the overall policy to ensure that the sustainability of housing in terms of acceptable living environment.

Malay Reservations Enactments

The Malay Reservations Enactments of the respective Malay States seek to ensure that certain land in the State is alienated only to Malays and that the land thus alienated or any interest in it will continue to remain in the hands of Malays.

Article 89 of the Malaysian Constitution deals with Malay reservations land. Only a Malay may own land or possess an interest in a Malay Reservation area. But in the States of Kedah and Perlis a Siamese agriculturist permanently resident in the state may also own land in a Malay Reservation. A Malay Holding includes any registered interest of a Malays a proprietor or co-proprietor in any alienated land included in Malay Reservation Area which has been duly declared and gazetted. In the state of Terengganu it includes any registered interest of a Malay in any alienated country land comprised in any holding not more than 10 acres. As such, in Terengganu a Malay holding can be within or outside a Malay Reservation area (Marbeck, 1982)⁷.

⁷ Marbeck, A.B, 1982, The General Practice Surveyor and the law, The Surveyor Journal, p 10.

Land Taxation

All land in Malaysia is subject to an annual tax administratively known as 'Quit Rent' which is collected by the State Government. The tax structure is based on the State Land Rules and is determined by the size, location and use of the land. This form of tax has little influence in encouraging the development of vacant land as tax on vacant land is low.

Property tax or 'Assessment Tax' is another form of tax levied on property within a local authority which is collected by the local authority. The tax levied is determined under the provisions of the Local Government Act and varies from one local authority to another. The more improved or built up a property is the higher the assessment tax. Assessment tax is a form of revenue to the local authority to provide for public services and facilities.

The Real Property Gains Tax Act 1976 ensures that profits made from the sale of land are taxed. This is to prevent property speculation and it is not designed to tax unearned increment in land values or to increase the supply of land for development.

III. MALAYSIA'S LAND POLICY FRAMEWORK

THE term "policy" can be seen as an abstraction of reality and is defined as a group of decisions taken by authoritative decision makers which can at least analytically be linked to some degree of coherence and which are concerned with the selection of prime goals and the means to achieve them (Gray, 1983)⁸. Land policy therefore provides the boundaries and parameters which provide the framework, direction and continuity of decisions made for the function of land in the implementation of national development plans which involve regional, state-wide and local plans.

The Constitution of Malaysia provides for the doctrine of private ownership of property including land. The National Land Code (NLC) supports this through the creation of a comprehensive and organized system of land ownership, registration and dealing which ensures the indefeasibility of title to land.

As stated above, the right of land being a State matter is provided in the Constitution. This would mean that there are as many land policies as there are States. Where the third tier of government exists i.e. Local Authorities, there exist further "localized" land policies which are in turn controlled by State Land policies.

Article 91 of the Malaysian Constitution provides for the establishment of a National Land Council comprising of State representatives with a Federal Minister as a Chairman. The main function of this Council is to formulate a national policy for the promotion and control of the utilization of land throughout the country for mining, agriculture, forestry of any other purpose

⁸ Gray, C.J., Stringer J.K., and Williamson, P., 1983, 'Policy Change: An analytical framework. Annual PSA conference, University of Newcastle, April 1983.

in consultation with the Federal and State Governments and the National Finance Council. It is mandatory for the Federal and State Governments to follow the policy formulated. The Council has in the past formulated broad based policies on squatters, land speculation and use of land for industries.

These policies however, have been kept confidential and there is no known assessment of their effectiveness. As land is a State matter it can be expected that each State will want to decide on what it can do with its land first rather than be subjected to a national policy.

Thus adoption of the land policy framework in Malaysia could be envisaged as shown in the figure below⁹:

Figure 1

Architecture Framework for the National Land Policy (envisaged by the Federal Constitution & The National Land Code).



Vision

Towards Sustainable Development through Excellence Land Resource Management

Policy Statement

Ensure that land resources are utilised on a sustainable basis for the continued progress of socio-economic development of the nation.

⁹ Ismail, M.S., 2009, A Draft Framework for National Land Policy, Jabatan Ketua Pengarah Tanah dan Galian (Persekutuan), Putrajaya

Policy Objectives

- To enhance the continuity of access to land and security of tenure.
- To encourage the sustainable use of land.
- To improve productivity, income and living conditions and eradicate poverty.
- To reduce land-related competing interests and disputes.
- To develop an efficient and effective system of land administration and management.
- To encourage land ownership by Malaysian citizens.
- To balance the competing interest of one policy to another.

Policy Principles*Principle 1: Access to land for all citizens*

This principle needs to be stated in the face of ever-increasing pressures on the land resource and its administration. The principle recognizes that guarantee of land access, clearly defined property rights and secure tenure has to play in human resources development.

Principle 2: Integration of this National Land Policy (NLP) with the vision and goals of the National Vision 2020

The Vision 2020 is the long-term guide to Malaysia's development. Therefore, a principle of this national land policy is to ensure optimum utilisation of land resource to assist in achieving the socio-economic development vision and related goals of the Vision 2020.

Principle 3: Institutional coherence/alignment of land-related agencies

This deserves its status as a principle rather than simply a strategy because of its fundamental importance in achieving all the NLP's objectives. That is, it is a fundamental principle of this policy that institutional coherence and efficiency is a necessary precondition for the achievement of all the above objectives.

Principle 4: A process of capacity building upon Malaysia culture and institutions

This principle recognises that, historically, lasting progress is built incrementally, one step at a time. Practices and institutions that encourage such growth are to be facilitated: that is, all existing use and management rights are to be recognised and modified if need be.

Principle 5: Community participation, accountability and transparency in land administration and management

This principle follows from the one above and the human resource development principles of the Vision 2020. This policy principle is directed towards local communities taking their future more and more into their own hands, with the government being available to them to service their requirements. The principles of transparency and accountability are to apply to all levels of this process - from the communities themselves to the highest echelons of land administration and management.

Principle 6: Gender equity

Obstructions to the human resource development of any individual should not be imposed on the basis of gender or races or marital status. Land-related legal impediments to gender equity are to be removed. The growth towards gender equity in customary tenure is to be encouraged.

Principle 7: A process of stimulating land and property markets

National Vision 2020 recognises the private sector as holding the key to economic growth. The effective operation of the private sector is dependent upon the establishment of clearly defined property rights- including land-related property rights - by a legal framework, and their efficient administration through an institutional framework.

Principle 8: Optimal sustainable use of the land resource

Natural resource management and development are the basic strategies towards improving sustainable food security.

Philosophy

- Generate economic development by maximising equitable benefits to the entire society from land on sustainable basis.
- Provide quality land administration services, hospitality and infrastructure required by the population.
- Emphasize security of land tenure through innovative legal framework.
- Ensure the quality of land management fabric is based on the local cultures of the nation.
- Ensure the continuous preservation and conservation of the environment.
- Promote national unity and social development.
- Promote participation of the multi-races society in their respective community development towards enhancing good governance.
- Eradicate poverty.

- Responsive and innovative towards technological advancement and development.

Issues and Challenges

- (i) Ownership of land and urbanisation pressures.
- (ii) Land rights control under the National Land Code (NLC) – land is a State matter.
- (iii) Planning regulations and laws - freedom of the States to adopt all or part of it for all or part of their area or not to adopt it at all means that the area coverage desired is likely to be sporadic.
- (iv) Compulsory land acquisition – a method of land assembly by the government.
- (v) Environmental degradation.
- (vi) Malay Reservations Land.
- (vii) Housing policy – provide affordable and adequate housing to low income group.
- (viii) Deforestation.
- (ix) Indigenous peoples and customary land rights.
- (x) Land administration issues – Qualified Titles, urban land management, lack of coordination between government agencies, technological issues, legal issues of land registration, etc.

Policy Thrusts

- Thrust 1: Security of land tenure for all segments of society
- Thrust 2: An adequate supply of land for all segments of society
- Thrust 3: Building on existing land rights and practices
- Thrust 4: Land rights administration: Lowering transaction costs and securing rights
- Thrust 5: The role of land market to enhance productivity and access to land
- Thrust 6: An efficient and sustainable land-use administration
- Thrust 7: Development of a good land administration system

Implementation Strategies

Strategy 1: Improve the Land Literate Knowledge Base

Develop land law literate experts, and undertake studies to identify the potential threats to land administration and management, and how they may be countered.

Strategy 2: Enhance Sustainable Utilisation of Land

Identify and encourage the optimum use of the land, diversity, ensuring fair distribution of benefits to the nation and to local communities.

Strategy 3: Develop A Centre Of Excellence In Land Administration and Management

Establish Malaysia as a centre of excellence in land administration and management in Asia region.

Strategy 4: Strengthen The Institutional Framework For Land Management

Establish and reinforce the mechanisms for planning, administration and management of land.

Strategy 5: Coordinate and Integrate land administration policies, practices and programmes in various fields

Increase efforts to coordinate and integrate land policies and land administration practices programmes.

Strategy 6: Integrate Land Policy Considerations Into Sectoral Planning Strategies

Ensure that all major sectoral planning and development activities incorporate considerations of land policy requirements.

Strategy 7: Enhance Skill, Capabilities and Competence

Produce a pool of trained, informed and committed manpower in the field of land administration and management.

Strategy 8: Encourage Private Sector Participation

Promote private sector participation in land resource conservation, exploration and sustainable utilisation.

Strategy 9: Review Land Legislation To Reflect Industrial and Peoples Needs

Review and update existing land legislation to reflect industrial and people's needs and introduce new legislation where appropriate.

Strategy 10: Minimise Impacts of Human Activities on Land Resource Degradation

Take mitigating measures to reduce the adverse effects of human activities on land resource degradation.

Strategy 11: Develop Policies, Regulations, Laws and Capacity Building on Land Administration and Management

Introduce measures for the incorporation of land policy principles and concerns, especially in relation to business re-engineering, and the global evolution of land administration.

Strategy 12: Enhance Institutional and Public Awareness

Promote and encourage the understanding and participation of the public and institutions for the effective administration and management of land administration.

Strategy 13: Promote International Cooperation and Collaboration

Promote international cooperation and collaboration in order to enhance national efforts in land administration and management.

Strategy 14: Exchange of Information

Promote and encourage the exchange of information on land administration and management at local and international levels.

Strategy 15: Establish Funding Mechanisms

Identify and establish appropriate funding mechanisms for land administration and management.

Strategy 16: Implementing good culture of corporate governance and modernisation through ICT

Identify and establish good culture of corporate governance and modernisation through ICT in land administration and management.

Strategy 17: Coordinating relationship between National Land Policy and other Government's Policies of the various sectors

Increase efforts and establish a workable mechanism to coordinate the impact of relationship between National Land Policy and other Government's Policies as general and specific policies of the various sectors.

IV. CONCLUSION

IT can be concluded that land policy in Malaysia is the result of an interplay of land related instruments which more than adequately administer and control land use and development for compliance with national development objectives. The environment for the implementation of land policy and land use planning strategies is controlled by a plethora of regulations. Hence, it would not be incorrect to say that it is over regulated. An important feature of land policy and land use planning implementation in Malaysia is the effort to improve the economic base of the Malays. The attitude towards foreign ownership of land is also changing with increasing attention being paid to the diseconomies being created by speculation and increasing land values. Administrative controls such as those imposed by the Foreign Investment Committee play an important role in the control of foreign land ownership and hence foreign investment which has enormous spin-offs on other sectors of the economy.

A major consideration in the effective implementation of land policy and land use planning is the fact that land is a State matter. It is interesting to note that whilst there exist various pieces of land legislation applicable to the country as a whole, each State eventually decides what is best for itself. In some instances this can be seen as an obstacle to national development and uniformity of policy implementation.

It is apparent that the land policies that have evolved from the various legislative instruments have not considered the issue of sustainable development and management of resources in detail. It now imperative for the government to seriously look into implementing the spirit of sustainable development and management of resources in all land related legislation. This will also bring the overall policy in line with the national development policies and programmes where one of the main facets is to give adequate attention to environmental protection.

It is also necessary for the Government to seriously consider a regulatory audit of all legislation and administrative regulations which affect the property development process especially housing. The protracted time periods encountered in the provision of housing is antagonistic to the policy of providing adequate and affordable housing to the people. It is acknowledged that land is a State matter and hence this can be difficult. However, it must be borne in mind that the diseconomies created by tedious procedures and systems will also affect the flow of investments into the States.

LAND DEVELOPMENT ISSUES AND LATEST INITIATIVES UNDERTAKEN BY JKPTG TO IMPROVE SERVICE DELIVERY SYSTEM OF LAND ADMINISTRATION

MOHD. SHUKRI ISMAIL¹ & ANESH GANASON²

Keywords: Malaysia's land policy, land administration functions, land administration and land development issues; improvements of service delivery, the way ahead, a good land administration system.

I. INTRODUCTION

THE framework of the Malaysian Constitution provides enormous power to the State Authority in respect of land matters. The Federal Constitution provides an avenue where land policies can be discussed and agreed upon with the consultation of State Governments in the promotion and control of the utilization of land throughout the country for mining, agriculture, forestry or any other purpose such as policies on squatters, land speculation and use of land for industries through the National Land Council. The policies that are agreed upon are in line with the aspirations of the Government in establishing the idea of providing a complete development plan for:-

- i. The social and economic direction in which the country is to move;
- ii. The physical perspective of the country within which implications of day to day decision can be considered; and
- iii. A control mechanism for the public sector, through the allocation of finances to implement its programme.

Taking these aspects into considerations, Malaysia's land policy comprises of legislative instruments, statutory organizations and statutory controls. Some of these instruments includes the National Land Code 1965; The National Land Code (Penang and Malacca Titles) Act 1963; The Strata Titles Act 1985; The Malay Reservations Enactments; The Town and Country Planning Act 1976; The Local Government Act 1976; The Land Acquisition Act 1960; The Environmental Quality Act 1974; The State Land Rules; and etc.

Malaysia being a multiethnic society provides a special concern when policies are drafted. The needs and the rights of each society have to be taken into consideration without diminishing the special rights of the Bumiputeras. The move from an agrarian economy to a rapid industrialized based economy needs the establishment of dynamic policies within the land administration.

¹ Research and Development Section, Department of the Director General of Lands and Mines Federal Malaysia; mohdshukri@kptg.gov.my

² Research and Development Section, Department of the Director General of Lands and Mines Federal Malaysia; anesh@kptg.gov.my

The National Land Code 1965 has incorporated some of these policies and land planning systems to rectify physical, economic, social and spatial imbalance. Among the land policies which were incorporated in the National Land Code to address these elements were:–

- Equitability and protection of property rights;
- Protection of traditional values with integration between cultural values and economic realities;
- Guarantee of ownership and security of tenure;
- Land use and taxation management;
- Land markets and valuation;
- Providing a good land administration system.

It is the purpose of the Code to ensure uniformity of land laws and land policies with respect to land tenure, registration of titles relating to land, transfer of land, leases, charges in respect of land, easements and other rights and interests in land. In this regards, the policies are part of an integrated government initiative, not a stand-alone policy that forms a coordinated public policy framework, which are lingered by doubts and contention. The future of land administration has to be seen with a positive approach and certainty that will help build confidence in improving land administration and thus provide the right building blocks in encouraging development.

II. LAND ADMINISTRATION FUNCTIONS

THE term “land administration” referred in this paper is in line with the interpretation of the National Land Code, which includes processes of recording and disseminating information about the ownership, value and use of land and its associated resources. Such processes include the determination of rights and other attributes of the land, the survey and description of these lands, their detailed documentation and the provision of relevant information in support of land markets.

In this context, an understanding of the broader aspects of land management is essential to establish a proper land information management. Land administration is concerned with three main commodities — the ownership, taxation and use of the land — within the overall context of land resource management.

As a Federation, Peninsular Malaysia maintains decentralized land administration offices in each State jurisdiction. The land administration is the State government responsibility performed under different levels of government departments such as the District Land Offices, State Director of Land and Mines Offices and Departments of Survey and Mapping. Embedded in this land administration framework are:–

- the cadastral mapping systems within the control of the Department of Survey and Mapping;
- land registry and titles office within the control of the State's District Land Offices and State's Director of Land and Mines Offices; and,
- Federal land management within the control of the Federal Land Commissioner, Department of the Director General of Land and Mines (Federal) (JKPTG).

Today this organizational arrangement is assisted by the computerisation of spatial and non-spatial information but subjected to enabling legal framework within the National Land Code. For instance, these includes:-

- i. Manual Intervention System for pre-registration matters in land such as application for Temporary Occupation License (TOL), application for partition of land, amalgamation of lands, conversion of land use, and etc.
- ii. Computerized Land Registration System (CLRS) for registering dealings and non-dealings in land;
- iii. Computerised Land Revenue Collection System (CLRCS) for collecting land revenue, including online payment;
- iv. Sistem Pangkalan Ukur Kadaster (SPDK) (including the coming into operation of e-Cadastre) for preparation of certified plans in respect of registration of titles;
- v. Other computerization initiatives such as e-Consent (Terengganu), e-MMKN (Malacca), e-Benar (Perak) and etc.

III. LAND ADMINISTRATION AND LAND DEVELOPMENT ISSUES

LAND Administration is an integral part of development of a nation. The basis of rights to properties and the opportunity to develop land for the purpose of agriculture, residential, commercial and industry are based on:-

- i. systematic and accurate records of boundary definition and ownership of land;
- ii. a government guarantee of indefeasibility of title to alienated land;
- iii. the need for systematic and accurate recording of land information for the purpose of land taxation as an important source of state revenue;
- iv. and the duty of the government to protect and administer State land from encroachment.

In line with these understandings, land administration is governed by the National Land Code 1965 (Act 56 of 1965) which was created to provide a consolidated legislation in the aspects of land tenure, registration of titles relating to land, transfer of land, leases and charges in respect of land, easement and other rights in lieu of alienation and development of land.

Rapid development and various needs of securing proprietors interests have put a lot of demands on land administration. The lack of speed in service delivery has made doing business with the land administration a nightmare because of the bureaucracy and long approval periods which dampens the prospect of attracting large investments into the country. The need of introducing various new policies and land legislative amendments to accommodate current development is vital to materialize the Government Transformation Programme (GTP) and New Economic Model (NEM). But the new facelift in the land administration has taken heed of the concerns of the public and industries to transform land administration in Malaysia in addressing the issues faced in land development and in the same time enhance and improve service deliveries.

In this paper, a brief identification of some related issues pertaining to land development within the framework of the National Land Code can be addressed below.

(a) Qualified Titles and Final Titles (QTs and FTs)

Qualified title (QT) is a concept implemented in Malaysia; where land titles are issued in advance of a proper cadastral survey. Historically, QT were introduced to in the 1960's as a measure to accelerate administration involved with subdivision development. In major developments, it was required for landowners to amalgamate the land into one piece before it could be subdivided. The QT was issued upon amalgamation of the land, and the final title (FT) was applied before final subdivision of the land. This practice occurred due to the lack of qualified land surveyors which slowed the pace in registration of final titles. In order to rectify the constraints that amalgamation and subdivision placed on land developers, the NLC was amended to allow the State Government to subdivide, amalgamate, and partition the QTs while the final titles were being issued.

Although the provisional nature of QTs suggests that the rights and restrictions surrounding these ownership units would be less formalized than those surrounding FTs, the question of QTs is less concerned with the presence of formal verses informal rights, but more concerned with temporary versus final titles.

Although the process of issuing QTs was successful in speeding up the development process, as well as assisting in the establishment of an active land market, it has resulted in 670,255 QTs that have yet to be converted to FTs. In reality, each of the surveyed land parcels that were created upon issuance of FTs actually contains many more land ownership units within its boundaries. This creates an issue of survey, as each ownership unit has not necessarily been surveyed or registered as a FT.

QTs have been successfully traded and used as security in the land market in the same way that FTs are treated in the land market. Banks and financial institutions also treat QTs and FTs in the same way, regarding loan security.

Because of these factors, there is little motivation from land owners to convert their QTs to FTs.

The original configuration of the QT concept meant that many QTs were created by non-surveyors, with the central survey and mapping organization not having control over the form of these cadastral plans. Although it was intended for these plans to eventually be converted to final titles, the 670,255 QTs that have not been converted are therefore not recorded in the national cadastral map series. Also, QTs are defined using general boundaries while FTs require a fixed boundary system to be used. In other development, there will be no possibility for strata titles to be issued by the land Registries if the land is constantly held under QTs.

These factors will generate difficulties when the attempt of converting the national cadastral maps series into a digital cadastral database. It is accepted however, that computerisation of records will resolve many of the issues surrounding the differences between QTs and FTs.

(b) Coordination between levels of institutional arrangement for land administration

Division within the federated states of Peninsular Malaysia has led to different institutional arrangements and uniformity of practices for land administration. Peninsular Malaysia is a federation of States, each of which is responsible for its own land matters. All States operate a Torrens system of registration, administered by the State Land Offices and coordinated by the State's Department of Land and Mines. On the other hand, cadastral surveys are controlled by the Department of Survey and Mapping, Malaysia (JUPEM) which is a federal department. JUPEM is responsible for undertaking cadastral survey work within Peninsular Malaysia and is supported of licensed land surveyors. Comparatively, in Sabah and Sarawak, however, cadastral survey and land administration is administered by a single organization, the Department of Land and Surveys.

(c) Automatic Renewal of Land Leases

Section 40 of National Land Code 1965 states that all state land belong to the State Authority. When state land is disposed off by the State Authority to an individual in perpetuity for an indefinite period, this land is now granted as freehold title. When the state land is disposed of by the State Authority to an individual for a term of years, by virtue of law, not exceeding 99 years, this land is now granted as leasehold title. Upon expiry of the period of the lease, the land will revert to the State Authority.

The owner will then have to either apply for a renewal of the lease before its expiry or apply for a fresh alienation if the lease has expired. These will involve the payment of a hefty premium which would be similar to buying the land, or

the State Authority using its discretion powers may offer some discount to the landowner. When the lease has been obtained by the leaseholder from the State Authority and the property is part of a residential area it is unlikely that the State Authority will refuse to renew the lease or grant a further term. Such a decision will no doubt be influenced and affected by policy considerations to meet the needs of the times in the context of prevailing circumstances. Whilst most house owners of such leasehold property are likely to see the lease renewed or a further term granted, the owner might be unhappy about the renewal period as well as the premium that has to be paid.

There cannot be a guarantee that the renewal is for a duration which is equal to the period of the earlier lease. Nor would the new premium to be paid likely to be the same as when the lease was obtained on the earlier occasion. There could also be instances where there is no renewal of the lease at all. This is more likely to be the case where the lease is at the outset for a shorter period and for non-residential purposes. However, even in the case of a residential area a possibility could exist where the lease may not be renewed. This could happen if the area in question is required by the State to meet a more pressing and urgent need for national interest, in which case the houses in the area concerned may have to be demolished.

The uncertainties surrounding the status of leasehold land can lead to problems in using the land as security for securing credit, development and any other dealings by the proprietor. In order to overcome this problem which will also directly impact on economic development of the country, it is proposed to devise mechanism for automatic renewal of lease. A research is being done by the Department of the Director General of Lands and Mines (Federal) to examine and suggest a suitable mechanism for renewal of lease which is an important contribution to making the land administration system more effective.

(d) Various types of application forms for land development

Looking from the land administration perspective, land development in Malaysia simply means the change of original use of any alienated land that effects its restriction in interest, express conditions and category of land use as opposed to what has been earlier approved by the State Authority upon alienation. Interestingly, land development is nowhere mentioned under the National Land Code (NLC) which is the governing code for land administration in Malaysia. Under the Code, land development however takes place in one or more of the following forms:-

- Variation of conditions, restrictions and categories (Section 124)
- Sub-division (Sections 135 – 139)
- Partition (Sections 140 – 145)
- Amalgamation (Sections 146 – 150)

- Simultaneous applications for sub-division and variation of conditions, restrictions and categories (Section 124A), and
- Surrender and re-alienation - special provisions (Sections 204A – 204H)

A study revealed that the availability of these options may lead to confusion to the public and industry players, and to certain extent, some of the officers and staffs in the land Registries are not even precisely able to distinguish between one options to another. The new comers in land administration may not be able to provide a proper advice to the customers of what is the best option of application which most suited with their proposed development plan or problems and encumbrances on the title or any other consequences that has to be taken care.

For instance, section 124 of the National Land Code is only suitable to be applied for an application to alter minor conditions such as to alter any category of land use or express conditions to the category of land use or any other express conditions which do not require multiple categories of land use for a large scale housing development project. The application under this provision in some cases does not require a sub-division of land because it is only involve with alteration of express condition of the land use categories on the same land.

However, there are other provisions in the National Land Code which related to land development matters such as application for sub-division, partition and amalgamation of land under Part Nine, Chapter 1, 2 and 3. It seems that these provisions look simple but somehow difficult to understand their peculiar functions especially to the general public. For example:–

- How to differentiate between an application for sub-division and application for partition of land.
- Similarly in the case of an application for amalgamation of land under section 147, where in certain circumstances it requires for consents of the State Authority before the Director of Land and Mines or Land Administrator may approve such applications.
- An application for surrender and re-alienation under section 203 and 204 are only applicable for contiguous lots held by the same proprietor under Land Office Title. The purpose of this provision is to enable the land to be re-alienated in a different form or unit from the original title obtained through alienation. In practice, the provision of section 203 and 204 would eventually become irrelevant or unpopular to the actual needs for land development. Applications in this type are hardly found in land Registries, and so much so there are people who are unaware or understand of it existence.

As such it is easy and practical, if those options for land development applications under the Code are streamlined or limited into two options only; first by retaining the provision of section 124 for application to alter conditions

of land use (which includes either alteration, amendment, cancellation or imposition of conditions, category of land use or restriction in interest); and second by surrender or surrender and re-alienation of land (which covers the elements of sub-division or partition or amalgamation or simultaneous subdivision and variation of use). This approach may cause streamlining the existing statutory forms for application for land development to be easy to use and user-friendly. If this approach is agreed upon industry players and stakeholders, the existing provisions of the National Land Code have to be reviewed and amended for that purposes.

(e) Redevelopment of land by en bloc concept

The concept of redevelopment of land by En-Bloc basically means all the owners of separate units in an apartment, condominium or even an office building, coming together to collectively sell their properties to a developer for comprehensive redevelopment. Thus, this term is generally refers to “En Bloc Sale or Collective Sale”.

In view of an en bloc sale concept, there may be major amendments to be made to the Strata Titles Act 1985 (STA) which radically alters the fundamental and vesting rights of ownership in strata-titled property in Peninsular Malaysia with the professed objective of optimization land use. At the time when en bloc sales or collective sales are to be worked out under the existing framework of STA, there shall be the requirement of unanimous consent among property owners within the development before they could collectively put up their properties for sale. Therefore, in those developments where one person or a minority refused to give their consent to sell their unit, the collective sale could not materialize. As a result of this, there will be many situations where a majority of the owners lose the opportunity to realize the capital gains from such a type of sale. In response to the possible complaints and appeals from frustrated owners whose efforts to complete such sales had been thwarted by a (very often) small minority, a proposal has to be made to amend the STA to facilitate collective sales or en bloc sales. The concerns of the majority may be accepted by Parliament as legitimate and the actions of the dissenting minority were described as “[impeding] efforts to maximise the development potential of en bloc sale sites, and [preventing] the rejuvenation of older estates”. It is in these circumstances that radical amendments have to be effected to the STA.

There are at least three reasons on why owners of strata-type properties usually go for en-bloc sales:-

- (1) En-Bloc Sale allows parcel owners to sell their properties for a lot more than they could fetch by selling individually in the open market.
- (2) En-Bloc Sale allows parcel owners to convert the unused land or development potential in their property development into cash.

- (3) En-Bloc Sale also allows parcel owners to cash out of their property investment for other newer and larger properties or re-invests in other forms of higher yield investments.

In addition, En-Bloc Sale is normally feasible when one or a combination of the followings is evident in the development:-

- (1) An increase in plot ratio of the land.
- (2) Re-zoning of the land to a higher use.
- (3) The land is not fully built up or utilised to its allowable development potential.

IV. IMPROVEMENTS OF SERVICE DELIVERY

JKPTG has taken heed of the Government and business players concern that service delivery has to be enhanced, expedited and customer friendly. According to Doing Business 2010, Malaysia is ranked 86 when it comes to registering properties and it takes 144 days to complete a registration. We are not proud of this standing and JKPTG has spearheaded the initiative to enhance service delivery in land administration.

Among the initiatives that have been introduced is the “single piece flow” system. This is an adaptation of a conveyor belt system practiced by factories in the production line. A set of officers called has “a team” are stationed at every point from the presentation counter, checking counter, verification counter and registering counter at all time to avoid the flow of registration to be stopped. The old practice of moving the documents in bundles from one point to another has been abolished and each presentation is moved from one station to another as it comes.

To maintain the fitness of the documents presented, checklist of relevant documentations has been introduced to conveyancing lawyers and the general public at the counters in the land offices and in the near future will be uploaded in their official websites to expedite the process of registration and to avoid the instruments to be rejected due to insufficient documents. This change in the approach of service delivery has contributed to the ability for registration of transfer to be done in 2 days. The reduced time frame in registration can assist in generating businesses and push the confidence of investors in Malaysia. Within four months of the implementation of the Single Piece flow, land administration has managed to register 61.12 % of the total transfers of lands in Peninsular Malaysia with 2 days.

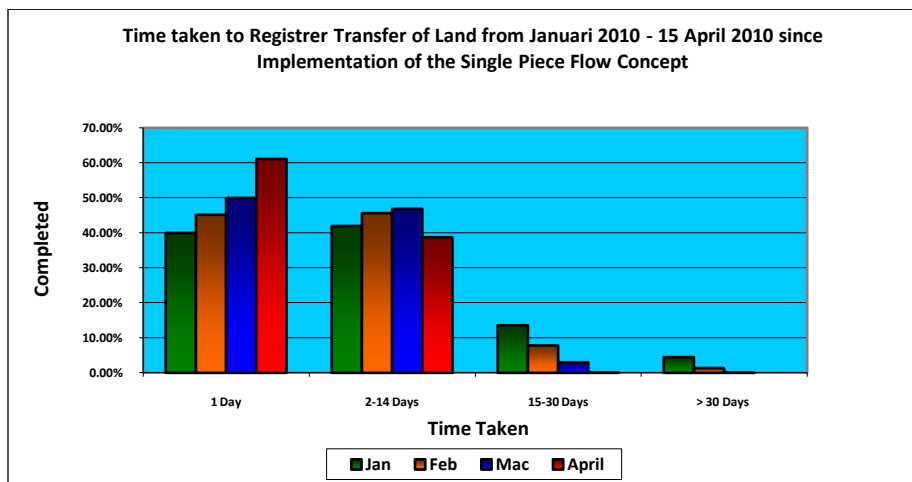


Table 1: The time taken to register transfer of land since the implementation of the Single Piece flow (January 2010 – 15 April 2010).

For a much more corporate environment in the land offices, the concept of 5Ss has been introduced. This concept provides an healthy working environment where filing and retrieving of documentation is standardized, coded and easier. This practices makes it easier for Registrars to check the documentations that are to be registered in a shorter period of time. The proper arrangement of documentation in the land offices will reduce the habit of overlooking and much scrutiny is given in determining the documents are valid to be registered.

The introduction of the Mykad and thumbprint reader in all land offices is an administrative way in reducing fraud and forgery in land transactions. It has become a practice where the officer will check the Mykad and the thumbprint of the individual who is presenting the instrument of dealing to determine the identity of the person. In Kuala Lumpur all runners of conveyancing lawyers are registered with the Department of Land and Mines Kuala Lumpur before they may make any dealings with the office to monitor the submission of instrument is done through the firms or not in the case of fraud and forgery. These minute efforts can assist in the task of reducing fraud and forgery.

Apart from these efforts, JKPTG has taken various innovative steps to review the related land legislations and procedural framework which has been identified as constraining factors to the improvement of land administration service delivery. For instance, the review of the National Land Code has been started recently with consideration to introduce new elements to accommodate the needs of the general public and stakeholders in land administration. These includes:-

- i. Introducing new provisions relating to automatic renewal of alienated land leases;

- ii. Introducing new provisions relating to the concept of single title system with objective to transform the institutional arrangement and functions of the State's land administration;
- iii. Incorporating the Torrens Insurance Principle with intention of providing compensation for loss to innocent parties in consequence of fraudulent title;
- iv. Providing new provisions relating to electronic land dealing (e-Dealing) and electronic submission of applications (e-Lodgement) to land Registries within the framework of Electronic Land Administration System.
- v. Streamlining the statutory forms relating to land dealings and non-dealings matters and make it easy to use and user friendly.
- vi. Rebuilding the roles and functions of the JKPTG in response to the global challenges in land administration.

V. THE WAY AHEAD

THE origin of the land administration systems in Peninsular Malaysia has not changed much since the 19th century in the aspect of the legal framework, only the technology to deliver them has significantly changed. If full advantage is to be taken of the technology and a truly integrated service is to be delivered in tandem with the Malaysian Government Transformation Programme, then some radical reforms are called for. The first of these is to adopt a more holistic view of land administration in which land issues can be seen in perspective.

Land as a whole is greater than the sum of its parts. The treatment of land rights, land usage, land taxations and land values as entirely separate entities handled by entirely separate organizations may lead to a misuse of resources. To achieve sustainable development one must consider all aspects of the land and how they inter-relate.

Land registers in land Registries in Peninsular Malaysia has been designed to reflect the way that property is used in order for appropriate services to be provided and citizens can be aware of their full rights. The integrated Electronic Land Administration System, if it is built in the right manner, is a model for change as a preliminary step in the right direction. Information needs to be readily available with regard to the disposal of land and the land development activities.

The second necessary reform is to ensure that all the institutional arrangements for an information-based society are in place. Some of these arrangements require new laws or clarification of existing laws relating to the ownership, copyright, privacy, liability and exploitation of land related data. In particular there may be a need for new legislation to permit electronic conveyancing and to facilitate the sharing of data between the public and private sectors.

Every State land administration needs to develop its own land information. The State governments of Peninsular Malaysia in particular cannot afford to

waste their resources, especially their land, and for them an integrated approach to their land administration system is an essential investment that will help to sustain their future.

Overall, what is needed is a change of attitude towards land and land administration as a whole, a sharper focus on information as a commodity, and binding commitment to keep that information up to date. Land administration systems must evolve to provide a modern framework within which the demands of sustainable development can be met. Given greater awareness of the issues, this should not be too difficult to achieve.

VI. CONCLUSION

THIS paper has provided a brief insight of what land administration has done in addressing the major issues in land administration and what it plans to do. The importance of expediting service delivery is another challenge that the land administration is facing, and what are the efforts taken to reduce time taken in land transactions to attract customers to do business in the land offices.

A good land administration system supports sustainable development. It will guarantee ownership and security of tenure; support land and property taxation; provide opportunities for investment; develop and monitor land markets; protect land resources and support environmental monitoring; facilitate the management of State-owned land; reduce land disputes; facilitate rural land management; improve urban and rural planning and infrastructure development; provide statistical data in support of good governance; and provide a foundation for spatially enabling government, business and wider society. It should be affordable and open to everyone, meeting the needs of all its users, and must be sustainable.

In our view, there are key issues identified to assist improvement and management of land administration systems:-

1. The creation of a vision or “big picture”, and road map to support long term planning and land development implementation;
2. Taking action to improve the legal and institutional framework for land-related activities;
3. Making land-related information more open, transparent and accessible for the public;
4. Speeding up the processes of core land activities (registrations, plans, etc.) through process re-engineering, computerization and closer co-operation between all land-related agencies;
5. Developing an Information Policy to provide a framework for the sharing of data between agencies as part of an e-government strategy and, as appropriate, with the public;
6. Using Business Process Re-engineering (BPR) as an integral component of the introduction of Information and Communications Technology (ICT) to facilitate the modernization of land administration systems;

7. Strengthening the Spatial Data Infrastructure (SDI) within the general ICT Strategy as a key component of land administration;
8. Ensuring appropriate institutional and technical arrangements are in place to facilitate the integration of cadastral and topographic data within spatial data infrastructures (SDI) to support sustainable development;
9. Strengthening the relationship and understanding between the land administration and financial sectors;
10. Improving the system of fair and equitable land taxation by adopting international standards;
11. Improving procedures for sharing the cost and risk in land development;
12. Strengthening the capacity inside as well as outside government agencies and in universities and initiating research in land administration, spatial data infrastructures and spatial enablement;
13. Encouraging participation in the land administration system through public awareness campaigns both within government and wider society and streamlining procedures to facilitate participation; and
14. Co-operating with international organizations in the sharing of knowledge and understanding of issues related to land.

BIBLIOGRAPHY

1. Federal Land Commissioner Act 1957 (Act 349).
2. National Land Code 1965 (Act 56 of 1965).
3. Strata Titles Act 1985 (Act 318).
4. UNECE, Guidelines on Land Administration, [unece.org, http://www.unece.org/hlm/wpla/publications/lguidelines.html#1](http://www.unece.org/hlm/wpla/publications/lguidelines.html#1).
5. Nor Shariza, Abdul Karim., Ainul Jaria, Maidin., Zainal Abidin, Nordin. & Mohd Shukri, Ismail. 2010, Electronic Land Administration System In Malaysia: A proposal for Review from ICT and Technical Perspectives, *unpublished*.
6. Ismail, M.S., 2010, Electronic Land Administration System In Malaysia: The Need for New Enabling Provisions.
7. Ganason, A., 2010, Land Administration System In Malaysia, A Proposal for Re branding the Functions of the Federal Lands Commissioner and the Department of Director General of Lands and Mines.
8. Ganason, A., 2010, Leading Land Administration to the future.
9. Ismail, M.S., 2009, Defeasibility of title: Does Assurance Fund Matters?, *unpublished*.
10. Ismail, M.S., 2009, Insights On The Proposed Malaysian Assurance Fund, *unpublished*.
11. Ismail, M.S., 2010, Land Administration in Peninsular Malaysia, A General Overview, *unpublished*.
12. Ismail, M.S., 2010, Malaysia's Land Policy Framework, *unpublished*.

13. Nor Shariza, Abdul Karim., Ainul Jaria, Maidin., Zainal Abidin, Nordin., 2010, Review of the Legal, Administrative and Procedural Framework for the Enhancement of the Malaysian Land Administration System, *unpublished*.

LAND ADMINISTRATION SYSTEM IN MALAYSIA: SINGLE TITLE SYSTEM: A STIMULANT TO LAND ADMINISTRATION REFORM

ANESH GANASON¹

Keywords: Registrars, State grants, state lease, mukim grant, mukim lease Registries, Land Offices, state land, alienation

I. INTRODUCTION

REFORM in a general statement means a change for the better. The removal or overhauling of irrelevant bureaucracies, institutional restructuring and legislative amendments are methods to propel reforms. In Malaysia, the Government has echoed the clarion call for a Government Transformation Program which will change the way public sector will reflect in providing services to the public and assisting in achieving the goals set forth within the New Economic Model.

The land administration in Malaysia have evolved under the National Land Code 1965 from a manual based regime to a semi automated regime with the introduction of the Computerized Land Registration System (CLRS) and in the next few years will be accustomed to an electronic system via the Electronic Land Administration System (ELAS). These changes have taken a toll of 45 years and the urge to change even more has caused the land administration to shake of its clutches from the heavy dependence to bureaucracies.

The existence of a dual title system (i.e. Registry Titles and Land Office Titles) in Malaysia has moulded the land administration system in Peninsular Malaysia. The usage of this dual title system was to make identification of location much easier; for instance the Registry Titles were issued for town, village or country land that exceeds 4 hectares. The Land Office Titles were issued to country land that does not exceed 4 hectares. The fundamental of these practices were carried from the Federated Malay State Land Code Cap.138 1926. The British Administration developed a sort of land administration that established the Registry to govern land surrounding major towns and suburban villages which were easily excisable by and could be easily under the watchful eyes of the English Residents' of the States. The Land Offices were established at every district to govern country land which were located rather remotely from the town centres and not so hospitable by the British Officers and were given to the Local Chieftains to govern.

The practiced continued when Malaya got it's independence in 1957 because the Federated Malay State Land Code Cap.138 1926 was still practiced until it was substituted to the National Land Code 1965.

¹ Research and Development Section, Department of the Director General of Lands and Mines Federal Malaysia; anesh@kptg.gov.my.

With the need for swift delivery system and a more integrated database, the sense of having multiple types of titles makes these efforts a daunting task. Administration structures need to be expanded and establishment of various offices makes overhead costs to rise and the prone towards mistakes and discrepancies become higher. Yes we agree that the law has been there before but why change it. Has years go by the number of titles have increased tremendously from 3,324,009 titles in Jun 1986 to 5,721,616 titles in 2008. The increase of 72% in a span of 22 years shows the need for a much simpler way of control and managing documents of titles to protect the legal rights and access to land.

An effort to reform land administration was done way back in 1984 with the introduction of a single title system via National Land Code (Amendments) 1984 Act A587 which came into force on 25 March 1985. The initial proposal was to convert all Registry Titles to Land Office Titles. These amendments was short lived due to implementation problems and was repealed immediately the very same year with National Land Code (Amendments) 1985 Act A615 which came into force in 1 June 1985

This paper shall provide a conceptual approach relating to institutional restructuring of the Land Administration in lieu of establishing a single title system.

II. CREATION OF THE SINGLE TITLE SYSTEM – REGISTRY TITLES

THE neo-effort of a single title system is proposed to convert all titles in the State into registry titles. The term that shall substitute the document titles are as such:-

- i. State Grants (to substitute Registry Grants and Land Office Grants); and
- ii. State Lease (to substitute Registry Leases and Land Office Leases)

The prerequisites for the establishment of this concept shall be addressed via:

- i. Legislative amendments to the National Land Code 1965;
- ii. Institutional restructuring of the land administration;
- iii. The need for an Electronic Land Administration System as prescribed under the Sixteenth Schedule of the NLC should be enhanced to provide integration of data; and
- iv. Capability of cadastral information in producing accurate survey details and cataloguing for the whole state rather than district based.

a. Legislative amendments to the National Land Code 1965

The legislative amendments that can be suggested in introducing a single title system can be accustomed in a way of how the CLRS and ELAS provision was introduced into the land administration system. Modification and a pilot

project has to be done and when the results of the exercise abides with the provisions and no hiccups in the implementation then the Minister may in a way of a gazette the coming of operation of the Single Title System in Peninsular Malaysia.

Besides making way for modifications and amendments of law, the Electronic Land Administration System has to provide the tool to operate an integrated land information system. In the event of promoting a single title system the idea of sharing information of the register and online electronic transactions are important in construing information needed for registration of dealings.

b. Implementation of the Sixteenth Schedule in respect of establishing a Single Register of Title

The current practice of the Register in accordance to section 158 for Registry Title and 159 for Land Office Title are maintained separately by the respective Registrars. The act of having a consolidated registry does not exist currently but the introduction of the Disaster Recovery Centre (DRC) under the Sixteenth Schedule provides the practice of replicating all registration in the State into the DRC. For the maintenance and safekeeping of all data of registration when the single title system is established concept of improving or modifying the registries in the State into the DRC concept can be establish so a total presentation system via electronic transaction can be established and the Registrars and Deputy Registrars can manage the Registries.

A huge exercise of re-computing, data cleaning, recalling of titles have to be carried out in moving forward with the exercise of this policy. Many may find that these exercises are rather redundant and does not bring a major impact in the land itself. But administratively this exercise may pave the way of introducing the electronic transaction that will bring in the idea of transactions can be done without visiting the land offices. When a centralized database is established controlling all the titles in the States makes it easy for the general public to interact with the land administration at any land administration counters in the state for the purpose of land searches and presentations.

c. Re-cataloguing of Titles Numbers in line with Cadastral information.

Another aspect that has to be taken into account are the cataloguing of the title numbers when the single title system is introduced. Status quo the cataloguing of the titles are based on the titles issued by the Land Offices according to the Mukims that have been gazette under section 11 of the NLC. This practice has allowed for identical title numbers being issued within a state but the locality of the titles are in different Mukims. When a consolidated approach is established the re-cataloguing of the title numbers has to be done to synchronize the identification of the titles. This is to avoid hiccups in the electronic registration system and also for searches to identify which title is

which. It can be introduced by modification of the title numbers by creating a set of numbers or digits to identify a certain Mukim or district and the title number. From the normal 5 digit numbers issued to titles it may be increased to 7 or eight digits.

III. INSTITUTIONAL RESTRUCTURING OF THE LAND ADMINISTRATION

TO propel the single title system into success rest upon the acceptance of the human capital within the land administration and the need to restructure the current institutional structure of the land administration. The dual title system provides a two-tier administration that works in silo but depends with each another when it comes to decision makings. Recommendations and prior approvals are given by Land Administrators and the final decisions are determined by the State Authorities with the assistance of the State Director. These practices may deter speed and incur unnecessary bureaucracies.

A major shake up will be seen when the single title system is established. The existence of the Land Office shall cease to exist and the establishment of subsidiary Registries will substitute it. To make this possible the State Authority shall evoke its power under section 12(1)(b) to appoint as many Deputy Registrars of Titles within the state to substitute the role of the Land Administrators in registering titles. Besides that with the repeal of section 159 the duties of maintaining the Mukim Registers shall cease to exist and the information shall be captured by a modification done under section 158 to maintain the Land Office titles that have been issued and during transitional period.

When the system has been established the state Land Administration shall be headed by a State Director and the districts shall be headed by Land Administrators. A Registrar of Titles shall be the custodian of all the titles issued in the State and the Deputy Registrars of Titles will be placed at every district to register the titles. The positions of Deputy Registrars of Titles in the State Land and Mines Department (PTG) shall cease to exist and be redeployed at the districts where the act of registration will be centred.

a. Roles of the State Land and Mines Department

When the single title system is established, the role of registering titles shall cease to exist in the State Land and Mines Department (PTG). The roles of registration shall be transferred to the Sub-Registries in the various districts. The Sub-registries will still be called District Land and Mines Office (Pejabat Tanah dan Galian Daerah) (PTD).

The PTG will assume the role of policy makers and provide enhancement in service deliveries. The duties of planning, implementation and controlling of the state land administration budget shall be centralized to the PTG to make administration and auditing easier which echoes the 10 Malaysian Plan which emphasizes swift decision making and integrity through total audit.

By reducing the burden of managing application and registration at the PTG the work force can be rearranged to create a conducive environment that projects a corporate image for land administration within the state. The Director and his staffs shall be consultants in introducing new enhanced business processes that will provide swift service delivery and generate income for the state. A more business approach image must be carried by the Director in creating policies on disposal of land and development of land within the state. Applications of development and disposal shall not be entertained by the PTG office because these are more operational procedures which shall be handled by the District Land and Mines Office (PTD).

Enhancing human capital through training and career development roadmaps shall be another major concern of the PTG office. Rewards and punishments shall be dictated by the Director through professional monitoring mechanisms to avoid the lack of integrity and the increase of corruption and criminal breach of trusts. Programs and a rotation approach shall be practices for all staffs within the state and to provide exposure to the staffs to various duties in the land administration. The PTG will control all spending and finances of the land administration. This is to avoid the mismanagement of funds and assets within the state by the District offices. With close or centralized monitoring will bring more value for the money spend in moving the administration. Centralized financing makes auditing much more easier and the sense of accountability shall become more intense.

When the single title system is introduced, a centralized database shall be established to control and operate all registration in the State. This means a centralized Register of Titles shall be maintained with the proposed amendments to section 158. The PTG office shall hold the Register Document of Title (RDT) in the form of a virtual data with the authenticated digital signature of the Registrar or Deputy Registrar of Title. This can only happen when the Sixteenth Schedule has been implemented fully by the land administration. The Fourteen Schedule does not permit it because the RDT has to be printed and store by the respective registry or land office. If the status quo is maintained and the Single title system is practiced it will be another daunting task of having two RDTs where one will be kept at the various Districts' Register and the other will be kept at the PTG. This will become cumbersome for searches and subsequent registration where all the RDT has to be destroyed. When a total electronic approach is practices there will be a single Register where it functions virtually and every Deputy Registrars at the PTD can have access to update the registration and the register shall be maintained and managed by the Registrar of Titles in the PTG. PTG shall provide technical experts, trainings and maintenance of the system.

In the idea of creating the Assurance fund in the Malaysian Land Administration, the PTG shall manage the fund and the Assurance Fund Board. The PTG shall provide services to applications, hearings and provide the procedures to rectify the mistakes or paying out from the fund. The Registrar of Titles shall be responsible in making any alteration or execution of

any court order to rectify any mistakes done to the Register of Title in the state.

The change of the roles of the Director and the Registrar of Titles shall bring has shock or in many ways taking away many operational powers but the new look shall provide the enhancement of leadership qualities that will spear ahead a ship. A leader shall need to see the macro aspects of management and not cling on to petty discretion powers that will deter service delivery or restrict creative thinking and ideas due to the lack of time and pressure to deliver routine targets. A birds eye view approach shall provide a much better advantage in making decisions or bringing the concept of a better Government Transformation Program to the land administration.

b. Roles of the District Land and Mines Department

The District Land and Mines Department (PTD) shall substitute the Land Offices which is established under the current regime. The Mukim Register or the Land Office Register shall cease to exist when the single title system is established with the repeal of section 159. And with the amendments to section 77 to remove the term Land Office title and also the repealing of Section 87 will provide the basis of the non existence of the Land Office title and also the functions of the Land Office.

With the establishment of the Single Title System, all procedural aspects of land administration shall be dealt by the PTD. The functions that will be practiced at the PTDs are:-

- i. application for disposal of land;
- ii. application for temporary occupation licenses;
- iii. application for removal of rock materials;
- iv. application for development (i.e. subdivision, partition, amalgamation, variation of conditions and restrictions);
- v. registration of dealings and non dealings;
- vi. collection of rent;
- vii. forfeiture;
- viii. auction and sales; and
- ix. enforcement;

The appointment of the Deputy Registrar of Titles shall execute all registration of Registries titles within the district to substitute the Land Office Titles. The Land Administrator shall have the power to receive application for disposal, TOLs, permits and development issues with providing recommendations and State Authority papers for approvals. This will bypass the current practice where all paper will be done by the Land Administrator and delivered to the State Authority via the Director of Land and Mines. This approach is to reduce time in decision making and bureaucracy.

Presentation counters shall be doubled and the number of staffs in the PTD shall be increased to service the customers that will be dealing with the respective land office. The current practice is that only dealings or non dealings Land Office Titles shall be presented at the respective Land Office, but with the single title system all titles in the district shall be in the per view of the Deputy Registrar of Titles. It is the duty of the Deputy Registrar of Titles to maintain the duplicate of the Register of Title for the respective district and the main Register at the PTG office.

Application of all aspect under the Code shall be handled by the PTD. This requires sufficient Deputy Registrars and staffs with adequate training and facilities to serve the public. The redeploying of staffs form the PTG may help in establishing this requirement. The implementation of the Sixteenth Schedule shall provide the much needed edge in having a electronic based system that will provide ease and accuracy in registering the system.

Rotation of Land Administrators, Deputy Registrars of titles and staffs shall maintain the integrity of the system and avoid the creeping of corruption and criminal breech of trust to occur in the land administration. The implementation of this system shall also develop skilled employees in the land administration and provide the platform of having Land Administrators as a professional profession. The criteria to select a Land Administrator and Registrar of Title should be scrutinized to maintain the high quality of the service and the integrity.

IV. CONCLUSIONS

THE idea of establishing a single title system in the Malaysian Land Administration failed once but with the change of time and the mind set of the individuals within the land administration, the idea of introducing the Single Title system should be mooted again for discussion. It is seen initially that certain powers of the Director of Land and Mines shall be shifted to the Land Administrator which may receive some disagreement but for the long run these realignment shall benefit the whole lot in terms of service delivery and the introducing a fresh image towards land administration.

The creation of this system will provide much ease to the public and avoid confusions when all aspects of land will be dealt at the district and this could be the precursor for the implementation of a total Electronic Land Administration System according to the Sixteenth Schedule.

The focus of the paper is seen as a preliminary observation of institutional shake up in lieu of implementation of the Single Title System within the land administration system. The results of this observation will be an input in a research on the National Land Code on the aspect of land administration. This paper provides the preliminary report on the analysis of what changes that can be made to transform the position of the State Land and Mines Department and the Land Office with the introduction of the Single Title System.

This paper was created to get feedbacks from other land administrators and the general public if the single title system is implemented. The feedbacks will be adopted by the researcher in improving the recommendation to the Government in enhancing land administration.

BIBLIOGRAPHY

1. National Land Code 1965 (Act 56 of 1965).
2. National Land Code (Amendments) 1984 Act A 587.
3. National Land Code 1965 (Amendments) 1985 Act A615.
4. Urusetia Kanun Tanah Negara, Mewujudkan Sistem Satu Hakmilik, Paper 8 of the 3rd Director of Lands and Mines Meeting, 1988, *unpublished*.
5. Maidin, Anul Jaria, *et. al.*, 2009, Principle of Malaysian Land Law, Lexis Nexis.

PEREKAYASAAN URUSAN PENYERAHAN BALIK TANAH BERIMILIK DI BAWAH KANUN TANAH NEGARA 1965

MOHD SHUKRI ISMAIL¹ & ANESH GANASON²

I. TUJUAN

KERTAS ini disediakan bertujuan untuk melaporkan pandangan awalan kepada cadangan perekayasaan urusan penyerahan balik tanah bermilik di bawah Kanun Tanah Negara 1965.

II. DEFINISI PEREKAYASAAN

MENURUT kajian-kajian antarabangsa, konsep perekayasaan didefinisikan seperti berikut:-

“the fundamental rethinking and radical redesign of business processes to achieve dramatic improvements in critical contemporary measures of performance such as cost, quality, service and speed [Hammer, Michael and Champu, James (1993), *Reengineering the Corporation: A Manifesto for Business Revolution*, Harper Business”

“encompasses the envisioning of new work strategies, the actual process design activity, and organizational dimensions [Davenport, Thomas (1993), *Process Innovation: Reengineering work through information technology*, Harvard Business School Press, Boston]”

Kedua-dua definisi ini memberikan pandangan bahawa pembaharuan yang ingin dibawa perlulah merupakan satu perubahan asas (*fundamental*) yang radikal iaitu ia bukan sahaja melibatkan reka bentuk semula prosedur kerja malah organisasi dan pemilik proses kerja (*process owner*) tersebut.

Salah satu kaedah (*tool*) dalam konsep perekayasaan adalah melibatkan aplikasi sistem elektronik yang membolehkan perkongsian maklumat dan mengubah prosedur manual (*paper-based system*) kepada prosedur kerja berasaskan teknologi ICT³.

Konsep perekayasaan perlu menghasilkan penambahbaikan yang bertokok (*incremental improvement*) dan bukan semata-mata untuk memudahkan jalan

¹ Pengarah, Seksyen Kajian Penyelidikan dan Pembangunan, Jabatan Ketua Pengarah Tanah dan Galian (Persekutuan); mohdshukri@kptg.gov.my

² Ketua Penolong Pengarah, Seksyen Kajian Penyelidikan dan Pembangunan, Jabatan Ketua Pengarah Tanah dan Galian (Persekutuan); anesh@kptg.gov.my

³ Hammer, Michael and Champu, James (1993), *Reengineering the Corporation: A Manifesto for Business Revolution*, Harper Business.

kerja sahaja. Ia memerlukan integrasi teknologi secara berterusan bagi meningkatkan kecekapan dan keberkesanan⁴.

Analisa Prosedur Semasa Penyerahan Tanah Bermilik di bawah KTN

A. Prosedur Undang-undang

Kesemua prosedur kerja penyerahan tanah bermilik adalah dikawal di bawah kuat kuasa undang-undang KTN. Terdapat empat (4) jenis permohonan penyerahan tanah bermilik menurut KTN iaitu:-

Jadual 1: Jenis-jenis Permohonan penyerahan balik tanah dalam KTN.

Bil.	Urusan Tanah	Borang Berkanun	Pihak Berkuasa Melulus	Rujukan Peruntukan Undang-undang
1.	Penyerahan balik keseluruhan tanah (<i>Surrender of whole of alienated land</i>)	Borang 12A	<ul style="list-style-type: none"> • PTG Negeri (jika hakmilik Pendaftar); atau • Pentadbir Tanah (jika hakmilik Pejabat Tanah) 	<ul style="list-style-type: none"> • Jadual Pertama KTN • s. 195, s. 196, s. 197, s. 198, s. 199 KTN
2.	Penyerahan balik sebahagian tanah (<i>Partial surrender of alienated land</i>)	Borang 12B	<ul style="list-style-type: none"> • PTG Negeri (jika hakmilik Pendaftar); atau • Pentadbir Tanah (jika hakmilik Pejabat Tanah) 	<ul style="list-style-type: none"> • Jadual Pertama KTN • s. 195, s. 196, s. 200, s. 201, s. 202 KTN
3.	Penyerahan balik dan pemberimilikan semula lot-lot tanah di bawah hak milik Pejabat Tanah yang berdampingan (<i>Surrender and re-alienation contiguous lots held under Land Office title exceeding 4 hectares</i>)	Borang 12C	<ul style="list-style-type: none"> • Pentadbir Tanah 	<ul style="list-style-type: none"> • Jadual Pertama KTN • s. 195, s. 196, s. 203, s. 204 KTN
4	Penyerahan balik dan pemberimilikan semula – peruntukan khas (<i>Surrender and re-alienation- special provision</i>)	Borang 12D	<ul style="list-style-type: none"> • Pihak Berkuasa Negeri 	<ul style="list-style-type: none"> • Jadual Pertama KTN • s. 204A, s. 204B, s. 204C, s. 204D, s. 204E, s. 204F KTN

⁴ Manual Perekayasaan Proses dan Prosedur Kerja, MAMPU

B. Prosedur Proses Kerja

Sebagaimana diuraikan dalam “A Manual On The National Land Code”, prosedur proses kerja secara generik bagi penyerahan tanah bermilik adalah dirumuskan seperti ditunjukkan dalam Rajah 1.

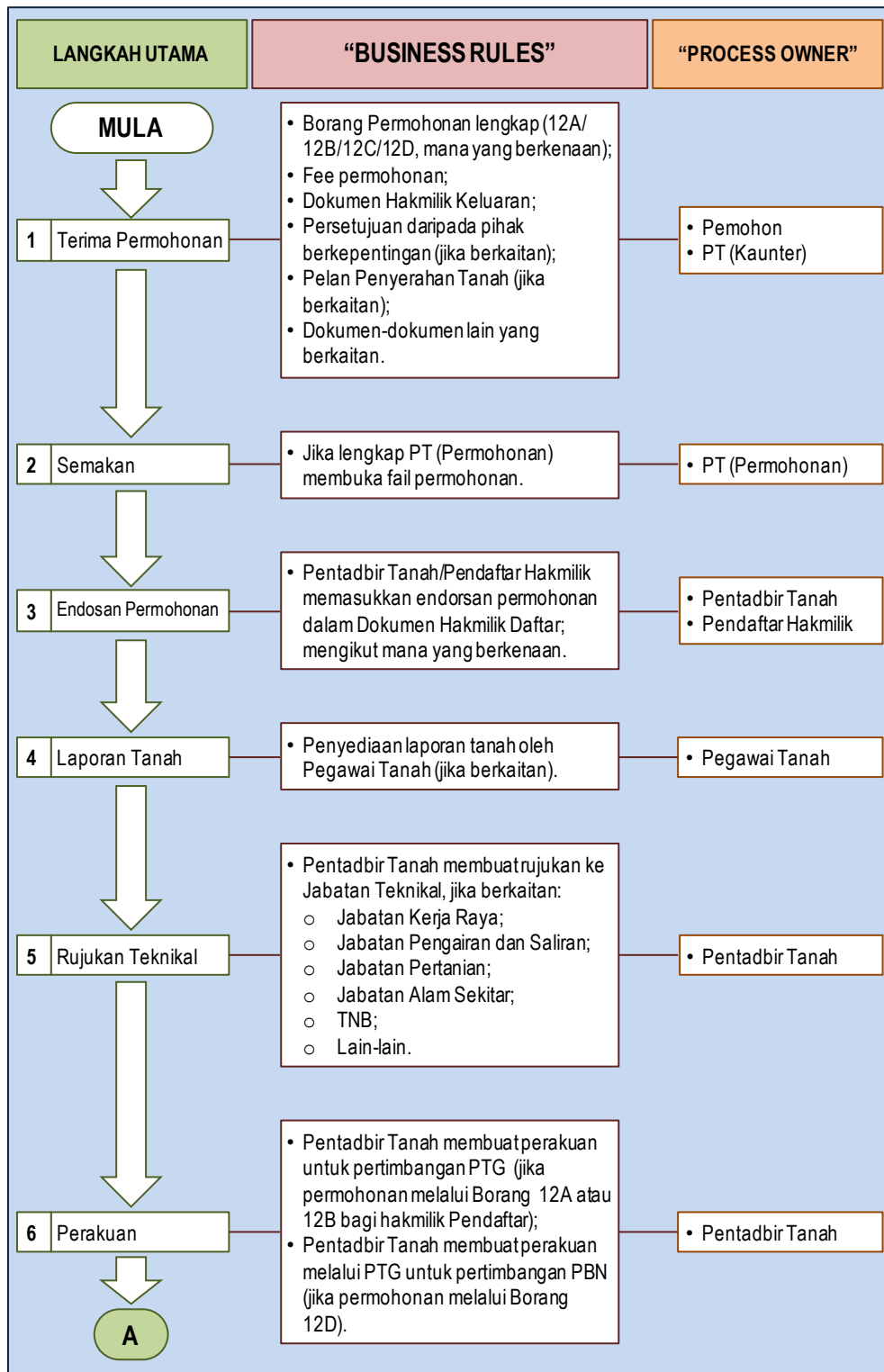
C. Persamaan Syarat-syarat Permohonan

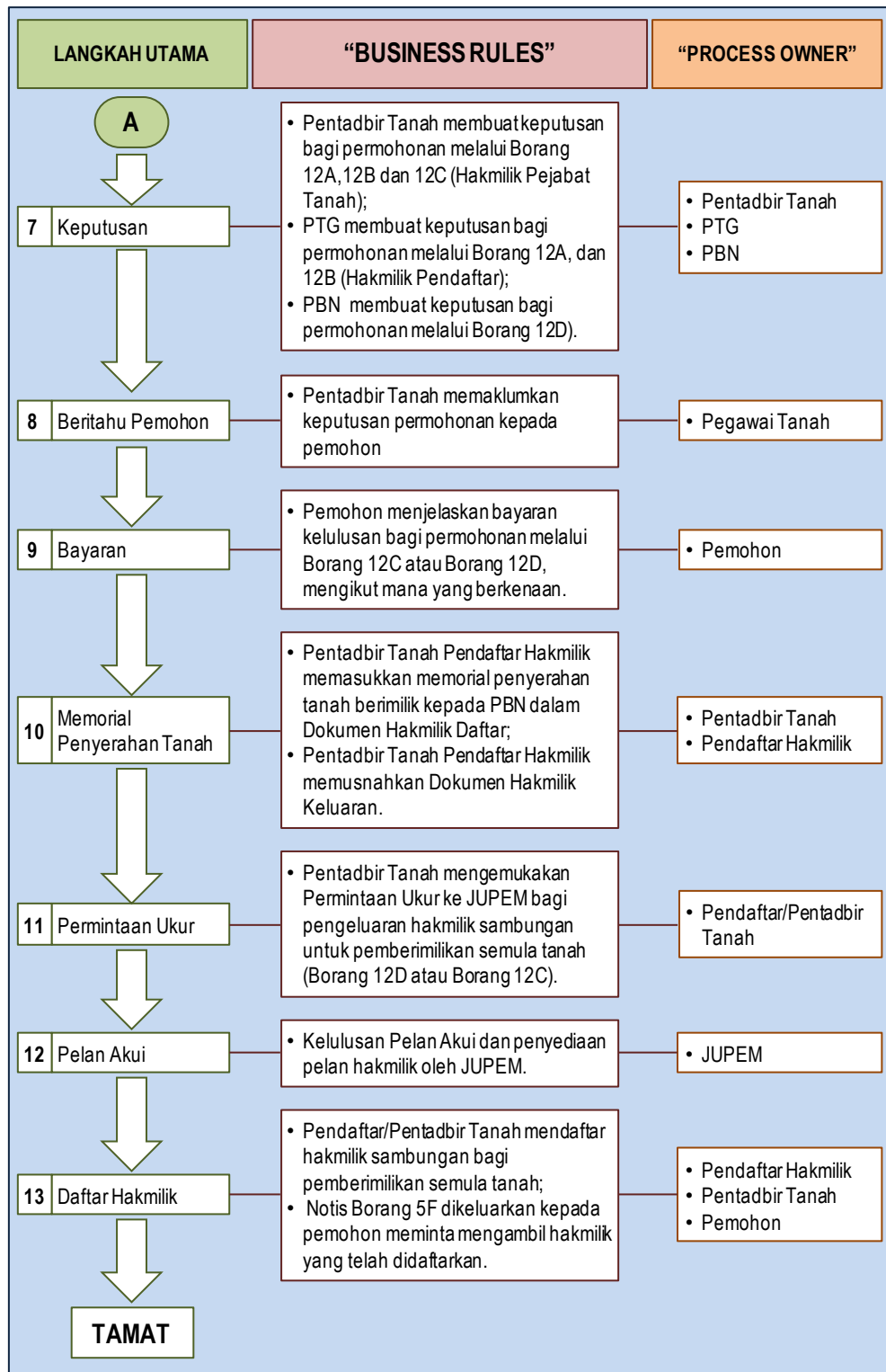
Di bawah ini merupakan beberapa persamaan syarat-syarat permohonan yang wujud dalam borang-borang berkanun bagi urusan penyerahan tanah bermilik:-

Jadual 2: Persamaan dalam syarat-syarat permohonan.

Kriteria	Persamaan Yang Wujud			
	Borang 12A	Borang 12B	Borang 12C	Borang 12D
Maklumat Tanah: • No. Hakmilik • No. Lot • Daerah • Mukim • Negeri	✓	✓	✓	✓
Fee permohonan	✓	✓	✓	✓
Keperluan surat persetujuan orang berkepentingan	✓	✓	✓	✓
Dokumen Hakmilik Keluaran	✓	✓	✓	✓
Pelan kawasan	X	✓	✓	✓
Keperluan pengakusaksian	✓	✓	X	X
Tandatangan pemohon	✓	✓	✓	✓
Tandatangan Pendaftar Hakmilik/ Pentadbir Tanah	✓	✓	✓	✓

Rajah 1: Proses Kerja Generik Bagi Penyerahan Tanah Bermilik.





III. PEREKAYASAAN YANG DICADANGKAN

A. Konsep Perekayasaan

Perekayasaan yang dicadangkan bagi urusan penyerahan tanah bermilik di bawah KTN ini adalah berkonsepkan “single service delivery” (SSD). Pelaksanaan konsep SDS ini memerlukan “enabling environment” yang berikut:-

- (i) “There must be an option for a single title system”, misalnya mewujudkan jenis hakmilik Pendaftar sahaja. (sekarang ini terdapat dua (2) jenis hakmilik iaitu hakmilik Pejabat Tanah dan Hakmilik Pendaftar”;
- (ii) “There must be a single contact point of statutory form”, iaitu hanya satu borang berkanun sahaja digunakan bagi pelbagai jenis tujuan penyerahan tanah bermilik (lihat contoh di Lampiran A);
- (iii) “There must be a single registered title”, iaitu hakmilik tetap (*final title*) digunakan bagi pelbagai jenis tujuan penyerahan tanah bermilik;
- (iv) “There must be an integrated computer-based processing system”, iaitu satu sistem pemprosesan bersepadu menggunakan teknologi ICT;
- (v) “There must be a single contact point of enabling legal provisions” iaitu mewujudkan peruntukan undang-undang tunggal dalam KTN bagi semua jenis tujuan penyerahan tanah bermilik seperti penyerahan keseluruhan tanah, penyerahan sebahagian tanah dan penyerahan tanah dan bermilik semula;
- (vi) “There must be a single contact point of customer service counter at land office”; dan
- (vii) “There must be a single approving authority” iaitu mewujudkan Pihak Berkuasa Melulus tunggal bagi semua jenis tujuan penyerahan tanah bermilik.

B. Pendekatan Perekayasaan Proses Kerja

Langkah perekayasaan yang dicadangkan bagi proses kerja urusan penyerahan tanah bermilik di bawah KTN ini yang berkonsepkan “single service delivery” (SSD) ini adalah diilhamkan dalam Lampiran B.

C. Implikasi Undang-undang

Perekayasaan yang dicadangkan ini akan melibatkan pindaan serta pengubahsuaian peruntukan undang-undang KTN seperti contoh berikut:-

- (i) Seksyen 197 KTN;
To provide a legal web-based application for surrender the whole of alienated land.
- (ii) Seksyen 200 KTN;
To provide a legal web-based application for partial surrender of alienated land.
- (iii) Seksyen 203 KTN;
To provide a legal web-based application for surrender and re-alienation of land under Land Office Title and Registry Title.
- (iv) Seksyen 204A KTN;
To provide a legal web-based application for surrender and re-alienation of land under Land Office Title and Registry Title.
- (v) Jadual Keenam Belas, KTN;
To incorporate a new electronic statutory form (e-Form) relating to surrender of alienated land, i.e. Form 12E.

IV. PENUTUP

KONSEP perkhidmatan berorientasikan “single service delivery” sebagaimana yang dicadangkan dalam kertas ini wajar diadaptasi dalam pembangunan Sistem e-Tanah bersesuaian dengan keperluan memperluaskan pemakaian peruntukan undang-undang di bawah Jadual Keenam Belas KTN bagi merealisasikan transformasi pentadbiran tanah melalui Sistem Elektronik Pentadbiran Tanah. Ia selaras dengan objektif “Government Transformation Programme – Road Map” dan visi Pelan Strategik JKPTG 2009-2013.

LAMPIRAN A

National Land Code
Form 12e
(Sixteenth Schedule)

BARCODE

APPLICATION FOR SURRENDER OR ALIENATED LAND

To the Land Administrator, District
 *I/We,
 Of
 Proprietor of the land/s scheduled below, hereby apply for approval of *my/our:

- ☐ a) *Surrender of whole
- ☐ b) *Surrender of a part of the land as shown in the attached plan
- ☐ c) *Surrender of these lands on the terms that the land comprised therein be immediately re-alienated to *me/us in the different units as shown on the attached plan. In the said plan, the boundaries of the existing lands as scheduled are shown in black and the boundaries of the proposed new units, different from the old, are shown in red

2. As required by Part Twelve of the National Land Code I/we now submit-

- a) The prescribed fee of RM.....,
- b) *A letter of consent from each of the following.....persons
 (being person whose consent in writing is required for the particular reason specified in each such letter)-
 1)
 2)
 3)
- c) *the issue document of title the land
 *a copy of my request to
 * charge/lien-holder to produce the issue document of title the land of the Land Office.

Dated thisday of20.....

.....
Digital
Signature of Proprietor

SCHEDULE

District	*Town/Village/Mukim	Description and No. of Title	*Lot No./L.O. No	Area

**Delete as appropriate*

For Official Use Only

(A) Rents for the current year paid.

Land Administrator

District

(B) Surrender/ Surrender and realienation approved

Dated thisday of 20...

.....
Digital
Signature of
Director/Land
Administrator

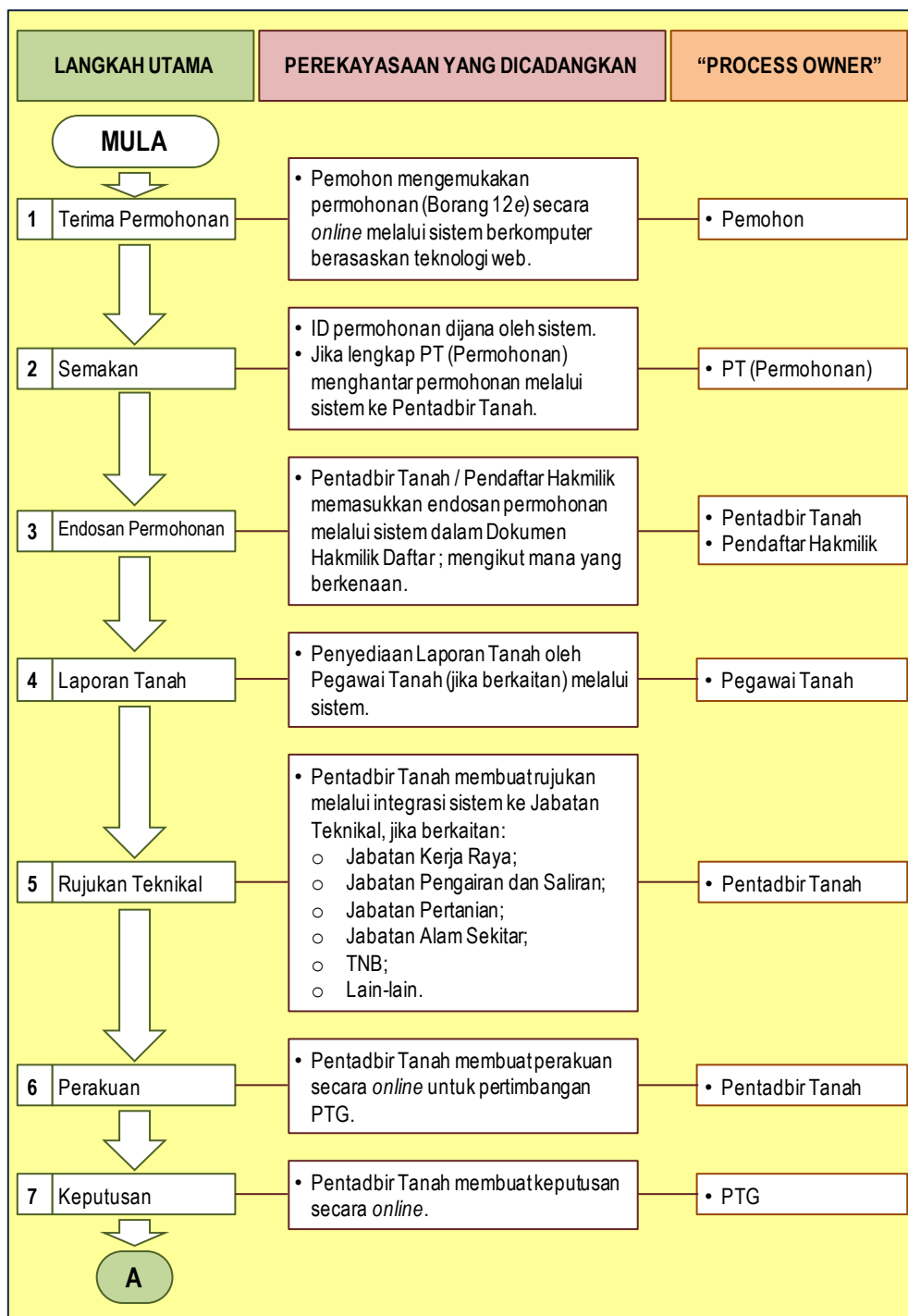
**delete as appropriate.*

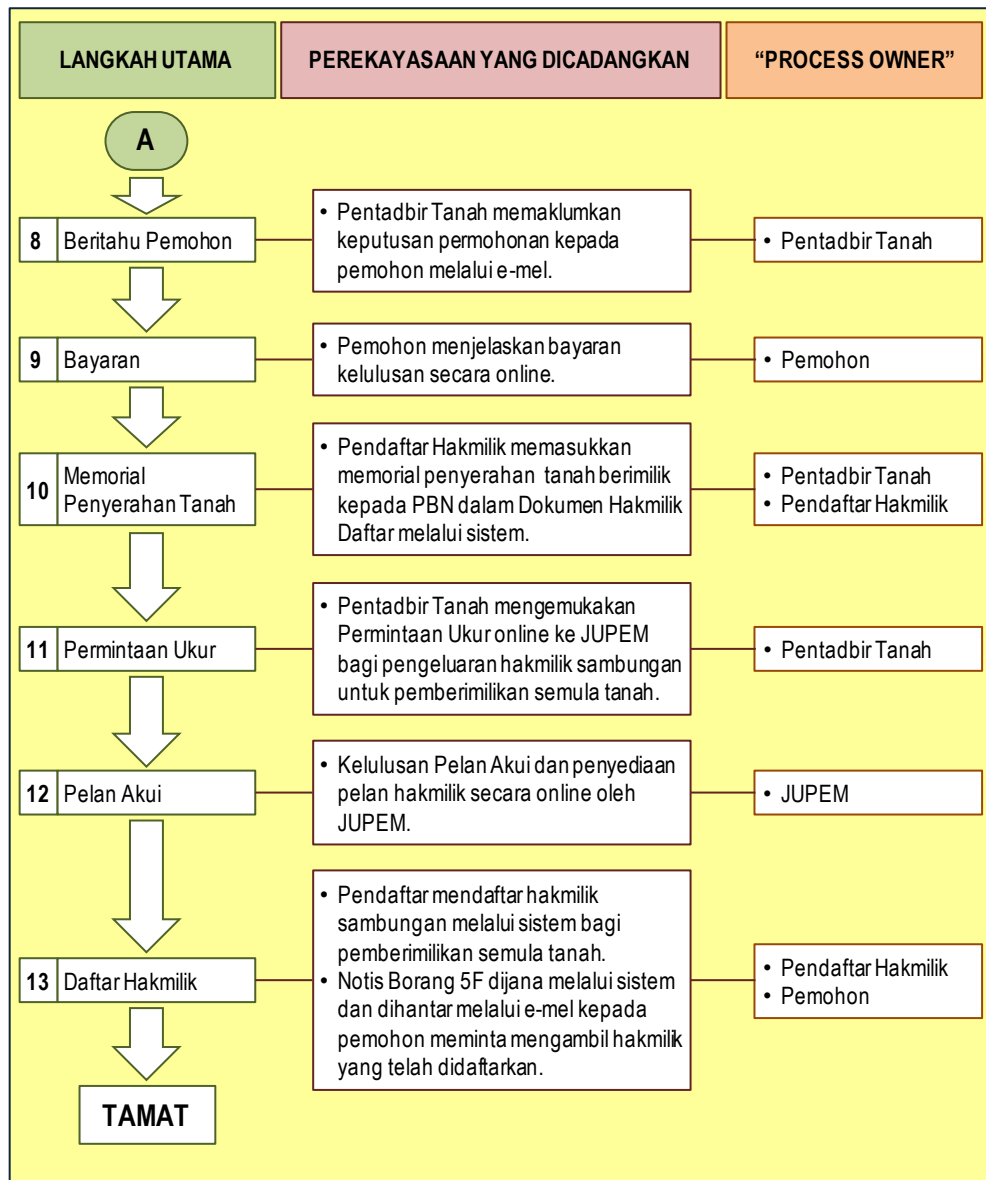
EXPLANATORY NOTE — The consent in writing is required of every person—

- i. Entitled to the benefit of any registered interest effecting the land or any part of the land (including a charge or any lease thereof).
- ii. Entitled to the benefit of a lien over the land or over any lease of the land or any part thereof;
- iii. Entitled to the benefit of a tenancy exempt from registration affecting the land or any part thereof (being a tenancy protected by endorsement on the register document of title); and
- iv. Having a claim protected by caveat to any interest affecting the land or any part thereof

LAMPIRAN B

**PROSES KERJA GENERIK BAGI PEREKAYASAAN
URUSAN PENYERAHAN TANAH BERIMILIK**





NATIONAL LAND CODE 1965: ELECTRONIC LAND ADMINISTRATION SYSTEM IN LAND REGISTRIES

MOHD SHUKRI ISMAIL¹

Keywords: Land administration, land tenure, spatial data, textual data, service delivery, e-Tanah, e-Government.

I. INTRODUCTION

MALAYSIA is a federation and operates a uniform legal framework of land administration and Torrens registration systems in each state of Peninsular Malaysia, Sabah and Sarawak. The systems practiced in that States have played a significant role in shaping Malaysia's development. Initially they provided registration of ownership and interest in land. Then, by providing security for land transactions, transfers and dealings, the systems assisted establishment of a successful and complex land market. The land titles and cadastral systems have recently evolved into comprehensive instruments for assisting economic, environmental and social decision making. This is shown in broadening land tenure arrangements, recognition of traditional customary and aboriginal land rights, and use of new technologies to integrate land title and cadastral information as a foundation of an integrated land system. Future objectives involve further development of computer technology and applications to enhance the operability and efficiency of land administration, registration, dealings and transfer and support the wider roles that land information plays in land title and spatial data infrastructures.

The State Government land management systems provide a suitable environment for the land market and a sound base for freehold and leasehold land management generally doing this by:-

- Providing security of tenure (achieved by registering interests in and, in many cases, guaranteeing title to land);
- Registering the size, extent and spatial relationships of land parcels through survey;
- Developing land policy in form of legislative instruments;
- Controlling land use and development through planning schemes;
- Managing and administering the State land;
- Providing an impartial and equitable base for property valuation to serve the fiscal requirements of rates and land tax; and
- Providing public access to land administration information including tenure, survey, mapping, valuation and other related data.

¹ Director of Research and Development Section, Department of the Director General of Lands and Mines Federal Malaysia; mohdshukri@kptg.gov.my

Within a national momentum towards e-Government services, land administration has tended to remain a government responsibility. There are four main arguments for retaining government control over the functions of cadastral surveying and land registration. These are: systematic and accurate records of boundary definition and ownership of land are of general public interest; government guarantee of indefeasibility of title (but not boundaries) private land; the need for systematic and accurate recording for land taxation purposes as a source of important state revenue; and, government needs to protect and administer State and other public land to ensure against encroachment.

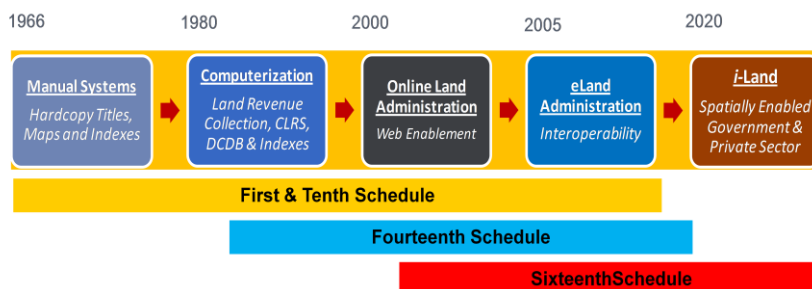
Computerisation of land registration or land information systems of each State in Peninsular Malaysia is an inevitable consequence of the global penetration of computers into everyday transactions. External factors such as the push for greater efficiencies in legal transactions, a reduction in legal costs and a desire to maintain security of title and prevent fraud creates a suitable environment for improving the current technology. Although the opportunity for improvement in efficiencies through the use of digital technology was recently recognised by the Sixteenth Schedule of the National Land Code (Amendment) Act 2008 (NLC), but by several commentators the move to a paperless registration system has been slow to gather any pace. One obvious factor that has contributed to this reluctance is the desire to maintain a paper-based document of title as evidence of ownership and mechanism of minimising fraud. Comparatively, is it true that the initial concerns about increased fraudulent activity involving an electronic title have been reported? Given with experience of some fraudulent cases involving land transaction, is it valid to argue that the integrity of the Torrens system can only be preserved by keeping paper-based document of title or is it possible to introduce an electronic system that also retains the hallmarks of the Torrens system as originally conceptualised?. It is pertinent to note that the theme of the Electronic Land Administration System is ‘e-future – into the mainstream of land administration’ – where ‘e’ may represent “emerging”, “electronic”, “exciting” – e-Tanah is all of these and it can also add “exhilarating” – at times “exhausting” – but above all “enterprising”.

II. EVOLUTION IN LAND ADMINISTRATION AND LAND REGISTRATION SYSTEMS

FIGURE 1 below shows five stages in the evolution of land administration systems from technology perspective. The first stage recognizes that historically land titles registration was manually conducted and cadastral systems were manually operated with all maps and indexes hard copy. At this stage the cadastre focused on security of tenure and simple land trading. The 1980s saw the computerization of these cadastral records with the creation of digital cadastral data bases (DCDBs) and computerized indexes. Accordingly

the computerized land registration systems have come into force in 1995 to 2001 in all State land Registries of Peninsular Malaysia. However this computerization did not change the role of the land registry in respect of integrated land titles registration system; but it was a catalyst to start institutional change nationwide where the traditionally separate functions of surveying and mapping, cadastre and land registration started coming together².

Figure 1



At the present time 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, local government. Examples of this are the Sistem Pangkalan Data Kadaster (SPDK) and the new e-Cadastre being developed by the Department of Survey and Mapping. On the other development, the proposed web-based land titles system in land Registries is called as “e-Tanah System” which stands for Electronic Land Administration System.

This era has also offered the potential for better managing the complex arrangement of rights, restrictions and responsibilities relating to land that are essential to achieving sustainable development objectives. This is also driving the re-engineering of cadastral data models that will facilitate interoperability between the cadastre, land use planning and land taxation for example.

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 shown diagrammatically below is based on the engineering paradigm where hard questions receive “designed, constructed, implemented and managed” solutions. In iLand all major government information systems

² IM Shukri (2010). Electronic Land Administration System in Malaysia: The Need for New Enabling Provisions, Jabatan Ketua Pengarah Tanah dan Galian Persekutuan, Putrajaya – a discussion paper prepared for the Review of the National Land Code – Phase I.

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. Modern land administration demands such a land administration infrastructure as fundamental if land information is to be capable of supporting those “relative” information attributes so vital for land registries and taxation.

Thus, the e-Tanah objective is to enhance efficiency and effectiveness of delivery system in Land Registry of Peninsular Malaysia. The e-Tanah system is aims at integrating all survey and title processes via system integration; to provide them in digital form; to reduce the costs of both provision and compliance; to utilise technological development, and to meet the growing community demand for improved quality and delivery of services and information.

III. HOW “E-TANAH” COMES INTO PICTURE AND HOW ITS WORKS?³

WHY “e-Tanah”? Prior to coming into operation of Computerised Land Registration System (CLRS) or Sistem Pendaftaran Tanah Berkomputer (SPTB) in the mid-1990s to year 2000s, the features of yesterday’s land administration environment in Peninsular Malaysia can be envisaged as follows:–

- Most of the land matters in rural area are concentrated on land alienation and thus, the workloads to be shouldered by the land Registries are considered over-loaded and the arrears of work was increasing.
- The concentration pattern of the land matters resolution in urban area are involving land development relating to subdivision of land, conversion of land use, land acquisition, surrender of land, etc.
- In some extends, no effective action was taken to complete the process of law enforcement, i.e. enforcement to forfeit land under Section 100 or Section 129 of the National Land Code.
- Delays in preparation of paper and decision making due to the delays in obtaining adequate information from Land Settlement Officers or relevant Technical Departments.
- The time taken for processes involved in land Registries is sound to be beyond control due to interference of external factors and uneven distribution of workload. In most cases, no standard time frame is set out to complete the processes. Based on interviews conducted, it is obvious that the majority of respondents reluctant to confirm the actual time frame taken for the processes. However in some circumstances, there is a written time frame displayed but it was not properly observed and monitored.

³ I.M. Shukri, 2005. E-Tanah Framework, Pasukan Projek e-Tanah, Ministry of Natural Resource and Environment, Putrajaya – a paper prepared to provide the guiding principles for the implementation of e-Tanah pilot project in the State of Penang.

- Insufficient information on procedures and guidelines for submission of application are usually become a critical factor to the delays in the processes. In some cases, relevant reports and planning approval are obtained by the applicant prior to submission of application to land Registry.
- No adequate information on strata titles guidelines, checklists and procedures provided by the land Registry which may be retrievable by the public or industry players. As such, public and developers was not well informed of the relevant procedures and their responsibilities thereto.
- There is no uniformity in maintaining and updating the records. In some cases, although there are updating systems of record in place, but the updating process was not made it mandatory. There is no proper supervision to ensure the process of updating is carried out effectively. Copies and usage of Litho Sheets in land Registries are not standardized.
- In some State land Registries, Settlement Officer is obliged with responsibility for keeping and updating the records i.e. Lot Index. In some other States, it has been kept and updated by the Tracer. No time frame given to update the records. This leads to inefficiencies in revenue collection and inaccurate decision-making. Generally, there is no proper monitoring system to ensure that the updating process is being carried out.
- It has been observed that the application files are thick and bulky. In some land Registries, the file room is congested and requires additional spaces. There is no proper system to trace the files movement. The process of sending files from one land Registry to another is not standardised. For instance some PTD sends the whole file to the PTG while some other PTD made it by sending the relevant paper only.
- The application files are registered and kept by the relevant Unit established in land Registry organization. The movement of the file is usually recorded in a docket system. The registration of file reference number is based on guidelines provided by PTG. In some cases the color scheme is used to identify the subject matter of the file. In most cases, the procedure for file registration system and closing the file is not adhered with. Due to limited spaces for files storage, the active files are kept by the individual Unit in which it's located at various places.
- The lack of a proper system for safe keeping the files makes it difficult to find it when it is needed. In some land Registries, there are no personnel assigned to responsible for keeping and searching of the files. This circumstance may cause delays in completing the processes for decision making.

In view of this scenario, there are some leading drivers for change surrounding the land administration:–

- Increasingly unwieldy nature of manual or paper processes, for instance, with 30 km of document shelving, increasing at a rate requiring an extra 1

km of shelving each year (survey plans, microfilms, field books, traverse sheets, reports, check sheets, notices, titles registrations, mortgages, transfers etc)

- Increasing use of automated or digital systems by industry players and local authorities, leading to a demand for an equivalent government system. Here the technology was both the driver and the enabler.
- Concerns by conveyancers at unacceptable delays in the manual process, typically 1-6 months for survey approval and issue of new titles.
- Demand, particularly from utility agencies and local authorities, for greater spatial accuracy or consistency in the cadastral or parcel map. While the DCDB was being used extensively it suffered from significant inaccuracies due to its derivation from digitising hard copy maps of varying scales and quality.

These specific drivers could be seen in the light of the major drivers of change affecting our societies:-

- Population growth and urbanization.
- Environmental stresses.
- Resource depletion.
- Economic restructuring.
- Technological advances.
- Information and communications revolution.
- Democratisation and open access to information.
- Individual responsibility and self-determination.

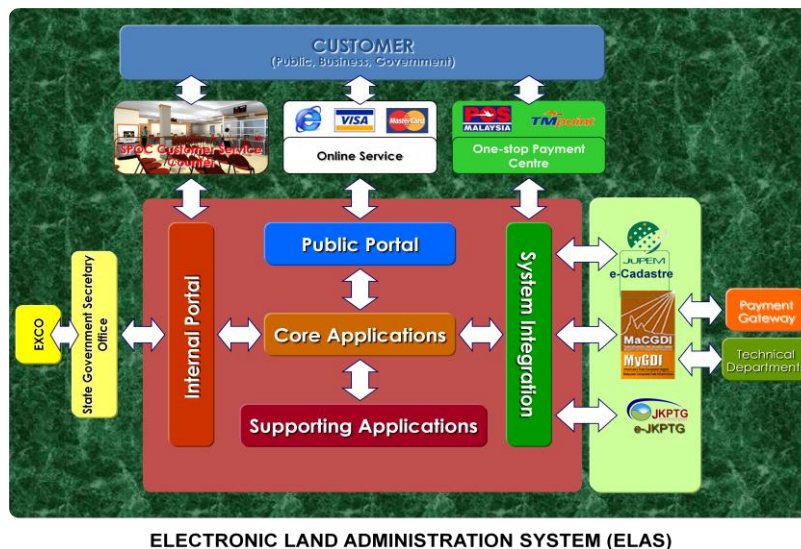
How the system has to be designed?

The “e-Tanah” application system is a legislative driven rather than technology driven. Thus, it is pertinent to note that the “e-Tanah” system in any land Registry shall be developed in accordance with the Sixteenth Schedule of the National Land Code 1965. As can be seen in Figure 2, the key features of this system includes not less than the following:-

- (a) web-based application system;
- (b) easy to use;
- (c) a single point of entry for both the public (the internet users) as well as the intranet users (internal users);
- (d) a workflow-based application system;
- (e) an integrated with Document Management Systems for easy retrieval of required documents during processing;
- (f) a hybrid-architecture system which is a combination of centralized and distributed systems within “as-is” legal framework;
- (g) authentication of titles by use of electronic means such as digital signature.

- (h) there will be a Disaster Recovery Centre (DRC) set up in the State to ensure the e-Tanah system continues to be operative in time of disaster.

Figure 2



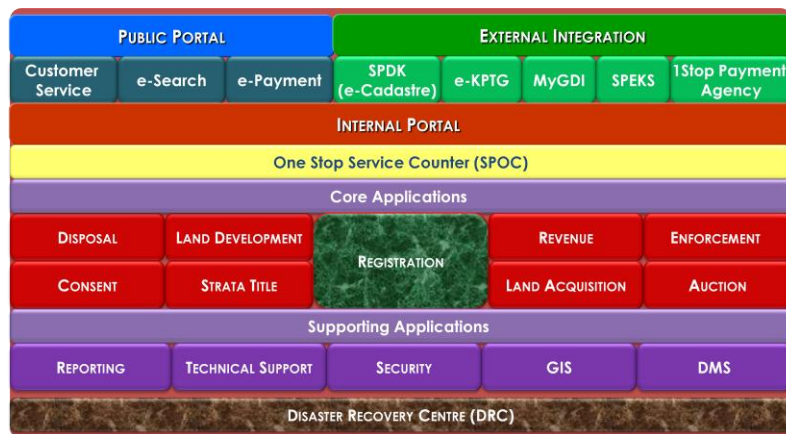
How the system functions?

In respect of land administration service delivery, the architecture of “e-Tanah” system comprised of—

A. Public Portal

- To allow the public users to access for the pre-defined services and information supplied by e-Tanah through on-line internet access as well as public kiosk. Public users will be able to access the e-Tanah public portal from anywhere through normal internet access or through public kiosk situated at respective PTG and PTG. (see Figure 3).
- To be used by the public or the internet users to perform any enquiries pertaining to Guidelines and Procedures of any land matters e.g. how to perform transfer of properties, how to register a mortgage, how to apply for Disposal of Land, how to submit application for transmission upon death, enquiries on quit rent outstanding amount and rent rates, perform e-payment and also to perform e-Carian or internet search of title information.
- To perform e-payment and e-Search (e-Carian) the public must first required to be registered with the State Authority’s concern and become a registered user.

Figure 3



The pilot e-Tanah public portal consists of three basic sub-modules namely:-

- Customer Service,
- e-Search, (e-Carian); and
- e-Payment (e-Pembayaran).

Customer Service allows the following functions:-

- To display information regarding services and legal procedures,
- To enquire online,
- To complain online,
- To check on status of application of transaction,
- Help service and assistance.

e-Search is a system to cater the need of selling land information to land office customers via internet. In developing the application, special consideration is required to be given as such the developed application will at the minimum meet the requirement for Private Title Search as specified under section 384 of National Land Code (NLC) and State Land Rules. To fulfill the requirement for the state financial procedures and Accountant General financial procedures, the deposited amount for the customers with prepaid account will be hold by respective State Treasury. To avoid accessing the operational database, a separate new database will be created inside the Backup Server.

e-Payment allows online public users to pay quit rent online through the internet. The module has the following functions:-

- Online payment;

- To provide interface to public users to pay quit rent online;
- 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;
- To accept credit card payment by the public user; and
- To allow user to check on status of payment of quit rent of a particular title or arrears in quit rent.

The online payment module offers two payment types - Payment using credit cards, and Corporate Account to Corporate Account Online Clearance.

B. Internal Portal

To be the central point of connections to an integrated e-Tanah modules and external modules (i.e. e-JKPTG, SPDK/ e-Cadastre and One Stop Payment Agencies). Internal portal will be used by the officers and staffs of the PTD and the PTG in performing their daily tasks. The officers and staffs will only need to logon to internal portal once via Single Sign-on Concept and they will be able to access their tasks in any e-Tanah module assigned to them. For security reasons they will only be able to see and access modules they are responsible for.

The Internal Portal will act as the central desktop for staffs and officers of the PTD and PTG. This internal portal will have links/portlets to all modules in overall e-Tanah System such as:-

- (a) to receive applications or payments from customers/publics.
- (b) to be a one-stop counter service for Document Collection.

Core Application Systems The e-Tanah internal portal consists of the following core application modules namely:-

- (i) Single Point of Contact (SPOC) Module,
- (ii) Land Disposal Module,
- (iii) Land Development Module,
- (iv) Land Acquisition Module,
- (v) Strata Title Module,
- (vi) Title Registration Module,
- (vii) e-Consent Module,
- (viii) Auction Module,
- (ix) Revenue Module, and
- (x) Enforcement Module.

Single Point of Contact (SPOC) Module through One Stop Service Counter could be accessed by the staff manning the counter via Internal Portal. The module is required to be designed to function as an entry point of all land

related matters. All applications submitted by the public will be checked and initiated at this module. The application will be given a reference number, date and time stamp, matter at hand (e.g. application for state land through land alienation), and information on applicant name and address will be captured. An acknowledgement will be printed out and issued to the applicant.

For instance, the One Stop Service Counter Module will integrate with related back-end module so application data will be pushed to respective back-end module. The One Stop Service Counter will integrate with Revenue Module when payment or revenues are collected. At One Stop Counter Service Module, the system will integrate with Revenue Module to check and ensure that all outstanding quit rent amounts are duly paid. The system will alert the staff if there are amount still outstanding. The applicant will be advised to pay first before submitting application.

This module will also have a function to receive any payment e.g. processing fee of application for state land through alienation. A receipt of payment will be printed and issued to the applicant. Upon the completion of the transaction, the information of submitted application will flow to Portal and the related back-end module. One Stop Service Counter Module will integrate with Portal where Land Office and staff will be alerted of the application submitted.

Land Disposal Module is required to be designed to cater for processing the application for state land through land alienation and other than alienation. The functions involved in this module will include items as follows:-

- registration of the application;
- desktop mapping system;
- scanning application form “Jadual 1” and raster image of plot applied;
- charting or updating spatial data (litho sheet layer) through digitizing or keyboard entry;
- Capturing internal unit/department/external department comments on the application and External;
- Preparation of Majlis Mesyuarat Kerajaan Negeri (MMKN) paper;
- Updating of meeting decision;
- Prepare notification letter to applicant and request for deposit;
- QT preparation or updating of spatial data QT layer and printing of Form B2;
- PU or request for survey preparation;
- Form B1 reader and printing;
- RE, RT Requester;
- Pangkalan Data Kadaster (PDK) reader and updates;
- Digital Signature;
- Enquiries;
- Reports.

Land Development Module is required to be designed to cater for processing of land development, i.e. partition of land, subdivision of land, amalgamation of lands, conversion of lands se, etc. The functions involved in this module will include items as follows:–

- registration of the application;
- desktop mapping system;
- scanning of relevant documents and raster image of proposed development;
- charting or updating spatial data (litho sheet layer) through digitizing or keyboard entry or program to automatically update the spatial layer based on the digital pre-computed plan of the proposed development provided by the applicant;
- Function to prepare land report;
- Capturing external technical department comments on the application;
- Preparation of meeting paper (for approving authority e.g. MMKN, Menteri Besar etc.);
- Updating of meeting/approving authority decision;
- Prepare notification letter to applicant and request for payment of survey fees, fees for title preparation etc.;
- Function to update appeal to reduce amount or payment through instalments;
- QT preparation by updating of spatial data QT layer and Preparing plan for Form B2;
- PU or request for survey preparation;
- B1 title plan reader for Form B1 preparation;
- RE, RT Requester;
- Pelan Data Kadaster reader and updates FT layer at PTD;
- Digital Signature;
- Enquiries;
- Reports.

Land Acquisition Module is required to be designed to cater for processing of land acquisition initiated by the State itself or acquisition for the Federal use. The functions involved in this module will include items as follows:–

- function to register the application;
- desktop mapping system;
- scanning of relevant documents and raster image of proposed acquisition;
- charting or updating spatial data (litho sheet layer) through digitizing or keyboard entry;
- Query function to obtain title information, ownership and correspondence address of the owner for notice purposes and generate Form A and Form B;
- Function to prepare land report;
- Function to generate Form C;

- Function to generate Form D;
- Function to generate Form I;
- Function to issue request to Registration Unit to make an endorsement of Form D through Title Registration Module;
- Function to generate Form E in order to notify the owner and any other interested parties of the intention of LA to conduct hearings and enquiries for the acquisition;
- Function to update enquiry decision;
- Function to generate award for the acquisition in Form G;
- Function to generate Form H;
- Function to generate Form K;
- Function to issue request to Registration Unit to make an endorsement of Form K through Title Registration Module and cancel the title and subsequent to that cancel the quit rent record for the next year. At the same time the system will also send request to Technical Unit to update the spatial data layer to become state land;
- Function to update spatial data layer;
- Function to generate Form L;
- Function to update title information and new rent to cater for partial land acquisition;
- Enquiries;
- Reports.

Strata Titles Module is required to be designed to enable the PTD or PTG to process application made with respect to any building or buildings having two or more storey on alienated land, each to be held under Strata Titles or into accessory parcels. Under this module, the user will be able to process an application for the subdivision of building into parcels or subdivision of land into land parcels starting from receiving an application in Form 1 or Form 1A of the Strata Titles Act, 1985 (STA), processing and routing it to various units in the Land Office and relevant technical departments outside Land Office for comments (if necessary).

The module offers user a complete workflow up to decision making process by the PTG (in the absence of any contrary directive by the State Authority) through online reports and papers. Upon approval by the PTG, the module will generate a letter of approval to the applicant together with the amount of payment due and other necessary documentation and plan for issuance of strata titles for each parcel. Once all payment has been made by the successful applicant, this module will generate the necessary data for the issuance of Strata Title for each parcel through Title Registration Module.

Title Registration Module is required to be designed to cater for processing the registration of title in consequence of alienation of land, registration of dealings and non-dealings to land. For example, the functions involved in registration of transfer of land sub-module will include items as follows:–

- a) Through portal alerts Registration staff will be aware of tasks to process application to transfer land or share. By using the information captured at SPOC Service Counter Module, the Initiation Module in the previous SPTB will no longer be used. This “new version of SPTB” will immediately start with Entering function.
- b) PTD or State PTG staff will enter information according to the instrument presented.
- c) For titles that cannot be transferred without the consent from State Authority (expressed in Restriction in Interest of the document of title), this module will access Letter of Consent module to check if for consent being given to perform such transfer.
- d) Using Entering function, staff can propose to register or reject or suspend the presentation. Staff can then print verification document and the system will file the document in the Document Management System (DMS).
- e) From Entering function, the system will flow to Registration function.
- f) Through portal alerts Registrar will be aware of tasks to register application to transfer land or share.
- g) PTD or State PTG officer will perform checks on the presented documents as well as Verification Document stored in the DMS. He can then register the presentation. Upon registration, new version of the title, letter or other notifications will be generated by the system and will be sent to the printer and file into the DMS.
- h) Integration with other module - Integration of Title Registration Module and Letter of Consent Module to check for consent granted. Integration of Title Registration Module and Revenue module will take place to check if all quit rent are duly paid before processing can take place and upon registration new owner information will be transferred to Revenue module. Integration will also take place between Title Registration Module and Collection Module and Portal.

e-Consent Module is required to be designed and developed to record information with regards to the application, process the application and in doing so update status of the application. This module will also be used to produce Letter of Consent for transfer, charge, transfer and charge. With the implementation of this module, the retrieval of information of the consent to perform transfer, charge or transfer and charge will be improved tremendously. There will be an integration system between this module and Portal, One Stop Service Counter and Title Registration Module.

Auction Module is required to be designed to enable District Land Office and PTG office to deal with auction matters in the following stages:-

Stage 1:

Processing of application for obtaining an order of sale.

Stage 2:

Processing the registration of order of sale.

Revenue Module is required to be designed to enable District Land Office and PTG office to update and maintain quit rent accounts and other land revenues timely and effectively. Information with regards to the quit rent and other revenues could be update in an almost real time manner. For example, with this module—

- (a) Quit rent can be paid at any district office within the State. Periodic updates to the payments will be made to synchronize database kept at PTG replicated database;
- (b) A function is to be developed to send payments information to various District Land Office and PTG where title is situated. Another function at every District Land Office will update the payment information received at the local database.
- (c) Payments can be made at prescribed Pusat Bayaran Setempat e.g. Post Office and Kedai Telekom. Through e-payment in the Portal module, payments can be made via the internet using the existing infrastructure of banks.

Enforcement Module is required to be designed at the PTD and PTG, and connected to the Internet via State.Net Internet connection. The module will be accessible to the users both through the Intranet network and Internet network.

With the implementation of this module, the system will provide the following functional specifications:—

- i. Receiving complaints which will be done at the Single Service Counter under the concept of Single Point of Contact;
- ii. Capturing reports by transmitting online through integration or interface with e-Local Authority System (e-PBT) or by receiving public complaints at the SSC;
- iii. Capturing search on proprietor profile via interface with computer system of Suruhanjaya Syarikat Malaysia (SSM);
- iv. Registration of investigation file via system and routing to Investigation Officer for investigation report preparation;
- v. Scanning of relevant documents and raster image of relevant plans or the ability to receive and process digital plans or documents;
- vi. Function to prepare correspondence letter to proprietor and other reference parties;
- vii. Preparation of reports by using standard templates;
- viii. Capturing comments from Legal Advisory Office – on the case in question;
- ix. Preparation of paper for DLM approval by use of the computer;
- x. Updating of meeting/approving authority decision;

- xi. Prepare notification letter or administrative notice to be served to proprietor to show cause of failure to make application for strata titles, request payment on which the approval relates, request for payment of penalty, clarification on matters on which the breaches of law relates, etc;
- xii. Receiving penalty payment and transmitting online to the Revenue module through inter module integration;
- xiii. The use of Public Key Infrastructure (PKI) to authenticate decision made by Land Administrator or DLM;
- xiv. Searches and enquiries;
- xv. Reports and utilities; and
- xvi. Others as may be required by users from time to time.

Supporting Application Systems

The e-Tanah internal portal also consists of supporting application systems namely:-

- (i) Reporting
To allow for the compilation and generation of any kind of reports whether in pre-defined or free defined formats.
- (ii) Workflow and Routing
To allow for better management and maintenance of each and every module in e-Tanah system, and permit interaction between individuals and organizations at different locations. In the event of a failure or disaster of e-Tanah application at PTG, the individual e-Tanah system at the district levels will be able to operate independently and once the system at PTG is up and running again, the module will be able to synchronize with the latest updates.
- (iii) Security
To enable the technical personnel and administrator to manage e-Tanah security aspects through a single window. This module will be fully integrated with all modules in the e-Tanah Portal to manage the security of e-Tanah. The module will have functions of Audit Trail and User Access Control.
- (iv) Geographical Information System (GIS)
GIS is a major land spatial database of the overall land related information system of the State. It will be developed with a view to be user-friendly, scalable, robust and while at the same time contributing to the overall data integrity and security. It will serve to support decision making at the strategic, tactical, and operational levels. It will provide spatial support for the performance of state and district administrative operation.

(v) Technical Support

Basically technical support services for e-Tanah covers the following:-

- Hardware and OS Support - covered by Vendor backed by Hardware Principal.
- Software Support - covered by Vendor backed by Software Principal.
- Third Party Components - covered by Vendor backed by The Principal.
- Applications Support – covered by Vendor.

C. Internal Integration

The development of e-Tanah system requires a need to integrate the system with other internal related applications system which has direct correlation with e-Tanah business flows. For instance:-

- Land Development Module will integrate with Revenue Module when payment has been made for the payment of the charges.
- Land Development Module will be integrated with e-Cadastre in JUPEM whereby data on request for survey PU will be sent digitally. Upon completion of survey work and certified plan PA preparation at JUPEM, digitally signed B1 title plan and lot number will be sent to PTD.
- Land Development module will also be integrated with Portal where alerts to the staff of Registration Unit will know there is title to be registered.
- Integration to Title Registration Module will take place upon request to register the title. Data about the title to be registered and title to cancel will be transferred to Title Registration Module.

D. External Integration

The preliminary external integration between e-Tanah system and other external systems will cover the following:-

- Integration between e-Tanah and Sistem Pangkalan Data Kadaster (SPDK) or e-Cadastre,
- Integration between e-Tanah and e-JKPTG, and
- integration between e-Tanah and One Stop Payment Agencies.

Integration between e-Tanah and SPDK or e-Cadastre is to enable transmission of electronic Requisition for Survey (RS) and Requisition for Extract of Plan (RE) (in the case of a final surveyed lot) to be done quickly and effectively.

The integration between e-Tanah and e-JKPTG will enable easy transfer of data between e-Tanah and other land related modules such as Small Estate Distribution Module, Land Acquisition Module and Federal Land Module (Record and Revenue Modules) in e-JKPTG. Whilst e-JKPTG (now known as e-

KPTG) is currently residing at JKPTG HQ and State branches, at one point or another, e-JKPTG will have to interface with the e-Tanah system for data transfer purposes or for registration of matters such as registration of Form E of the Small Estate Distribution Act into the title or titles in question.

The integration with One Stop Payment Agencies will allow for all information regarding revenue payment collected on behalf of the PTD and PTG by the one stop payment agencies such as Pos Malaysia, Kedai Telekom and Banks to be downloaded and integrated into the e-Tanah database at the PTG level for updating in the revenue segment of the database. The data will then be replicated back to the respective PTD for reconciliation. To this respect, the e-Tanah Project Team together with Vendor has to conduct an extensive discussion with the respective one stop payment agencies to detail out the exact database structure and requirements to enable effective integration of data to be done between them and e-Tanah.

IV. POSSIBLE FUTURE IMPROVEMENTS

e-Dealing

Another component of electronic land administration system is to cater the needs of public users to lodge land dealings (such as transfer, charge, lease and easement) via Internet to any land Registry under operation of e-Tanah System. This electronic application system contains electronic title records, electronic statutory forms or instruments called e-Form and electronic lodgement of its supporting documents. In 2008, the National Land Code (NLC) was amended to support the introduction of electronic land administration in land Registry with remote electronic private searches for public users but excluding electronic registration of dealings⁴.

The process of creating and lodging an electronic dealing, called an e-Dealing, includes: create dealing, prepare, attests, certify and sign, stamping, present and register. An e-Dealing is created electronically using electronic templates in a shared workspace where many details such as current owner's name, are entered automatically onto the electronic template from the titles register. To submit an e-Dealing, the instruments must be certified (attested) and electronically signed using a digital certificate. Only conveyancers who are nominated on the authorised form can certify and sign e-Dealings. They must have a digital certificate and appropriate privilege allocated within the firm.

Once both conveyancers are satisfied the e-Dealing proceeds to the stamping stage. This stage allows for the instruments to be released and the e-Dealing electronically submitted to land Registry with a presentation priority date assigned. Upon submission of presentation, the e-Tanah System runs automated checks. If the dealing passes it is registered immediately and the titles register is automatically updated without manual intervention by the

⁴ Percetakan Nasional Berhad (2009). National Land Code (Amendment) Act 2008 (Act A 1333).

land Registry (PTD or PTG). The submitting conveyancer receives an electronic notice confirming registration.

In accordance with statutory guideline that has to be developed under Electronic Land Administration System in land Registry, person or body listed in the Fifth Schedule of the NLC must take all reasonable steps to ensure the security of the password for his or her Digital Certificate. It must not be written down and must not be shared with anyone, including partners in their firm. For instance, the lawyer is personally responsible for all instruments that are registered that have been certified and signed using that lawyer's Digital Certificate. In this regard the protection of passwords and systems will include the protection of digital certificates and associated passwords, and passwords, usernames, and personal identification numbers relating to electronic banking.

e-Submission or e-Lodgement

An electronic application in electronic land administration system is aim at providing the public users to lodge matters other than land dealings (such as caveats, vesting, non-dealing applications, etc) via Internet to any land Registry under operation of e-Tanah System. This electronic application system contains electronic title records, electronic statutory forms called e-Form and electronic lodgement of its supporting documents. The National Land Code (NLC) was amended in 2008 to support the introduction of electronic land administration in land Registry with remote electronic private searches for public users but excluding electronic submission of non-dealings.

The process of creating and lodging an electronic application, called an e-Submission, includes the following steps: create online application, prepare, attests if any, certify and sign, present and entering endorsement, verify and approve, and register. An e-Submission is created electronically using electronic templates in a shared workspace where many details such as current owner's name, purposes of applications, are entered automatically onto the electronic template from the titles register. To submit an e-Submission, the application forms must be certified (and attested if applicable) and electronically signed using a digital certificate. Only applicants who are nominated on the authorised form can certify and sign e-Submissions. They must have a digital certificate and appropriate privilege allocated by the certification authority.

For instance, once submitted application for variation of land use is satisfied, the e-Tanah System runs automated checks. Then the e-Submission proceeds to the entering endorsement stage. This stage allows for the application to be endorsed onto register and accordingly to be considered for approval by the Approving Authority with a submission priority date assigned. If the application approves and it fees paid by the applicant, the converted use of land is registered immediately and the titles register is automatically updated without manual intervention by the land Registry (PTD or PTG). The submitting applicant receives an electronic notice confirming registration.

In accordance with statutory guideline that has to be developed under Electronic Land Administration System in land Registry, the similar business rules as highlighted for e-Dealing will apply *mutatis mutandis* to e-Submission security procedures.

V. RISKS AND CRITICAL SUCCESS FACTORS

Risk Factors

Implementing a large scale project like e-Tanah system will definitely involves certain risks of not being completed on time or not completed at all due to unexpected reasons or management misconduct.

Some of risk factors identified that if it left unchecked, it might detriment the successful implementation of e-Tanah system. They are including the following:-

- Change in leadership to champion the project implementation may cause the appearance of unreliable man who doesn't have soul to understand the project driven. As a result the e-Tanah prerequisite theme for 'the right man for the right job' will be left behind and unseen.
- Frequent change in the users' business nature may cause indefinites change in user requirements.
- Change in organization's executive levels may lead to revise priorities.
- Change in sponsorship could result in less commitment to and/or cooperation may cause change to the project momentum.
- Hardly maintained the sense of urgency along the project timeline may lead to slow down in pace.
- Frustrations may cause the team's high achievers become impatient and leave the project, get transferred out or retire and other personnel from nowhere might be reassigned.
- The team and users have to bear for a long waiting to see the results of the system.
- The system at risks when it developed against the legal framework.

Critical Success Factors⁵

The following factors are keys issues towards the successful implementation of the e-Tanah system:-

- The need to have top executive sponsorship of the computerization plan. The implementation of the project is aims at modernising the work practices and standards within The Land Offices and PTG. Senior management must champion this mission and support the efforts to implement the changes that are necessary for the successful implementation of the e-Tanah system.

⁵ Jabatan Ketua Pengarah Tanah dan Galian Persekutuan (2002). *Kajian Sistem Pemodenan Pejabat Tanah (SPPT) – Vol. 5. unpublished.*

- Right and accurate selection of expertise, acquires, configure, install and maintain a powerful and reliable IT infrastructure to support the development, integration and operations of the systems.
- The need for user management to be committed towards the implementation and sustenance of the computerization project. User management must provide the resources with capabilities to ensure a successful implementation, establish a user support infrastructure to encourage continuous use of the system.
- The need to have a strong project management team. Strong project management skills are mandatory on large scale implementation to effectively manage resources, resolve conflicts and variations to the original plan that might arise during implementation. It is therefore imperative that project management from the standpoint of the overall ISP be undertaken by competent and highly experience parties. The stakeholder must engage either internal or external resources to fulfill this role in the near future.
- The need to have tight control over the performance of the third-party IT service providers. It is therefore critical for management to monitor the performance of IT service providers during implementation period through clearly defined and understood contractual arrangements and acceptance criteria.
- The need to instill a 'System Ownership' culture. All systems that have been implemented will only be successful operationally if there exists individuals conversant with the systems and who acts as the 'ambassadors' for promotion of the systems across Land Offices and PTG.
- The need to have an on-going change management process to complement the implementation strategy to manage major changes with the introduction of the systems, changes to work practices and retraining. A key change management issue is the significant changes to current work practices and culture that will be brought by the introduction of the new systems. To manage change effectively, a formal communications program must be established to proactively monitor the changes being brought about and its consequent operational repercussions. This program should be considered as an integral part of project management. The challenge is to transfer knowledge and the ownership of the various operational aspects of the systems to the individuals and parties who will be responsible. Emphasis will need to be given to system acceptance and transferring of ownership to users, user training and post-implementation reviews. A change management issues register should also be maintained by project management to monitor all change management issues reported during and after implementation.

VI. CONCLUSION

THE modern land administration paradigm is about protecting government land, allocating rights over State land, regulating the land market, and

providing access to information and service delivery. Today, 'land administration' refers to the role of government in securing land ownership for the community, providing access to public land, protecting identified values and public open space, and establishing information systems based on where land is, what it is used for, and its value (be it in ringgit terms through the market or community values through public purposes)⁶.

Due to the inherent wealth of Peninsular Malaysia relatively expensive and cadastral land registration systems were allowed to evolve in the individual jurisdictions. These systems work well and underpin a secure land transfer system supporting an active land market. Furthermore, although Peninsular Malaysia cadastral systems were not designed as part of a wider land administration system, they now form its foundation and are becoming increasingly important within the wider spatial information environment.

Peninsular Malaysia was an early adopter of the benefits of technology in improving its land administration systems and functions. In the mid-1980s Computerized Land Revenue Collection Systems was created to deliver land information by use of computer. However, in retrospect, the technology then available could not deliver the Government's ambitions. In addition, the organisational arrangements remained fragmented and worked against improved integration of service delivery.

Overall, what is needed is a change of attitude towards land administration as a whole, a sharper focus on information as a commodity, and binding commitment to keep that information up to date. Land administration systems must evolve to provide a modern framework within which the demands of sustainable development can be met. Given greater awareness of the issues, this should not be too difficult to achieve.

Therefore there must be "the right man for the right job" who can make the successful operation of electronic land administration system in land Registries. If not, e-Government vision in land Registries will remain static, and the delivery system in land administration remained unchanged.

⁶ IM Shukri (2010). Land Administration in Peninsular Malaysia: A General Overview, Jabatan Ketua Pengarah Tanah dan Galian Persekutuan, Putrajaya – a paper prepared as a guidance for Internal Research and Development Team.

MEASURES UNDERTAKEN TO SAFEGUARD AGAINST FRAUD IN LAND DEALINGS

MOHD SHUKRI ISMAIL¹

Keywords- Fraud & the conveyancers, fraud & Registrar of Titles, root causes of fraud, challenges in detecting fraud, measures undertaken, review of the National Land Code – certificate of correctness, assurance fund.

I. INTRODUCTION

LAND and buildings are usually the most valuable assets people own. They can be sold and charged to raise money and can therefore be attractive targets for fraudsters.

Generally Land Registry (that is the State Director of Land and Mines Offices in respect of Registry Title or District Land Offices in respect of Land Office Title), professional conveyancers and credit providers or lenders all have safeguards to minimise the risk of a fraud being successful. However it is important that property owners do what they can to help prevent fraud and to protect their ownership in the same way that they protect other things they own.

It is pertinent to address that fraud within the context of indefeasible title or interest in land is becoming serious issue for conveyancers. Although conveyancing processes and procedures administratively may differ from State to State, any system of conveyancing that is based upon the registration of title and mortgage documents is inherently susceptible to fraud.

Anyone owning an interest in property can be the victim of property fraud, but there are some situations where this is more likely, such as:-

- where a relationship breaks down
- where a property is empty or is bought to let
- where the owner is abroad or absent
- where the owner is infirm or in a home.

If you are in any of these situations, or you are otherwise concerned that you may become the victim of property fraud, seek advice from a professional conveyancer such as a solicitor, and consider taking the necessary actions to alleviate it.

II. FRAUD AND THE CONVEYANCERS

¹ Director of Research and Development Section, Department of the Director General of Lands and Mines (Federal) Malaysia; mohdshukri@kptg.gov.my

AN integral part of conveyancing practice involves the provision of advice in relation to transfers, charges and refinances. Conveyancers in Peninsular Malaysia for example will regularly act for clients in relation to the finance of a family home or an investment property. Most lenders will require the borrower to seek for independent legal advice as a condition of the loan. In many cases, it is this requirement for an independent legal advice which prompts the borrower (and fraudster) to seek the services of the conveyancer.

Fraudsters may also seek the services of a conveyancer in order to sell a property without the knowledge of the true owner. Although it is more common for fraudsters to simply charge a property to which they have obtained the title (or have forged the title), conveyancers should be mindful that fraudsters may attempt to sell or transfer that property and will seek the services of a conveyancer for this purpose.

Unfortunately, for conveyancers it may be difficult to distinguish between a bone fide client legitimately seeking legal services and a fraudster approaching the conveyancer as simply an obstacle to be overcome in the carrying out of the fraud. The risk to the conveyancer is that in circumstances where a transaction turns out to be perpetrated by fraudsters, the conveyancer's conduct may be closely examined to establish whether the loss suffered by the victim of the fraud can be attributed to any negligence on the part of the conveyancer.

Conveyancers therefore need to be alert to any fraud indicators and need to be careful to properly identify their clients, whether they are vendors or borrowers.

III. FRAUD AND LIMITATION OF REGISTRAR'S POWERS

IT is the duty of the Registrar to determine whether an instrument presented is fit for registration according to the provisions of Chapter III. He can only proceed with the registration according to the manner prescribed in Chapter IV if the instrument is fit for registration, and accompanied by all documents required by section 294 of the National Land Code 1965. Otherwise, he can proceed in accordance with the provisions of section 289 or 299 as appropriate. As long as an instrument of dealing is in order and fit for registration according to the requirements of section 301, it is the duty of the Registrar to register it.

The power of the Registrar is administrative in nature in which he will proceed with the registration if he finds that the applicant had complied with all the necessary requirements and procedures. However, if he finds that such procedures had not been complied with, he then has a right to suspend or reject that application. In *Mohammad Bin Buyong v Pemungut Hasil Tanah, Gombak*, it was held that the words "shall not register" in section 300 of the National Land Code 1965 are merely directory and not mandatory and failure on the part of the Registrar to comply with it does not invalidate the registration.

The Registrar is vested with the power to require production of certain documents whenever he considers them necessary. However, this power is subject to certain limitations as prescribed in section 303 of the National Land Code 1965 as follows:-

- (i) the Registrar need not be concerned to enquire whether any transfer of a lease, sub-lease or a grant, constitutes a breach of any agreement against assignment or sub-letting.
- (ii) in the case of a lease, sub-lease or surrender granted or accepted by a chargee in possession, the Registrar is not obliged to enquire whether the chargee was rightfully in possession.
- (iii) the Registrar is also not concerned to enquire into the validity of any certificate of sale issued pursuant to a sale upon default of a charge.
- (iv) where a dealing is effected by a person registered as a trustee or representative, the Registrar is not concerned to enquire whether the dealing is consistent with or permitted by the trust instrument. He is under no obligation to make any enquiries or to seek further information even if he suspects that the transaction may be in breach of trust. However where it has come to his knowledge that the transaction is in breach of trust, he must reject the instrument as being unfit for registration.

The Registrar can make enquiries, and require the production of evidence, oral or documentary, as he may consider necessary or desirable for the purpose of determining the fitness of any instrument for registration. The powers conferred by section 302 of the National Land Code 1965 are exercisable subject to the limitations imposed by section 303 and, in the case of any instrument executed under a power of attorney, paragraph (b) of section 311.

The Registrar is not required to go outside the terms of the transaction if it otherwise seems fit for registration. It was observed in *ARPL Palaniappa Chettiar v PL AR Letchumanan Chettiar & Anor*, by Wong Kim Fatt JC, that: "It is clear that under the Code the Registrar may act on his own motion or upon information or request made to him. The word 'may' indicates discretion on the part of the Registrar. He is not bound to act on such information or request in every case. ... [T]he Registrar is said to perform a quasi-judicial function in the exercise of that discretion, but the discretion must always be exercised judiciously or reasonably and in good faith, not arbitrarily nor in bad faith". In this case the plaintiff, *inter alia*, sought an injunction to prevent the Registrar registering a transfer which was otherwise fit for registration; the basis of the claim was that the transferor/executor was acting fraudulently. The injunction was refused on the basis that the Registrar had a statutory duty to register an instrument on its face fit for registration.

The following are some of the circumstances where documents can be found to be unfit for registration by Registrar:-

- where the instrument does not relate to a registrable interest, or does not comply with the requirements as to form, execution or attestation, or is not stamped;
- where there has been a substantial variation in the statutory form;
- where the instrument is linked to matters which would encumber the register with unregistrable subsidiary matters;
- where the incorrect procedure was adopted; for example, where a personal representative instead of applying for registration as proprietor of the subject land seeks to combine that application with a subsequent transfer of the land;
- where there is a prohibition or limitation on the dealing imposed by a written law other than the Code; for example, the Land (Group Settlement Area) Act 1960 (Act 530) or the relevant Malay Reservation legislation of the various States;
- where the dealing would be contrary to the restrictions in interest to which the particular land is subject or to any other limitation or restriction imposed by reference to the nature of the transaction or any prior transaction concerning the same land; and
- where the instrument declares or discloses a trust contrary to section 344 of the National Land Code 1965.

The Registrar is conferred a discretionary power to dispense with production of the document, or to reject the instrument which has not been accompanied by a relevant document. The rejected instrument must be so endorsed and cannot be lodged thereafter. Where the Registrar does not reject the instrument, he can decide not to ask for the production of the issue document of title but to issue a title in continuation or a duplicate issue document of title pursuant to section 175 of the National Land Code 1965. However, in taking this course of action, the Registrar must be aware of potential activity of transactions outside the Code using any existing issue document of title which has been claimed to have been lost or where the holder refuses to produce it.

It is important to note that the power of the Registrar to correct errors is confined to the errors or omissions made by the registering authority and not by any other persons. This power cannot be exercisable in respect of land held under Land Office Title or the corresponding form of qualified title except with approval of the State Director. Details of all corrections made by the Registrar must be recorded in a book called "Correction Note-book". The procedures prescribed by the National Land Code 1965 with respect to registration of dealings are very systematic. Thus, the chance of occurrences of fraud or any improper dealing in the Land Office is very minimum. However, we cannot rule out the fact that it is possible if a dishonest member of staff could be tempted to collude with the perpetrator of a fraudulent dealing.

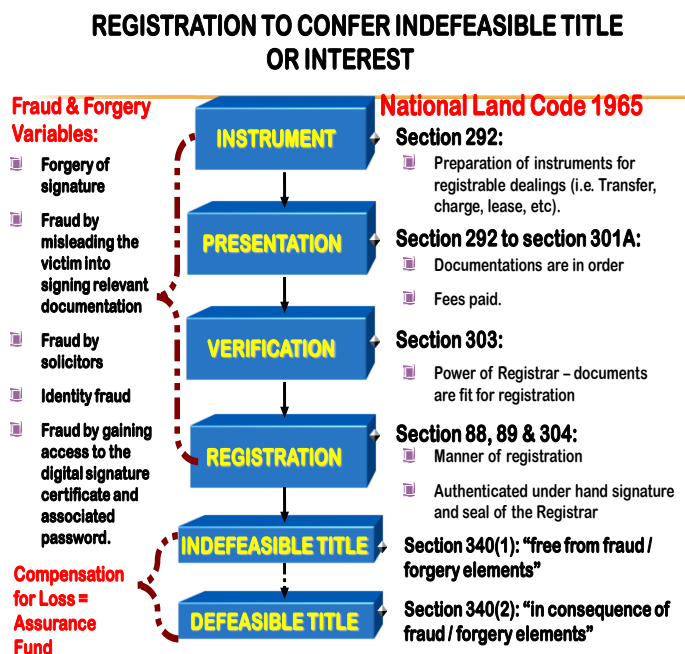
IV. ROOT CAUSES OF FRAUDULENT LAND DEALINGS

THE registering authority assumes an important role in ensuring that the registration of instruments of dealings is carried out accordingly. However, in recent years, complaints about land fraud have increased and this will have an adverse impact on the socio-economic development of the nation. The weaknesses within the land registration offices have been cited as the major cause of land fraud.

The detailed description of the process of administration of land dealings under the National Land Code 1965 shows clearly that it is not easy to commit fraud or improper dealings (see Figure 1). However, we do have cases of fraud and the statistics produced by the Police Department are clear proof of occurrences of fraud (see Table 1).

Despite the dealings registration system manifesting itself to be an efficient system, however, fraud and improper dealings within the conveyancing system is unavoidable. The Royal Malaysian Police investigation has identified a few modus operandi used by criminals in transferring land to themselves or other unsuspecting bona fide purchasers.

Figure 1: Flow Chart on Registration of Dealings in Malaysia & Fraud & Forgery Variables



Source: Ismail, M.S., Department of Director General of Land and Mines (Federal).

Thus, the weaknesses in conveyancing practice paving inroad to fraud can be described as below:–

(i) Forging of Transfer Form 14A or Charge Form 16A/B

The National Land Code 1965 prescribes the use of Form 14A to effect transfer of title or Form 16A/B for registering a Charge. The signature of the transferor or chargor (especially for a third party charge) can easily be forged without anyone actually realising it. It may go unnoticed, including by the registering authority, legal practitioners and a commissioner for oaths who may be witnessing signatures of parties without actually being present. A legal practitioner or commissioner for oaths can be cheated by an imposter by using a forged identity card. Pictures in identity cards are usually not reliable as it could be a picture taken some time ago or the person may have grown a beard/moustache or shaved off his beard/moustache, removed their spectacles for the picture or used some other method to disguise their identity.

Table 1: Statistic of fraud and forgery cases from 2005 – April 2010.

State	2005	2006	2007	2008	2009	2010 (Apr)	Total
Perlis	0	0	0	0	0	0	0
Kedah	4	5	4	8	6	7	32
Pulau Pinang	3	8	17	11	6	2	46
Perak	2	3	9	11	7	2	32
Selangor	2	13	10	11	18	2	61
Kuala Lumpur	1	3	6	19	4	2	37
Negeri Sembilan	1	2	4	4	5	1	17
Melaka	3	2	1	4	2	1	13
Johore	3	4	1	6	5	3	22
Kelantan	2	3	2	2	7	3	19
Terengganu	0	8	3	7	12	2	33
Pahang	2	2	2	2	5	2	15
Sarawak	4	3	2	10	5	1	25
Sabah	7	10	13	18	29	9	91
Total	44	66	74	113	109	37	443

Source: Commercial Crime Department, Royal Malaysian Police Force

(ii) Registering Dealings Using Power of Attorney

The Land Registry or office when presented with a document of power of attorney will only examine whether the document is legally effective such as the signature of donor and donee, attestation by the commissioner for oaths, and registration with the court. The registering authority is not trained to detect any defects on the instrument and they will register the dealing presented with a power of attorney unsuspectingly as long as it carries the court's seal and endorsements.

(iii) Using Court Order to Register Dealings in Favour of Prospective Title or Interest Holders Without Verification of Validity

The Land Registry/Office very often registers dealings relying on court orders without verifying the validity of such orders as the National Land Code 1965 does not require them to question the validity of such orders. The registering authority simply relies on the court's common seal and other particulars of the case provided by the parties. The registering authorities are not required to make any further enquiries and will register the dealing unsuspectingly. Furthermore, they are not trained and unable to detect any likelihood of fraud.

(iv) Applying for Issuance of Replacement Document of Title on the Pretext of Having Lost the Original Title

An imposter can make a report of loss of the issue document of title to the police, and submit the report to the Land Registry/Office with the intention of applying for a replacement document of title. This is made simpler with the assistance of unsuspecting Land Office staff or unscrupulous insiders who can be paid to assist the imposter.

(v) Problems in Computerised Land Registration System

Police investigation has shown that there are some staff employed by the private consultants engaged to manage the computerised land registration system who have misused the access code to the system. They have been involved in the land fraud scam as they can enter information onto the computer using the access code given to them especially if the particulars on the documents of title are not clear and this gives them room to tamper with the particulars of ownership.

(vi) Presentation and Collection of Conveyancing Instruments by Unauthorised Persons

Police investigation shows that the fraudster or imposter has been using a middleman to deal with the Land Office. Any unsuspecting conveyancing clerks could be used for the purposes of presenting or collecting registered documents with a small amount of fee in return for their services. The clerks being familiar to the Land Registry/Office can easily present the instrument without arousing suspicion amongst the Land Office staff.

V. CHALLENGES IN DETECTING FRAUD

THE following are some of the challenges faced in detecting fraud:-

(i) Lack of Uniform Practice in Land Registry/Offices

Despite the preamble to the National Land Code 1965 manifesting the Code as amongst others providing for uniform land and policy for registration of dealings, there is a certain amount of resistance within the Land Offices. Land Offices resort to using special guidelines, rules and procedures unique to their own office for their convenience.

(ii) Limited Powers of Registrar/Land Administrator

The Registrar has limited powers in registering the land dealings. His duties are limited to examining whether an instrument is fit for registration as prescribed in section 298 of the National Land Code 1965. So long as the instrument is "fit for registration" he is duty bound to register the dealing. He is not required to examine the instrument to for fraud or improper dealings.

(iii) Lack of Expertise and Resources in Detecting Forgery

The Land Registry/Office staff lacks expertise and resources to detect forgery in land dealings. According to a senior experienced member of staff at the Land Office, it is not possible for Land Office staff to identify a forged signature as they are not trained. Furthermore, they have no reason to suspect unless they are alerted by the relevant parties. Use of a thumbprint to execute the instrument of dealings instead of a signature can be a good mechanism to reduce forgery in Malaysia as no one thumbprint is similar to any other.

(iv) Problems in the Land Title Computerisation System

The land computerisation system is said to have problems and can provide avenues to those committing fraud. The security and stability of the register can be questioned. It is important to ensure the accuracy of the registration

system. Provision needs to be made for the failings of technology. The private agency appointed to assist the land registration departments to computerise the land titles has used temporary staff who have kept the access code and use it for purposes of entering fraudulent dealings. They can go undetected as they are appointed on part-time basis.

(v) Lack of Concern Amongst Legal Practitioners and Commissioners for Oaths

The practice of legal practitioners and commissioners for oaths attesting the signatures of parties without actually being present at the time of the party signing the conveyance documents can allow fraud to occur. In any transaction affecting land be it a sale or a purchase or establishing an interest over land, it is important to confirm the identity of the parties involved in the transaction. However, the legal practitioners and commissioners for oaths due to their heavy workload, at times rely on their clerks to verify the identity of the signatory. There is a clear instruction from the Malaysian Bar Council for legal practitioners and commissioners for oaths to be present at the time when conveyancing or other documents are executed. However, at times, the instruction is not complied with. The court in *Lau Teck San @ Lau Beng Cheng & 3 Ors v SK Song*, held that an attesting solicitor would be liable for professional negligence and or breach of an implied warranty of authority in the event the transferor turns out to be an impostor. This could help deter the busy practitioners from relying on their clerical staff to identify a person executing documents.

VI. MEASURES UNDERTAKEN TO IMPROVE LAND REGISTRATION SYSTEM

ALL identified fraud cases in Table 1 involve a dramatic increase in the use of false and forged documentation and fictitious identities in carrying out fraudulent land dealings against the true land owners and lenders. This rise in fraud in the land tenure system has important implications for conveyancers, particularly in circumstances where the conveyancer is unwittingly involved in a fraudulent transaction. There has also been involving forged signatures on land dealing instruments and its supporting documents highlight the need for conveyancers acting for transferors and transferees to take special care to identify their client and also to examine the authenticity of title and its relevant documentation involved in the transaction.

Thus, it is important to revisit the rationale for introducing the Torrens system of registration in Malaysia especially as there is evidence of risks to the system posed by fraud and other threats that have impacted the system so as to reduce its effectiveness. The following are some of the measures undertaken to safeguard against fraudulent land dealings that could be considered in the context of improving the dealings registration system.

(i) Introducing Thumbprint Reader

The introduction of the Mykad and thumbprint reader in all land offices is an administrative way in reducing fraud and forgery in land transactions. It has become a practice where the land administration officer will check the Mykad and the thumb print of the individual who is presenting the instrument of dealing to determine the identity of the person. In Kuala Lumpur all runners of conveyancing lawyers are registered with the Department of Land and Mines Kuala Lumpur before they may make any dealings with the office to monitor the submission of instrument is done through the firms or not in the case of fraud and forgery. These minute efforts can assist in the task of reducing fraud and forgery.

(ii) Enhancing Function of Land Administration Technical Committee

A committee has been established at the Federal and State Government level to identify the issues and problems relating to land administration and fraud. The membership of the committee must be extended to include Bar Council representatives besides the police. This will help the committee to identify the weaknesses in the conveyancing practice and capacity building of conveyancing practitioners.

(iii) Verifying Identity of Clients

It is recommended for lawyers and any party entrusted to witness the execution of documents to call all parties entering into the transaction to meet at one session where the parties will meet eye to eye rather than relying on estate agents or land brokers. This will provide verification as to the identity of the parties. There must also be established a procedure for the thorough identification of the parties by asking for identity card, driver's licence or passport and keeping a copy in the file. It is advised to adopt the 100 Point Check verification procedure as a minimum standard. Extreme care should be taken in transactions involving non English or Bahasa Malaysia speaking clients and ensure they are fully aware of the contents and of the documents they are executing and the nature of the transaction they are entering. The execution of documents must be witnessed only after verifying the identity of all parties to the transaction. If dealing is transacted by virtue of a power of attorney or trust deed, all documents purporting to confer the authority to deal with the property must be verified to ensure the authenticity of the documents to prevent fraud or improper dealing by unscrupulous parties seeking to make fast cash.

(iv) Capacity Building of Registry/land office Staff to Improve Competency

The most important requirement for ensuring a successful and smooth working of the Torrens system according to SK Das is an adequate and highly efficient staff in the registry so that presentation of an instrument for registration is immediately noted in the presentation book and a memorial thereof made with the least possible delay. The possibility of any error in effecting a memorial must be avoided and, in that context, noting in the presentation book of the date and the exact time of presentation of instruments for registration becomes highly significant, for priority is thereby preserved and indefeasibility of title assured. It is important to educate and train the Land Registry/Office staff to ensure the land registration system is effective and lives up to the principles and characteristics of the Torrens system.

(v) Constant Benchmarking to Improve the Dealings Registration System

Benchmarking is recognised as having a key role to play in improving public sector performance. Benchmarking is an important tool or mechanism developed to identify strength and weaknesses of a particular system in order to suggest improvements. Tools for benchmarking were developed to improve performance by identifying best practice through learning from others and, in so doing, to stimulate innovation and to gain a competitive edge in a rapidly changing and evolving business environment.

Benchmarking exercises are important and useful to improve performance of Land Administration departments and achieve the followings:-

- to provide a basis for comparisons over time;
- to identify strengths and weaknesses of the land administration system;
- to justify the need to improve land administration and registration system and identify areas/priorities for reform;
- to identify and link the all issues and sectors relating to land tenure such as financial aspects, good governance, sustainability, social perspective and other related issues from time to time with the changing needs of the society;
- to justify the need to invest in improving the land administration system;
- to constantly monitor improvements.

It is a continuous process and requires a significant investment of effort by all parties. The first steps might be to build simple models with neighbouring countries that have comparable systems of land registration. This could be supported by the development of a forum for exchange of information, evaluation of findings and consideration of the modalities for exchange of comparative data.

(vi) Review of The National Land Code

Apart from these undertaking measures, the Ministry of Natural Resources and Environment through the Department of Director General of Land and Mines (JKPTG) has taken various innovative steps to review the related land legislations and procedural framework which has been identified as constraining factors to the improvement of land registration service delivery. For instance, the review of the National Land Code has been started recently with consideration to introduce new elements to accommodate the needs of the general public and stakeholders in land administration. These includes—

- (i) Introducing new provisions relating to the concept of single title system with objective to transform the institutional arrangement and functions of the State's land administration;
- (ii) Incorporating the Torrens Insurance Principle with intention of providing compensation for loss to innocent parties in consequence of fraudulent title;
- (iii) Providing new provisions relating to electronic land dealing (e-Dealing) and electronic submission of applications (e-Lodgement) to land Registries within the security framework of Electronic Land Administration System.
- (iv) Streamlining the statutory forms relating to land dealings and non-dealings matters and make it easy to use and user friendly.
- (v) Rebuilding the roles and functions of the JKPTG in response to the global drivers of change in land administration.
- (vi) Introducing the establishment of "Land Court" as a special channel in resolving land disputes.
- (vii) Introducing the use of Certificate of Correctness. The certificate of correctness probably is a guarantee that the Registrar may accept an instrument at its face value, i.e. that the person signing the certificate is aware of the antecedent circumstances which culminated in the execution of the instrument. If the instrument *ex facie* is not in order, then it will be rejected notwithstanding the certificate of correctness. The Registrar only sees what actually appears in the instrument, hence it seems necessary to have the dealing vouched for. In other words, the Registrar places a trust in the solicitor or broker, and when a person certifies an instrument, only reasonably close contact with the facts which culminate in the execution of that instrument would appear to discharge that trust, but a solicitor or broker whose staff arrangements are such that every transaction is investigated with care and accuracy should be safe in certifying. A lawyer or real estate agent certifying as to correctness should sign his own name and not that of his firm. And the certificate shall show that he is acting for the party claiming under the instrument.

James Hogg, in the first leading text on the Torrens system says: "In addition to attestation by prescribed witnesses, the instrument must ... be

endorsed with a certificate, by the person who seeks to have it registered or his properly constituted agent that it is 'correct for the purposes of' the local Statute ... The provision seems in the five Statutes in which it occurs to afford some further ground for the argument that the intention of the legislatures, in enacting it, was to ensure by all possible means the correctness of the instrument tendered for registration, and relieve the person who obtained registration on the faith of it from all further liability". Suppose a lawyer were to certify as correct an instrument which was the result of a transaction the details of which were unknown to him, and he signed it as correct merely to oblige an acquaintance, or merely as a matter of form to secure registration relying on the clerk's certification. The official view is that this would be an entire misconception of the nature of the responsibility assignable to him. If a solicitor or broker is not aware of the circumstances surrounding a given transaction, how can he give an assurance that is *bona fide*, and it is this assurance which, it would seem, the certification was intended to produce. For example, a lawyer or real estate agent who has interviewed both vendor and vendee, has seen the contract for sale, has identified the land by official search, and has officiated at the actual settlement, can honestly certify the memorandum of transfer, or a solicitor or broker whose staff arrangements are such that every transaction is investigated with care and accuracy should be safe in certifying.

VII. CONCLUSION

THIS article has attempted to set out the challenges, strengths and weaknesses of the land registration system and the circumstances where it can be exposed to fraud or improper dealings.

Police investigation shows that the majority of fraud occurs prior to registration and this can go undetected at the Land Registry or Land Office as the staff entrusted with the registration process has very limited powers. Thus, lawyers and all other parties entrusted with preparing documents in conveyancing practice must assume an important role in the contract and pre-registration process to prevent incidents of fraud. The various suggestions especially the aspect relating to issuing of certificate of correctness and closing of dealing session must be studied and explored further in the context of improving Malaysian conveyancing practice. In Australia and New Zealand, this mechanism has helped reduce fraud considerably.

Overall, the Malaysian land registration system is organised, efficient and provides clear guidelines, and fraudulent dealings can be prevented if the Land Registry or Land Office staffs are trained to detect fraud. The Registrar has limited powers in that he is required to register all dealings if the dealings are in order and fulfil all the conditions precedent for effecting registration. It is hoped that the relevant authorities would look into the important aspects of land administration that is the capacity building of the personnel involved in

the land registration system so as to equip them with the relevant knowledge, skills, the ability to combat fraudulent dealings and preserve the inviolability of the land registration system as envisaged by Sir Robert Torrens. The Torrens system has many advantages, other than those envisaged by Torrens. However, at present the system has become very cumbersome and expensive for the layman. The Malaysian land dealings registration system must be enhanced further to curb the increasing rate of fraud or any improper dealings over land.

BIBLIOGRAPHY

1. Apart from the conditions of the National Land Code 1965, s 301 that section also requires that, before presentation of the documents for registration is made, the rent due in respect of that particular land must be paid.
2. National Land Code 1965, s 300.
3. Mohammad Bin Buyong v Pemungut Hasil Tanah, Gombak [1982] 2 MLJ 53.
4. Teo Keang Sood and Khaw Lake Tee, Land Law in Malaysia: Cases and Commentary, 2nd edn (Kuala Lumpur, Singapore and Hong Kong: Butterworths Asia, 1995), p 95.
5. ARPL Palaniappa Chettiar v PL AR Letchumanan Chettiar & Anor [1982] 1 MLJ 232 at p.234.
6. National Land Code 1965, s 207(1); Crowley v Templeman (1914) 17 CLR 457.
7. National Land Code 1965, s 346.
8. National Land Code 1965, s 214.
9. National Land Code 1965, ss 103–129.
10. Standard Chartered Bank v Yap Sing Yoke & Ors [1989] 2 MLJ 49.
11. Island & Peninsular Development Berhad & Anor v Legal Adviser, Kedah & Ors [1973] 2 MLJ 71.
12. National Land Code 1965, s 380(4).
13. Supt Shuhaimi Bin Othman, Commercial Crime Department of the Royal Malaysian Police Force, “Penipuan dalam Penyelesaian Urusan Tanah: Isu dan Penyelesaian”, paper presented at the Peninsular Malaysian Land Administrators Convention 2008.
14. Shukri, I M, Director of Research & Development, “Insights on the Proposed Insurance Principle of Malaysian Torrens System” (Putrajaya: Department of Director General of Land and Mines (Federal) (DGLM), 2008), paper prepared for a Briefing Session on October 18, 2008 to explore the possibility of introducing Title Insurance System in Malaysia.
15. Ainul Jariah Maidin and Hunud Abia Kadouf, (2010), “Weaknesses in the Registration of Land Dealing System in Malaysia: Suggestions for Improvements for Enhancing the System”, IIUM.

16. refer to the paper by ACP Tan Kok Liang, "Property Rights under the Malaysian Constitution: Should Fingerprinting be Introduced in Property/Land Dealings", paper presented at the 14th Malaysian Law Conference organised by the Malaysian Bar Council, Kuala Lumpur Convention Centre, November 2007.
17. "Sistem PTG diceroboh, Sindiket Palsukan Dokumen Pendaftaran Berkomputer", Reported in Utusan Malaysia March 14, 2007.
18. Lau Teck San @ Lau Beng Cheng & 3 Ors v SK Song [1995] 2 CLJ 425.
19. Watkins, Paul, "Fraud In Conveyancing", a paper presented at the Australian Institute of Conveyancers 2007 National Conference, March 2007, Internet edition accessed on August 20, 2009, http://www.stewarttitlelimited.com.au/multimedia/relatedmedia/Fraud_in_Conveyancing_AIC_National_Conference_Paper_2007.pdf. See also Department of Lands FAQ "How do I verify the identity of a person claiming a right to deal with land"? http://www.lands.nsw.gov.au/valuation/faqs/proof_of_identity?SQ_DESIGN_NAME. See Macdermott, Bruce, "Lawcover Risk Management – Managing the Risk of Identity Fraud" Law Society Journal, November 2005, at p 53; Low, Roushi, "Opportunities for fraud in the proposed Australian National Electronic Conveyancing System: Fact or Fiction? (2006) Murdoch University Electronic Journal of Law 13(2), pp 225–253; Bransgrove, Matthew, "Mortgage Law: What can solicitors do to reduce mortgage fraud?", New South Wales Law Society Journal (November 2004) at p 52.
20. Das, S K, (1963), The Torrens System in Malaysia (Singapore, Malayan Law Journal), p 106.
21. Peter Blair, Frank Ticehurst, K Nettle (1989), Baalman and Wells, Land Titles Office Practice, 3rd edn (Law Book Co., Australia) , p 223.
22. James Hogg, The Australian Torrens System with Statutes (London: W Clowes, 1905); Stein, Robert and Stone, Margaret, (1991) Torrens Title (Butterworths, Sydneys), p 17; Whalan, D J, "The origins of the Torrens System and its introduction in New Zealand", in Hinde, G W (ed), (1991), The New Zealand Torrens System Centennial Essays ((Wellington, New Zealand), p 1; Fox, "The story behind the Torrens System", (1950) 23 Australian Law Journal 489.

THE STRATA TITLES ACT 1985 AND A PROPOSAL FOR EN-BLOC SALE: THE MALAYSIAN APPROACH

MOHD. SHUKRI ISMAIL¹

Keywords: Planning, land scarcity, high-density private residential developments, enhanced plot ratios, strata-titled property, collective sales.

I. INTRODUCTION

PUTTING land to its highest and best use would mean that rather than constructing one bungalow on a plot of land, that land should be used to erect a multi-storey structure that could fulfill the housing needs of many. While individual ownership of land still exists in Malaysia, the proportion of land so owned remains very small. Property so owned also remains costly and unaffordable to the majority. A large percentage of its population resides in high-rise developments thus resulting in multiple ownership of property.

Multiple ownership of property, whether it is for residential, commercial, industrial or mixed use, requires that there is a proper system to allocate, manage and control the ownership and use of such land. In Peninsular Malaysia, the Strata Titles Act (STA)² which was modelled on the New South Wales Conveyancing (Strata) Title Act of 1961 was enacted in 1985 to meet this need and generally forms the legal framework for communal living in condominiums and apartments.

The concept of the STA was to permit the subdivision of land or buildings thereon into strata parcels, accessory parcels, provisional blocks, common properties and thereby confer to a number of individuals, ownership and use of a space of any shape below, on or above the surface of the land¹. With this concept in place, developers were able to construct multi-storey buildings, divide them up both horizontally and vertically, issue individual titles in respect of the subdivided units and sell them to various individuals thus creating a development that has multiple owners occupying a single piece of land (Christudason, 1996)³. This led to increased land use density and intensity, which facilitated land to be put to its highest and best use. This system of multiple ownership is basically a subsidiary ownership to a title of alienated land. It has been very successful in Peninsular Malaysia with the number of residential, commercial, industrial and mixed-use developments

¹ Director of Research and Development Section, Department of the Director General of Lands and Mines (Federal) Malaysia; mohdshukri@kptg.gov.my

² Strata Titles Act 1985, Part II.

³ Christudason, A. (1996), Subdivided Buildings: Developments in Australia, Singapore and England. International and Comparative Law Quarterly, Vol. 45 p 343.

registered under the strata title scheme as at the end of December 2009 being approximately 12,001 management corporations which representing 777,699 strata titles⁴. The success of the scheme has been partly attributed to the fact that such developments provide the opportunity for individuals to own 'private'⁵ property at more affordable prices.

It is in the context of developments with multiple ownership that the en-bloc sale phenomenon is discussed below.

II. EN BLOC SALE

EN-BLOC Sale basically means all the owners of separate units in an apartment, condominium or even an office building, coming together to collectively sell out their properties to a developer for comprehensive redevelopment.

Academically 'En Bloc' sale is often interchangeably referred to as a collective sale. However, an 'en bloc sale' usually refers to the situation where a building is sold as a block as if it is a single unit, whereas a collective sale is a type of real estate transaction whereby individual owners in a development band together to sell their properties jointly as an entity to a single buyer. These owners typically consist of different individuals who may own condominiums units, apartments or adjoining landed strata properties on alienated land. Their subject properties are private residential developments, often having freehold or leasehold titles and located in prime districts.

Freehold titles in urban areas have dwindled in number as a result of the aggressive acquisition in the form of the Land Acquisition Act 1960 which facilitated Malaysia's highly successful land development programme for public purposes, and the National Land Code 1965, which made 99-year leasehold titles the order of the day since 1984 for alienation of land by the State Authority. While collective sales are possible for developments with 99-year leasehold titles, they are seldom transacted due to the lack of financial incentives to redevelop such sites; in fact, additional costs have to be borne by developers in the form of a differential premium which must be paid to the State Government in order to renew the lease for the land. This makes existing freehold properties in urban areas even more desirable to developers.

Why en bloc sale?

Several factors triggered the phenomenon of en-bloc sales highlighted by industry players recently. They include the following:–

⁴ The statistic quoted is based on the number of management corporations that have been formed under operation of the Strata Titles Act 1985 as at end December 2009. In Peninsular Malaysia, management corporations are predominantly of multiple ownership of alienated land. There are however, some developments that have been formed as management corporations but continue to be owned by a single owner. Nevertheless the point is, these developments are capable of multiple ownership.

⁵ In the context of housing -'private' as opposed to 'public' housing provided under the Housing Development (Control and Licensing) Act.

(i) *Redevelopment arising from sustainable philosophy of National Urbanisation Policy and Enhanced Plot Ratios*

Redevelopment has been defined as a process whereby existing structures on site are purchased and demolished to create land for new uses (DiPasquale & Wheaton, 1996)⁶. It represents an adjustment process by which housing capital is gradually replaced, resulting in a higher density from the historic density. In order for redevelopment of a site to be viable, the net residual value of land if developed optimally must exceed the gross value of land and capital that currently exists on the site, as well as the cost of demolishing the old capital (DiPasquale & Wheaton, 1996)⁷. Thus, the relative physical obsolescence of the building and the availability and proximity of infrastructure (for example schools and public transport) may point to a greater intensification of land use and maximization of land resources through a collective sale and redevelopment.

Bearing the above in mind, it follows as discussed above, that if an existing development is sold jointly by individual property owners to a developer in the open market, there is the possibility of reaping windfall gains far above what the individual units can fetch, where sold individually; this is because the higher development potential arising from the enhanced plot ratio enhances the value of each individual owner's interest.

(ii) *Adequacy of Legislative Framework Affecting En Bloc Sales under Strata Titles Act 1985*

An en bloc sales may require a termination of a strata scheme but fortunately it has to be redeveloped for the purposes as may be agreed by the parcel proprietors. Under the Strata Titles Act 1985 (STA), the management corporation may be directed by unanimous resolution⁸ to take action to terminate the strata scheme⁹ where:-

1. The building is totally destroyed; or
2. The parcel proprietors seek to demolish the building; or partial destruction, the remaining parts of the building; or
3. There is only one proprietor for all the parcels.

⁶ DiPasquale, D. & Wheaton W.C., 1996, *Urban Economics and Real Estate Markets*, Englewoods Cliffs, N.J.: Prentice Hall.

⁷ *ibid.*

⁸ Under the STA, a unanimous resolution is one which is passed at a duly convened general meeting of a management corporation of which at least 21 days notice specifying the proposed resolution has been given and against which no vote is cast (s 4).

⁹ The management corporation if so directed shall, subject to any order of a court of competent jurisdiction under s. 57(7) of the STA, lodge with the Registrar a notification in Form 8 together with the issue document of title of the land and the parcels, and of the provisional blocks if any (s. 57(1)).

However, a court of competent jurisdiction, if it is satisfied, may on application of the management corporation, a parcel proprietor or the registered chargee of a parcel make an order directing the management corporation to terminate the subdivision of the building notwithstanding the absence of a unanimous resolution directing the termination¹⁰. The Court may also prohibit the management corporation from terminating the subdivision notwithstanding a direction for the termination has been given by unanimous resolution¹¹.

As noted above, even where the building is not physically destroyed, the proprietors in the strata scheme may decide that it is notionally destroyed bypassing the requisite resolution to that effect. The building may, for instance, become entirely unsuitable for its original purpose, not only through the physical deterioration, namely, the loss of its competitive position vis-a-vis other projects in view of technological advances, and evolving concepts in building design and materials. Another reason for agreeing on notional destruction is that an outsider makes an attractive offer to purchase the whole project.

In view of en bloc sale concept, there may be major amendments to be made to the STA which radically alter the fundamental and vesting rights of ownership in strata-titled property in Peninsular Malaysia with the professed objective of optimization of land use. At the time when en bloc sales or collective sales to be worked out under existing framework of STA, there shall be the requirement of unanimous consent among property owners within the development before they could collectively put up their properties for sale. Therefore, in those developments where one person or a minority refused to give their consent to sell their unit, the collective sale could not materialize. As a result of this, there will be many situations where a majority of the owners lost the opportunity to realise the capital gains from such a type of sale. In response to the possible complaints and appeals from frustrated owners whose efforts to complete such sales had been thwarted by a (very often) small minority, a proposal has to be made to amend the STA so as to facilitate collective sales or en bloc sales. The concerns of the majority may be accepted by Parliament as legitimate and the actions of the dissenting minority were described as “[impeding] efforts to maximise the development potential of en bloc sale sites, and [preventing] the rejuvenation of older estates”. It is in these circumstances that radical amendments have to be effected to the STA.

The proposed amendments to the STA will take effect to remove the need for unanimity as a pre-requisite for collective or en bloc sales. The amendments seek to allow for a collective sale to proceed without the unanimous consent of owners within a strata-titled development, requiring instead, merely a majority’s consent. It was hardly surprising that the possible proposed amendments led to vehement protests from strata-titled property owners who

¹⁰ Section 57(7)(a)(i) and (ii) of the STA.

¹¹ Such as where it is not in the best overall interest of the parcel proprietors as a whole to proceed with the termination of the subdivision.

were not willing to participate in collective sales. As the upshot of these possible amendments, that such owners would compel to agree to the collective sale, and felt that for instance, this make a mockery of their 'freehold' titles which are synonymous with perpetual ownership.

Such owners may also perceived the proposed amendments as an abrogation of their fundamental rights in private property, and on an entirely different footing from land acquisition approach. While the requirement for unanimous consent among unit-owners to be removed, other conditions will be imposed. These include replacing the requirement for unanimity with minimum percentages which is required to constitute the majority which could push the collective sale through, subject to the approval of the State Strata Titles Board (STB). The STB, which is modelled on the Strata Titles Board of New South Wales, is the tribunal or semi-judiciary body set up for resolving disputes relating to strata-type properties.

(iii) *Why owners go for En-Bloc sales? And when is it then feasible?*

There are at least three reasons on why owners of strata-type properties usually go for en-bloc sales:—

1. En-Bloc Sale allows parcel owners to sell their properties for a lot more than they could fetch by selling individually in the open market.
2. En-Bloc Sale allows parcel owners to convert the unused land or development potential in their property development into cash.
3. En-Bloc Sale also allows parcel owners to cash out of their property investment for other newer and larger properties or re-invests in other forms of higher yield investments.

In addition, En-Bloc Sale is normally feasible when one or a combination of the followings is evident in the development:—

1. An Increase in Plot Ratio of the land ;
2. Re-zoning of the land to a higher use; and
3. The land is not fully built up or utilised to its allowable development potential.

(iv) *Benefits of En-Bloc developments*

In an old development, the land might have been under-developed. Moreover, the units built on it may be old. The units can be sold only at low prices because of their dilapidated conditions.

In such cases, the owners can consider getting together and agreeing to sell all the units and, more importantly, the land on which the development stands, to a property developer. The developer can pull down the old buildings

and build more and new units on the land. The developer should pay the owner a higher price than what the owner can sell his unit for alone.

Thus, some benefits of en-bloc developments may include¹²:

1. Rejuvenation of rundown site and property;
2. Promote higher density enabling more income for the Local Authorities in terms of assessment, development charges and contribution;
3. Original parcel owners get to realize higher value than the existing deteriorated state and cash out;
4. More energy efficient, sustainable and updated designs to the new development; and
5. Greater economic activity and multiplier effect arising out of this re-development.

How can I profit from an en bloc sale?

In an en bloc sale, an owner of a unit sells his unit at a price higher than what he can sell it for individually. For example:-

In 1998, a buyer bought a flat at a development for RM2 million. In less than a year, he sold the same flat in an en bloc sale at RM4.75 million. This meant a staggering profit of RM2.75 million in less than a year. The owner had invested RM1 million of his own money to buy the flat, and borrowed the other RM1 million, to buy the flat. Therefore, the return on his investment of RM1 million is an impressive 2.75 times, within a year.

III. EN BLOC SALE: PROPOSED MALAYSIAN APPROACH

IN my view, an en bloc sale, or collective sale, is the sale of an entire private strata development by way of majority consent and it has to be governed by a proper legislative framework at two main stages:-

- a) Before issuance of strata titles: which has to be governed by the Building and Common Property (Maintenance and Management) Act 2007 (Act 663); and
- b) After issuance of strata titles: which has to be governed by the Strata Titles Act 1985 (Act 318).

It is proposed a policy direction to be set out that if there is unanimous consent to sell the development, the laws governing en bloc sales will not apply. The first step in an en bloc sale attempt is for owners to form a Collective Sale Committee (CSC). The law requires that only one CRC be elected for each development and that CRC must adhere to certain procedures as stated in the law.

¹² Real Estate and Housing Developers Association Malaysia Wilayah Persekutuan Kuala Lumpur (REHDA), Proposed Legislation for En-Bloc (Collective Sale) Developments, 30th March 2010.

Once a CRC has been formed, owners will indicate their consent to the en bloc sale by signing a Collective Sale Agreement (CSA). The majority consent by share value and strata area must be obtained within one year before the sale attempt can proceed further. The suggested majority consent levels¹³ are:-

- a) For developments (with strata titles) above 20 years calculated from the issuance date of the Temporary Certificate of Fitness (TCF) or Certificate of Fitness (CF), at least 75% majority consent of owners based on share value will be required for en-bloc developments;
- b) For developments (with strata titles) between 10 years and 20 years calculated from the issuance date of the Temporary Certificate of Fitness (TCF) or Certificate of Fitness (CF), at least 80% majority consent of owners based on share value will be required for en-bloc developments;
- c) For developments (with strata titles) less than 10 years calculated from the issuance date of the Temporary Certificate of Fitness (TCF) or Certificate of Fitness (CF), at least 90% majority consent of owners based on share value will be required for en-bloc developments;
- d) For developments (pending strata titles), consequential amendments to the Building and Common Property (Maintenance and Management) Act 2007 (Act 663) may need to enable such en-bloc developments as proposed in paragraph (a), or (b) or (c), as the case may be.

When majority consent is obtained, the next step is for the Sale Committee to find a buyer. To ensure transparency, this must be done through a public tender exercise. When a buyer is selected and the sale agreed upon, an application must be made to the Strata Titles Board¹⁴ (STB) for developments with strata titles, or as the case may be, intended for strata titles, which will consider the application and deliver a decision on whether the sale will go through.

When an application for an en bloc sale has been made to the STB, owners who do not consent to the sale can raise objections to the STB. The STB is required to consider these objections before deciding on the outcome of the application for sale. Any party dissatisfied with the STB's decision can challenge the decision through the judiciary's appeal system.

IV. HOW EN-BLOC SALE WORKS?

General Procedure

There are seven stages involved in the En-bloc Sale Process:-

1. Checking Land Value
2. Checking Owners' interest

¹³ See Note 11.

¹⁴ Currently the Strata Titles Board has not been formed yet by the State Authority. The present STA does not have any authority to order the termination of strata scheme by en-bloc sale.

3. Sale Preparation
4. Marketing of Land sale
5. Private Treaty/ Public Tender and Evaluation
6. Legal Completion of En-bloc Sale
7. Delivery of Vacant Possession.

En Bloc Documentation

En bloc Sale documentation are usually prepared and administered by the appointed solicitor. There are two main legal documents used in En-bloc Sale namely the Collective Sale Agreement and the Tender Document. However the Sale and Purchase Agreement may be used if the property is subsequently sold by Private Treaty.

The lawyers' Services

The Scope of the lawyers' Services usually includes the followings:-

- a) Advising all Owners on legal issues such as existing tenancy, trustees etc ;
- b) Preparing and explaining to all owners the terms and conditions in the Collective Sale Agreement;
- c) Preparing and explaining to Sale Committee the terms and conditions relating to the Tender Document ;
- d) Acting for owners in the discharge of any Charge and/or Mortgage ;
- e) Preparatory work and attendances for arguments in respect of the application to the Strata Board for the order of sale under the Act, if required.

Terms in Collectively Sale Agreement

Some principal terms in Collectively Sale Agreement include:-

1. Reserve price - the minimum price that owners agree to sell;
2. Method of distributing sale proceeds;
3. The validity period of the Collective Sale Agreement;
4. Date to deliver vacant possession;
5. Indemnities for the Sale Committee and between owners;
6. The Sale Committee's authority and responsibility;
7. The Mode of Sale ;
8. Appointment of Property Consultant and Lawyer;
9. Provisions for 75% or 80% or 90% majority agreement and undertaking to pay all costs relating to the Strata Title Board application.

In this regards the owners are advised to check with their respective lawyers with regards to their agreed scope of services and the Collective Sale agreement. The above is basically a general guideline subject to variations.

V. POSSIBLE CHANGES TO THE STRATA TITLES ACT 1985

WHEREAS it is expedient for the purposes only of ensuring uniformity of law and policy that the Strata Title Act is proposed to be amended pursuant to Clause (4) of Article 76 of the Federal Constitution as follows:—

Amendment of section 67X

1. Section 67X of the Strata Titles Act 1985 is amended—

- a) in subsection (1), by inserting after the word “this Part” the words “and Part IXB”;
- b) after subsection (3), by inserting the following new Part IXB;

“PART IXB¹⁵

Application for collective sale of parcel by majority of parcel proprietors

67Y. — (1) An application to a Board for an order for the sale of all the parcels and common property including provisional blocks in a strata scheme may be made by —

a) the proprietors of the parcels with not less than 75% of the share values and not less than 75% of the total area of all the lots (including the area of any accessory parcel if any) as shown in the strata titles where more than 20 years have passed since the date of the issue of the Temporary Certificate of Fitness or Certificate of Fitness, (not being any common property) comprised in the certified strata title plan or, if no the Temporary Certificate of Fitness or Certificate of Fitness, was issued, the date of the issue of the latest certification under any written law in force for any building (not being any common property) comprised in the strata title plan, whichever is the later; or

b) the proprietors of the parcels with not less than 80% of the share values and not less than 80% of the total area of all the lots (including the area of any accessory parcel if any) as shown in the strata titles where 10 to 20 years have passed since the date of the issue of the Temporary Certificate of Fitness or Certificate of Fitness, (not being any common property) comprised in the certified strata title plan or, if no the Temporary Certificate of Fitness or Certificate of Fitness, was issued, the date of the issue of the latest certification under any written law in force for any building (not being any common property) comprised in the strata title plan, whichever is the later; or

c) the proprietors of the parcels with not less than 90% of the share values and not less than 90% of the total area of all the lots (including the area of any accessory parcel if any) as shown in the strata titles where less than 10 years have passed since the date of the issue of the Temporary Certificate of Fitness or Certificate of Fitness, (not being any common property) comprised in the certified strata title plan or, if no Temporary Certificate of Fitness or

¹⁵ The provisions inserted in this Part are extracted from Part VA of the Land Titles (Strata) Act Singapore which modified by the writer for the purposes of this paper.

Certificate of Fitness, was issued, the date of the issue of the latest certification under any written law in force for any building (not being any common property) comprised in the strata title plan, whichever is the later;

who have agreed in writing to sell all the parcels and common property in the strata title plan to a purchaser under a sale and purchase agreement which specifies the proposed method of distributing the sale proceeds to all the parcel proprietors (whether in cash or kind or both), subject to an order being made under subsection (6) or (7).

(1A) For the purposes of a collective sale under this section and before the signing of the collective sale agreement by any parcel proprietor—

- a) there shall be constituted a collective sale committee to act jointly on behalf of the parcel proprietors whose members shall be elected by the parcel proprietors at a general meeting of the management corporation convened in accordance with the Eight Schedule; and
- b) the Ninth Schedule shall have effect as respects the collective sale committee, its composition, constitution, members and proceedings.

(2) The parcel proprietors referred to in subsection (1) shall appoint not more than 3 persons from the collective sale committee referred to in subsection (1A) to act jointly as their authorised representatives in connection with any application made under subsection (1).

(3) Subject to subsection (7C), no application may be made under subsection (1) by the parcel proprietors referred to in subsection (1) unless they have complied with the requirements specified in the Seventh¹⁶, Eighth¹⁷ and Ninth¹⁸ Schedules and have provided an undertaking to pay the costs of the Board under subsection (5).

(4) A proprietor of any parcel in the strata title plan who has not agreed in writing to the sale referred to in subsection (1) and any chargee or other person (other than a lessee) with an estate or interest in land and whose interest is notified on the register document of title for that parcel may each file an objection with a Board stating the grounds for the objection within 21 days of the date of the notice served pursuant to the Seventh Schedule or such further period as the Board may allow.

(5) The Board shall have power—

- a) to mediate in any matter arising from an application made under subsection (1);

¹⁶ Under the review of STA 1985, the new Sixth Schedule is to be inserted for the purpose of electronic strata titles registration system. In this proposed amendments, the Seventh Schedule will provides for the following:—

- Requirements for application for collective sale of parcel by majority of parcel proprietors.
- Requirements for application for collective sale of parcel not registered under this Act by majority of beneficiary owners of buildings.

¹⁷ In this proposed amendments, the Eighth Schedule will provides for procedures of general meetings for the purpose of en-bloc sales.

¹⁸ In this proposed amendments, the Ninth Schedule will provides for procedures on composition, constitution and proceedings of collective sale committee.

- b) to call for a valuation report or other report and to require the subsidiary proprietors referred to in subsection (1) to pay for the costs; and
- c) to impose such conditions as it may think fair and reasonable in approving an application under subsection (1).

(6) Where an application has been made under subsection (1) and no objection has been filed under subsection (4), the Board shall, subject to subsection (9), approve the application and order that the parcels and common property in the strata title plan be sold.

(7A) An order made under subsection (7) by the Board may, with the consent of the collective sale committee, include an order that the proceeds of sale for any parcel to be received by an objector, being a parcel proprietor who has filed an objection under subsection (4), be increased if the Board is satisfied that it would be just and equitable to do so.

(7) Where one or more objections have been filed under subsection (4), the Board shall, subject to subsection (9), after mediation, if any, approve the application made under subsection (1) and order that the parcels and common property in the strata title plan be sold unless, having regard to the objections, the Board is satisfied that—

- a) any objector, being a parcel proprietor, will incur a financial loss; or
- b) the proceeds of sale for any lot to be received by any objector, being a parcel proprietor, or chargee, are insufficient to redeem any charge in respect of the parcel.

(7A) An order made under subsection (7) by the Board may, with the consent of the collective sale committee, include an order that the proceeds of sale for any parcel to be received by an objector, being a parcel proprietor who has filed an objection under subsection (4), be increased if the Board is satisfied that it would be just and equitable to do so.

(7B) The total sum ordered by the Board for all the objectors under subsection (7A) shall be paid from the proceeds of sale of all the parcel proprietors and shall not exceed the aggregate sum of 0.25% of the proceeds of sale for each parcel or seven thousands ringgit for each parcel, whichever is the higher.

(7C) A Board shall not invalidate an application to the Board for an order under subsection (1) or section 67ZB (2) by reason only of non-compliance with any requirement in the Seventh, Eighth or Ninth Schedule if the Board is satisfied that such non-compliance does not prejudice the interest of any person, and the Board may make such order as may be necessary to rectify the non-compliance and such order for costs.

(8) For the purposes of subsection (7)(a), a parcel proprietor—

- a) shall be taken to have incurred a financial loss if the proceeds of sale for his parcel, after such deduction as the Board may allow (including all or any of the deductions specified in the Tenth¹⁹ Schedule), are less than the price he paid for his parcel;
- b) shall not be taken to have incurred a financial loss by reason only that his net gain from the sale of his parcel will be less than the other parcel proprietors; and
- c) shall not be taken to have incurred a financial loss by reason that the proceeds of sale for his parcel, after such deduction as the Board may allow (including all or any of the deductions specified in the Tenth Schedule), are less than the price he paid for his parcel if he had purchased the lot after a collective sale committee had signed a sale and purchase agreement to sell all the parcels and common property to a purchaser.

(9) The Board shall not approve an application made under subsection (1) —

- a) if the Board is satisfied that —
 - i. the transaction is not in good faith after taking into account only the following factors:
 - A. the sale price for the parcels and the common property in the strata title plan;
 - B. the method of distributing the proceeds of sale; and
 - C. the relationship of the purchaser to any of the parcel proprietors; or
 - ii. the sale and purchase agreement would require any parcel proprietor who has not agreed in writing to the sale to be a party to any arrangement for the development of the parcels and the common property in the strata title plan; or
- b) if the collective sale committee does not consent to any order made by the Board under subsection (7A).

(10) Where no objection has been filed under subsection (4), the determination under subsection (9) shall be made by the Board on the basis of the facts available to the Board.

(11) The Board may make all such other orders and give such directions as may be necessary or expedient to give effect to any order made under subsection (6) or (7).

(12) The Board may, at any time it thinks fit, extend, vary, revoke or discharge any order made under this section, and may vary any term or condition upon or subject to which any such order has been made.

¹⁹ In this proposed amendments, the Tenth Schedule will provides for procedures on deduction allowable by the Strata Titles Boards and include—

- Stamp duty paid on the purchase of the parcel or units comprised in the building.
- Legal fees paid in relation to the purchase of the lot or units comprised in the building.
- Costs related to the privatisation of any designated land as may be defined in the relevant statute.
- Costs incurred pursuant to the collective sale which are to be shared by all parcel proprietors or beneficiary owners as provided under the collective sale agreement.

(13) A notice sent by registered post under the First Schedule shall be deemed to be duly served on the person to whom it is addressed 2 days after the day on which the notice was posted, notwithstanding the fact that the letter may be returned by the post office as undelivered.

(14) The Minister may, with approval of the National Land Council, by order published in the Gazette, amend or add to the Seventh, Eighth, Ninth and Tenth Schedules.

(15) In this section, “parcel proprietor” includes a successor in title.

Effect of order of Board

67Z. —(1) Where a Board has made an order under section 67Y(6), (7) or (11) —

- a) the order shall bind all the proprietors of the parcels in the strata title plan, their successors in title and assigns and any chargee or other person with an estate or interest in land;
- b) (b) the proprietors of the parcels shall sell the parcels and common property in accordance with the sale and purchase agreement; and
- c) a lease affecting any of the parcels in the strata title plan (other than a lease held by a parcel proprietor) shall, if there is no earlier agreed date, determine on the date on which vacant possession is to be given to the purchaser of the parcels and common property.

(2) Nothing in subsection (1)(c) shall prejudice the rights of any lessee of a parcel proprietor to compensation from the parcel proprietor.

(3) A proprietor of a parcel who has leased out the parcel or any lessee of the parcel may, at any time after an application has been made under section 67Y(1) and before the Board has approved the application for sale, apply to the Board to determine the amount of compensation payable to the lessee.

(4) The proprietors of the parcels who have not agreed in writing to the sale under section 67Y and any chargee or other person with an estate or interest in those parcels shall, for the purposes of the sale of the parcels and common property, produce the issue document of strata title for the parcels to the person having conduct of the sale, the representatives appointed under section 67Y (2) or to their solicitors.

Power of president, etc., of Board to appoint person to act for certain parcel proprietor

67ZA. —(1) Where a Board has made an order under section 67Y(6), (7) or (11), the president, deputy president or registrar of the Board may, on application by the representatives of the parcel proprietors appointed under section 67Y(2), appoint any person to deal with all matters in connection with the sale of any lot—

- a) where the proprietor of the parcel has died and no personal representative has been appointed; or

- b) in such other case as the president, deputy president or registrar of the Board thinks fit.

(2) The president, deputy president or registrar of the Board may authorise the person appointed under subsection (1) to act for the parcel proprietor concerned in all aspects of the sale, including the redemption of charges, the execution of the transfer, the receipt of moneys, the settlement of encumbrances on the parcel, applying for a replacement issue document of strata title, giving valid receipts thereof and as soon as practicable paying the remaining moneys into court under the trustees law in force.

(3) The execution of any instrument in respect of any parcel by the person appointed under subsection (1) shall have the same force and validity as if it had been executed by the proprietor in whom the parcel is vested.

(4) When the transfers of the parcels in the strata title plan are lodged for registration under this Act, the authorised representatives or the solicitor acting for the parcel proprietors or the person appointed under subsection (1) shall certify in such form as the Registrar may approve that the provisions of section 67A have been complied with; and the certificate in favour of the purchaser of the parcels and common property and the Registrar shall be conclusive evidence of the facts stated therein.

Application for collective sale of parcel not registered under this Act by majority of beneficiary owners of buildings

67ZB. —(1) This section shall apply where there are units of buildings in a development registered under the written law in force has been leased out or sold and the beneficiary owners of the buildings own the estate in land comprised in the development.

(2) An application to a Board for an order for the sale of all the buildings and the land in a development to which this section applies may be made by—

- a) the beneficiary owners of the buildings who own not less than 75% share of the land and not less than 75% of the total area of all the flats where more than 20 years have passed since the date of the issue of the latest Temporary Certificate of Fitness or Certificate of Fitness for Occupation on completion of any building (not being any common property) comprised in the development or, if no Temporary Certificate of Fitness or Certificate of Fitness for Occupation was issued, the date of the issue of the latest certification under any written law in force on completion for any building (not being any common property) comprised in the development, whichever is the later; or
- b) the beneficiary owners of the buildings who own not less than 80% share of the land and not less than 80% of the total area of all the units comprised in the buildings where 10 to 20 years have passed since the date of the issue of the latest Temporary Certificate of Fitness or Certificate of Fitness for Occupation on completion of any building (not being any common property) comprised in the

development or, if no Temporary Certificate of Fitness or Certificate of Fitness for Occupation was issued, the date of the issue of the latest certification under any written law in force on completion for any building (not being any common property) comprised in the development, whichever is the later, or;

- c) the proprietors of the buildings who own not less than 90% share of the land and not less than 90% of the total area of all the units comprised in the buildings where less than 10 years have passed since the date of the issue of the latest Temporary Certificate of Fitness or Certificate of Fitness for Occupation on completion of any building (not being any common property) comprised in the development or, if no Temporary Certificate of Fitness or Certificate of Fitness for Occupation was issued, the date of the issue of the latest certification under any written law in force on completion for any building (not being any common property) comprised in the development, whichever is the later,

who have agreed in writing to sell all the buildings and the land in the development to a purchaser under a sale and purchase agreement which specifies the proposed method of distributing the sale proceeds to all the beneficiary owners of the buildings (whether in cash or kind or both), subject to an order being made under subsection (4) or (5).

(3) A proprietor of any building in the development who has not agreed in writing to the sale referred to in subsection (2) and any chargee or other person (other than a lessee) with an estate or interest in the building and whose interest is notified on the register document of title to the land for that building may each file an objection with a Board stating the grounds for the objection within 21 days of the date of the notice served pursuant to the First Schedule or such further period as the Board may allow.

(4) Where an application has been made under subsection (2) and no objection has been filed under subsection (3), the Board shall, subject to subsection (7), approve the application and order that the buildings and the land in the development be sold.

(5) Where one or more objections have been filed under subsection (3), the Board shall, subject to subsection (7), after mediation, if any, approve the application made under subsection (2) and order that the buildings and the land in the development be sold unless, having regard to the objections, the Board is satisfied that —

- a) any objector, being a proprietor, will incur a financial loss; or
- b) the proceeds of sale for any building to be received by any objector, being a proprietor, or beneficiary owner or chargee, are insufficient to redeem any charge in respect of the building.

(5A) An order made under subsection (5) by the Board may, with the consent of the collective sale committee, include an order that the proceeds of sale for any building to be received by an objector, being a proprietor who has

filed an objection under subsection (3), be increased if the Board is satisfied that it would be just and equitable to do so.

(5B) The total sum ordered by the Board for all the objectors under subsection (5A) shall be paid from the proceeds of sale of all the proprietors and shall not exceed the aggregate sum of 0.25% of the proceeds of sale for each building or seven thousands ringgit for each building, whichever is the higher.

(6) For the purposes of subsection (5)(a), a beneficiary owner —

- a) shall be taken to have incurred a financial loss if the proceeds of sale for his unit of the building, after any deduction allowed by the Board, are less than the price he paid for his unit;
- b) shall not be taken to have incurred a financial loss by reason only that his net gain from the sale of his unit will be less than the other beneficiary owners.

(7) The Board shall not approve an application made under subsection (2) —

- a) if the Board is satisfied that—
 - i. the transaction is not in good faith after taking into account only the following factors:
 - A. the sale price for the flats and the land in the development;
 - B. the method of distributing the proceeds of sale; and
 - C. the relationship of the purchaser to any of the proprietors; or
 - ii. the sale and purchase agreement would require any proprietor or beneficiary owner who has not agreed in writing to the sale to be a party to any arrangement for the development of the buildings and the land in the development; or
- b) if the collective sale committee does not consent to any order made by the Board under subsection (5A).

(8) Where no objection has been filed under subsection (3), the determination under subsection (7) shall be made by the Board on the basis of the facts available to the Board.

(9) Sections 67Y (1A), (2), (3), (5), (7C), (11), (12) and (13), 67Z and 67ZA and the Second and Third Schedules shall apply, with the necessary modifications, to any application or order made under this section.

(9A) In the application of section 84A(1A) and the Eighth and Ninth Schedules to any development to which this section applies, any reference to a management corporation shall be read as a reference to the proprietor of the land and beneficiary owners of the buildings.

(10) In this section —

"development" means any alienated land with one or more buildings where each of the stratified unit therein is owned by the proprietors;

"beneficiary owners" means unless the context otherwise requires, includes purchaser, subsequent purchaser, lessee and a successor in title other than registered proprietor of the parcel."

VI. CONCLUSION

URBAN areas in Peninsular Malaysia have very limited land to apportion to meet the needs of its people and a growing economy. After setting aside land for the necessary infrastructure like airports, ports, sewage treatment plants and water catchments, planners are left with little more than approximately 50 per cent of the land to use for homes, offices, factories, roads, parks and schools.

Much of the legislation and policies pertaining to real property in land-hungry urbanized Peninsular Malaysia has been enacted as a result of the need to optimize the use of this scarce resource. To this end, legislative controls in the form of (amongst others) the National Land Code, Housing Development (Control and Licensing) Act, Local Authority Act, Urban and Country Planning Act, Building and Common Property (Maintenance and Management) Act, Land Acquisition Act, and Strata Titles Act have been imposed over a variety of matters ranging from land ownership and land acquisition, to land use and development. However, it is not possible to consider here the implications of all the above legislation which has evolved to facilitate a judicious allocation of urban areas' scarce resource. This paper intends to provide focuses on the implications of the National Urbanization Policy on sustainable land resource and the critical role which has to be played by the Local Authority. In particular, this paper highlights a rather preamble legislative measure targeted at private residential and commercial strata-titled developments. This will be introduced in the form of amendments to the Strata Titles Act and accelerated the phenomenon of 'collective' or en-bloc sales in Peninsular Malaysia.

PROMOSI DAFTAR PINDAH MILIK 1 HARI JKPTG



KEMENTERIAN SUMBER ASLI DAN ALAM SEKITAR



JABATAN KETUA PENGARAH TANAH DAN GALIAN

TRANSFORMASI PENTADBIRAN TANAH



Malaysia

RAKYAT DIDAHULUKAN, PENCAPAIAN DIUTAMAKAN

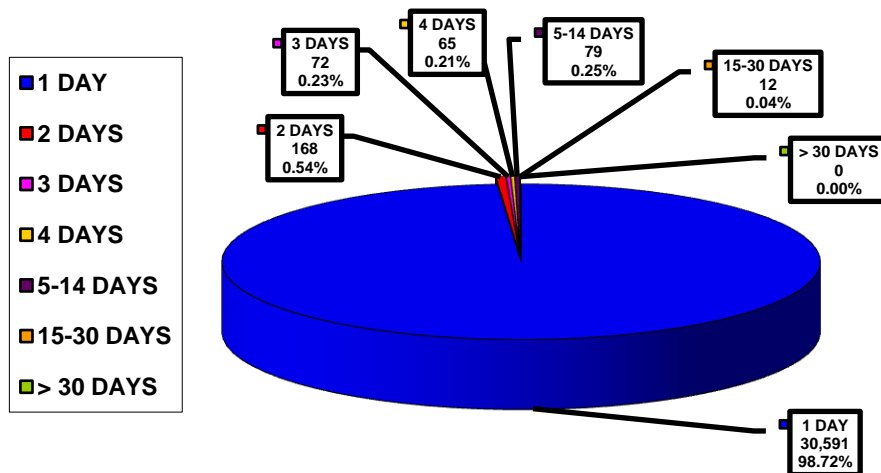
HARI

DAFTAR PINDAH MILIK TANAH

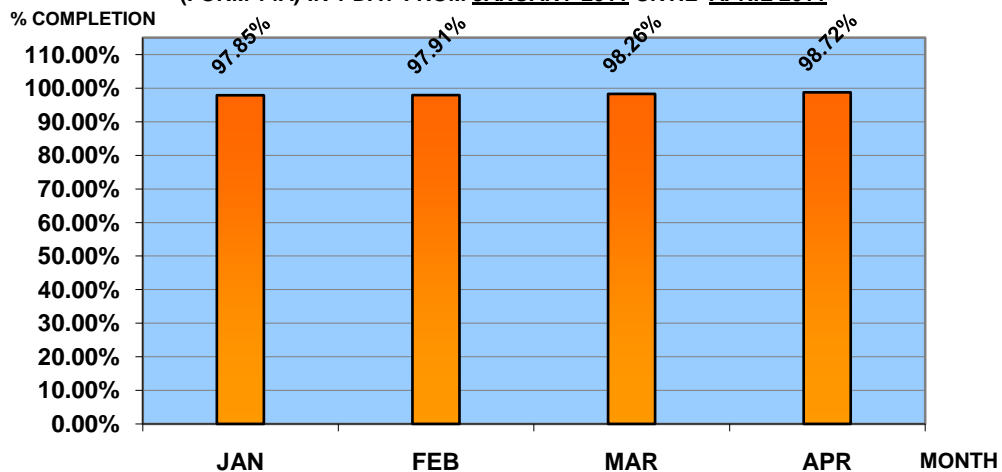
- PENDAFTARAN PINDAH MILIK TANAH DAPAT DISIAPKAN DALAM MASA 1 HARI BAGI *LANDED PROPERTY* (TIDAK TERMASUK PINDAH MILIK STRATA) MELALUI KAEDAH *ONE PIECE FLOW*
- DOKUMEN YANG DIKEMUKAKAN PERLU LAH LENGKAP DAN MEMENUHI SENARAI SEMAK AGAR PENDAFTARAN PINDAH MILIK TANAH DAPAT DISIAPKAN DALAM MASA 1 HARI
- MEMPERKEMASKAN PROSES PENDAFTARAN PINDAH MILIK TANAH KE ARAH MASA YANG SINGKAT
- PENDAFTARAN 1 HARI DI SEMUA PEJABAT TANAH DAN GALIAN NEGERI SERTA PEJABAT TANAH DAN DAERAH DI SEMENANJUNG MALAYSIA

PENCAPAIAN INISIATIF DAFTAR PINDAH MILIK 1 HARI

OVERALL PERFORMANCES OF REGISTRATION OF LAND TRANSFER (FORM 14A) 1 - 30 APRIL 2011



OVERALL PERFORMANCES OF REGISTRATION OF LAND TRANSFER (FORM 14A) IN 1 DAY FROM JANUARY 2011 UNTIL APRIL 2011



PERHATIAN

PEMBACA dialu-alukan untuk menyumbangkan hasil-hasil karya dalam Bahasa Malaysia atau Bahasa Inggeris mengenai perkara-perkara yang menyentuh kepada proses penambahbaikan, transformasi atau isu-isu semasa dalam Pentadbiran Tanah di Malaysia. Semua karya yang dihantar akan ditapis oleh ahli Sidang Editorial Jurnal Pentadbiran Tanah. Para penyumbang karya penulisan dipohon supaya menyenaraikan semua rujukan-rujukan yang dimaksudkan dalam hasil karya penulisan masing-masing bagi memudahkan pembaca membuat rujukan lanjut apabila diperlukan. Semua hasil karya boleh dihantar kepada Sidang Editorial Jurnal Pentadbiran Tanah, Jabatan Ketua Pengarah Tanah dan Galian (Persekutuan) dalam format Microsoft® Word secara e-mel atau cakera padat (*compact disk*) bagi memudahkan sidang redaksi membuat melaksanakan suntingan. Sebarang pertanyaan atau kemusykilan bolehlah menghubungi Sidang Editorial Jurnal ini.

