

**HOUSING
THE NATION:
A DEFINITIVE STUDY**

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**CAGAMAS
BERHAD**

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Foreword

Traditionally banking institutions regulated by Bank Negara Malaysia are the largest providers of housing loans in Malaysia. In order to develop a secondary mortgage market to enable these loans to be refinanced, should the need for liquidity arise, and also to increase the availability of financing for house ownership, Cagamas (acronym for National Mortgage Corporation in the national language) was incorporated under the Companies Act in December 1986.

With a paid-up capital of RM80 million, contributed by the banking institutions and Bank Negara Malaysia, and shareholders' funds of RM344 million at the end of 1996, Cagamas has been very active in mobilising resources for financing house ownership through the securitisation of housing loans of these institutions and in refinancing Islamic housing debts. The funds for such refinancing are mainly raised through the issue of long-term Cagamas bonds. At the end of September 1997, the outstanding housing loans purchased by Cagamas amounted to RM19.5 billion while outstanding bonds issued amounted to RM18.9 billion.

To mark its Tenth Anniversary, Cagamas commissioned the Institute of Strategic and International Studies (ISIS) Malaysia to undertake a study of Malaysia's housing industry and its financing. The study which consists of 17 chapters, written by authors in their specialised fields, is co-ordinated by ISIS, which also serves as the editor.

While much has been said and written about the housing industry in Malaysia, there has as yet been no attempt to publish the information in a single volume. This compilation, entitled *Housing the Nation: A Definitive Study*, aims to meet this need.

I hope this book will help to promote better understanding of the various facets of the housing industry in Malaysia, including the important question of financing house ownership. If in so doing Cagamas is able to stimulate further discussion and interest in providing affordable housing to Malaysians, and especially to those in the lower income groups, the objective of this book would have been achieved.



AHMAD MOHD DON
Chairman
Cagamas Berhad

Introductory Note

The idea for this book arose out of a desire by Cagamas Berhad to improve the housing industry in Malaysia and to enhance its services to the public. In late 1996, Cagamas commissioned the Institute of Strategic and International Studies (ISIS) Malaysia to undertake a nationwide study on the housing industry and compile the findings into a book. It was a formidable task to undertake. However, with the support of Cagamas, it was an assignment which we hope proves worthy of the efforts of the many people concerned.

To organise the study, ISIS formed a Housing Steering Committee; and to implement it, a Housing Study Group. Members were drawn from within the institute.

A few inhouse brainstorming sessions were held to give form and substance to the study as well as to plan the workflow. After the main subjects and sub-topics were proposed, the next task was to identify acknowledged experts who would be able to look at housing issues critically and offer suitable and practical solutions to the pressing issues facing the industry. Each of these experts was given a brief and a deadline to put down their thoughts and proposals in writing. Drafts of their papers were subjected to reviews at various independent workshops held at ISIS. Paper writers revised their text based on the inputs of those who attended these workshops.

Some of the papers formed the basis of the presentations made at the National Housing Convention organised by ISIS in May 1997. The deliberations at the convention provided further opportunities for paper writers to refine and, where necessary, redefine their work.

The rest of the articles were critiqued at workshops held subsequent to the convention.

After the second – and in some cases third – revisions, papers were presented to experts assembled by Cagamas. The comments of these experts provided yet another opportunity for another round of revisions.

The final versions of the articles, as produced in this book, are therefore the result of extensive reviews, additions or deletions. ISIS, and indeed Cagamas, has not limited the legitimate freedom of the authors to express their views or to present the facts as they perceived them. Finally, members of the ISIS Housing Study Team worked on Chapter 17 to highlight issues and recommendations.

For their valuable contributions, inputs, suggestions, patience, forbearance and co-operation ISIS owes a debt of gratitude to the following:

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and to those who participated in our workshops and the National Housing Convention, as well as all others who, in one way or another, helped in the production of this publication.

A handwritten signature in black ink, appearing to read 'Mohamed Jawhar Hassan', with a stylized flourish at the end.

MOHAMED JAWHAR HASSAN

Director-General

ISIS Malaysia

Overview

Introduction

In view of the scope and complexity of the housing industry, the purpose of this overview is to summarise the overall perspectives of the local housing industry which have been discussed quite comprehensively by various writers in this volume. This is not meant as a presentation to provide additional substance or insight on issues discussed. Rather it presents, in summary, the general views, analyses and various proposals variously expressed in the papers, and which are important in making the housing industry what it is today. Many views, some with differing opinions, have been expressed and analysed in the various chapters. Other than to highlight the main essence of the various discussions, it is difficult to capture in comprehensive details all the issues discussed.

What is crucial are the specific sectors, issues, problems and other critical factors that have been instrumental in helping the local housing industry to flourish and in enhancing its capacity to meet the increasing housing needs of a rapidly growing Malaysia. Crucial too are the policy directions that many of the writers have recommended and which have been taken up in the final chapter.

Thus, while the overview serves to highlight some of these major points and to explore some of the analytical deliberations on a chapter to chapter basis, its main function is to facilitate a quick understanding as well as to introduce the general contents of the volume.

Historical perspective

The historical perspective of housing is discussed in Chapter 1. What emerges from this discussion shows that, historically, the housing industry has experienced a constant mismatch between housing demand and supply

although the progress of housing development in Malaysia, which has been gradual, has been quite impressive. However, many constraints and weaknesses had hindered and often frustrated the achievement of housing targets especially for the lower income group.

The government took the correct approach when it tried to intervene in the property sector, particularly in the supply for low-cost housing. However, that remains a problem which is unresolved to this day. One reason is because the supply of houses, especially for the medium and low-cost units, has persistently been outpaced by the huge demand arising from the rapid economic growth and the consequent massive rural-urban migration.

The public sector, especially through the various state agencies, initially took up the challenge of low-cost housing as one of its priority sectors. Public sector agencies have been building subsidised low-rent houses for decades but eventually found the challenge daunting, leaving the government with no choice but to urge the private sector to take up the leading role. Notwithstanding this, the shortage has remained intractable in the face of rapid economic and urban growth. Thus, any redressal measures to be formulated and implemented must be long-term. The intense competition for housing must be tackled in conjunction with other sectors which are also in pressing need for land and other resources, especially labour and finance.

Housing industry today

Chapter 2 reviews and analyses this aspect substantively. It is emphasised that provision of proper and adequate housing represents one of the most significant development and social objectives of the government. Not only does the government have to create the conducive environment and proper support policies to see to the healthy development of the housing industry, but it has also to uphold the responsibility to make housing more affordable so that no group within the country is deprived of the opportunity for house-ownership.

Generally it is fair to say that the situation of housing in Malaysia is creditable. Malaysians are living in better housing conditions than their parents a generation ago. However, this has not come cheap; most house buyers are heavily mortgaged and both husbands and wives need to work almost a lifetime to settle their mortgages. House prices over the past few years have escalated to such an extent that even the middle income group has found it difficult to achieve their dreams of house-ownership. And, for the lower-income group, their only recourse to fulfilling their dreams of house-ownership is through government intervention in low-cost housing.

In spite of the fact that affordability is slipping out of the hands of many would-be house buyers, the demand for housing continues to be very

strong. The supply side has also been very active even though it is still unable to satisfy the increasing demands, especially for lower-priced houses and low-cost housing. In the Seventh Malaysia Plan, about 800,000 units are targeted to be built with 19 per cent in the form of low-cost units, 44 per cent low medium-cost units, 16 per cent medium-cost units and 11 per cent high-cost units. This target in house output appears to be adequate but the problem increasingly lies in the price of housing.

Yet, it is difficult for the government to act to bring about measures to curb prices. One way is to dampen demand which may result in a chain reaction that could jeopardise the current buoyancy in the property sector which is now crucial in fuelling national growth. The other option would be to induce the supply sector to put up more affordable houses – which is probably less destabilising. But is there a real mismatch between demand and supply or has the actual demand situation been grossly distorted by what is perceived to be excessive speculation?

Then, there is the question of inducing affordable pricing through the mechanism of taxation and/or incentives on building materials, financing and all other aspects, including land alienation and acquisition, legal controls, enforcement, speedier approvals and an overall more efficient management of the housing industry in the country. However, such actions may lead to excessive government interference with market forces and there are divided opinions whether this would be good for the housing industry or not.

Housing supply

Chapter 2 also explores the housing supply situation in the country. The population and housing census of 1991 showed there were 4.06 million housing units in the country catering to about 18.38 million people or 3.54 million households. The Seventh Malaysia Plan reported that another 647,460 housing units were built from 1991-95 yielding a building rate of approximately 129,490 units per year. Since 1995, there were about 4.7 million housing units for a population of 4.1 million households. This is testimony to the fact that at least in terms of houses built, the housing industry has been very active.

But what about the future? At least in the foreseeable few years ahead, the housing industry appears to be buoyant. In 1996, according to the Department of Valuation and Property Services in the Ministry of Housing and Local Government, about 204,000 housing units were under construction while another 140,000 were in the pipeline. Since 800,000 dwelling units are targeted to be built during the Seventh Malaysia Plan period, an average of 160,000 units can be expected annually up to the year 2000.

Judged by the above, it appears that the government target of achieving at least 30 per cent in low-cost houses must have been quite satisfactory. However, achieving this target only satisfies one part of the overall situation. What is important is not only to achieve the 30 per cent target but also to achieve an output that is adequate to satisfy overall demand. This, needless to say, must be a progressive and long-term measure.

Financing for housing

As discussed in Chapter 3, financing is by far the most important among the factors supporting the housing industry. Financing extends its support in two ways – facilitating property development for the developers and home-ownership for house buyers. The raising of funding for both these activities has never been a problem but the financial institutions carrying out such lending have, from time to time, been subject to controls by Bank Negara Malaysia. Since March 1997, Bank Negara Malaysia has added a new control by limiting bank financing exposure to the property sector to a maximum 20 per cent. This is a move to tackle the problem of excessive credit growth and asset price inflation. Nevertheless, certain exemptions are given such as for loans for houses costing RM150,000 and below and for first-time housing loans, even for houses above RM150,000.

The selective control of credit in the face of rapid monetary expansion can provide a temporary relief but only if the ceiling has not been breached. In this respect, it appears that many financial institutions in the country still have a sizeable capacity for making such loans given the exemptions. Additionally, should overall credit continue to expand further, then there should be more opportunities for financing to the property sector. Conversely, any detraction could proportionately reduce the lending capacity and trigger a downward spiral in the property industry. Because of this, the long-term effectiveness and efficiency of such control are questionable.

One of the earliest institutions extending huge loans to the housing sector is Malaysia Building Society Berhad (MBSB) or rather its precursor, Malaysia Borneo Building Society (MBBS). Then came the commercial banks, insurance companies, the government agencies, co-operatives and large private sector corporations as well as the Employees Provident Fund (EPF) which actually does not give loans but permits withdrawals subject to a certain limit for house purchases. Cagamas Berhad is also active in financing the property sector although it is only involved in refinancing housing loan portfolios and is not involved in the origination of such financing. In this role, Cagamas buys housing loans from the originators such as banks and other financial institutions and the Treasury Housing

Loans Division, and finances them through the issue of private debt securities. Through Cagamas' refinancing activities, the property sector can indirectly tap an alternative source of long-term financing. This adds an additional security shield by making financing and refinancing in the property sector more stable and less risky as well as reducing the financial burden of originating banks.

Of special importance to the property sector is the measure taken by the government in 1976 to make loans for the purchase of residential houses a priority sector. Ceiling interest rates, which are still in place, are imposed on loans for housing units costing less than RM100,000 each and for loans to Bumiputeras. This has in no small way helped to make the property sector in the country vibrant and booming while at the same time enabled lower-income groups to attain house-ownership.

However, in spite of the diverse and rather easy avenues already available in the financing of the property sector, a further liberalisation of the financing rules is in order to ensure that home-ownership becomes more widespread. In pursuit of this, a note of caution should perhaps prevail – like every sector of the economy, the property sector could also easily become a problem sector should the economy take a turn for the worse. Massive financial exposure to the sector should, therefore, be exercised with great prudence.

Secondary mortgage

The role of the secondary mortgage market is covered extensively in Chapter 4. Cagamas Berhad initiated the secondary mortgage market in Malaysia in 1987. With this market, the originators of housing loans could sell their housing loans to increase their liquidity and simultaneously have an avenue to hedge their interest rate risk.

Internationally there are many forms of secondary markets. Malaysia practises a simpler form which refers to pools of housing loans originated by primary lenders, such as commercial banks and other financial institutions, being sold on a full recourse basis to a mortgage corporation which in turn issues private debt securities to finance the purchases. In purchases on a full recourse basis, the beneficial ownership of the housing loans is passed only to the mortgage corporation. The bond holders do not directly own the housing loans sold to the mortgage corporation nor do they bear any credit risk which remains effectively with the primary lenders.

The primary objective of the secondary mortgage market is to provide an avenue for an intermediary between the primary lenders and the investors of long-term funds to play the role of a credible issuer of secondary

mortgage securities. Since its inception, Cagamas Berhad, with an authorised capital of RM200 million and an initial paid-up capital of RM50 million, has been actively playing this role.

Through Cagamas, an opportunity is provided for the primary lenders to securitise their holdings of mortgage loans. This has enabled the primary lenders to reduce both their liquidity and interest rate risks. Other objectives in the setting up of this market are to encourage the primary lenders to provide more end-financing to house buyers, to help achieve the social objective of widespread house-ownership and to further develop the Malaysian capital market.

Through the operations of Cagamas, long-term illiquid assets in the form of housing loans are effectively converted into debt securities which can be traded in the market. This process enables investors to earn an income from Cagamas debt securities which is basically derived from the mortgage interest paid by the house buyers on their housing loans.

Cagamas currently offers five types of mortgage purchase facilities to the primary lenders:

- Fixed rate mortgage purchase facility;
- Floating rate mortgage purchase facility;
- Convertible rate mortgage purchase facility;
- Islamic house financing debt purchase facility; and
- Industrial property loan purchase facility.

Various terms, conditions and eligibility criteria have to be met to qualify for these facilities.

Chapter 4 also discusses the various benefits that can be derived by the financial institutions from selling their housing loans to Cagamas including exemptions from statutory reserve requirements, improving liquidity and profitability, cost advantages, reduction of interest rate risks, diversification of funding base and reduction of maturity mismatch.

In spite of its brief existence of only about 10 years, Cagamas has been hugely successful as reflected in the growth of the volume of housing mortgages securitised. Reflecting this magnitude of success is the volume of housing loans securitised by Cagamas – which increased from only RM1,396 million at the end of 1988 to RM16,142 million at the end of 1996, a growth of more than 10 times. Various factors have contributed to this success, among them the support given by Bank Negara Malaysia, the corporation's single largest shareholder, and the various commercial banks and financial institutions as well as the support given by the Ministry of Finance and the Securities Commission. However, in spite of its success, the development of the secondary mortgage market has not been without problems arising from such factors as the relatively poor bond market in the country, the lack of information on bond trading, the narrow investor base,

the availability of housing loans for securitisation and the need to lengthen the tenure of the mortgage-backed bonds in the market. There is still room for improvement and development in this market.

Government housing policies and incentives

These aspects have been discussed in detail in Chapter 5 which reiterates that the housing policy elucidated by the Seventh Malaysian Plan is aimed at providing adequate, decent, affordable and accessible housing to Malaysians. Towards this end, the government has formulated various strategies and programmes by creating the necessary legislation, public institutions and instruments to provide the basic network to assist the housing sector.

The Ministry of Housing and Local Government plays the vital advisory role and, through the Town and Country Planning Act 1976, the Ministry provides policies and frameworks primarily for urban planning by considering land allocation, population density, layout plans and overall physical development. The Ministry also enforces its policies through various other acts.

Of basic importance is the public sector low-cost housing programme through which both the federal and state governments have co-operated to implement numerous low-cost housing projects. In this undertaking the state governments identify and allocate suitable lands, assisted by the National Housing Department in tender procedures and the supervision of the physical progress of projects. In many cases too, the state governments also identify the eligible buyers and make the necessary arrangements to extend end financing facilities.

Besides the state governments, some other government agencies are also active in the provision of housing. The Urban Development Authority (UDA) is one such agency which also undertakes commercial infrastructure and other land development activities. However, its operations are mainly in the urban and semi-urban areas. In addition, the government also encourages some government-based co-operatives to build and sell houses to their members as well as to the public. To facilitate this, the Housing Developers Act exempts co-operative societies engaged in housing development from having to obtain a developer's license and sales and advertising permits.

The Seventh Malaysia Plan has a very ambitious target of 800,000 units planned for construction with 230,000 units to be delivered by the public sector and 570,000 units by the private sector. Of most importance is the provision of low-cost housing for the hard-core poor, especially in the urban centres. For this purpose, Bank Negara Malaysia has instituted a RM3.6 billion revolving fund to undertake mixed development housing activities including low and medium-cost houses.

As part of the back-up programmes to make housing affordable and accessible to as many Malaysians as possible, the government has also introduced various policies and restrictions on foreign buying. The government has also introduced measures to discourage speculative activities. These measures are discussed in detail.

In spite of the laudable efforts of the government, by and large, the performances of both the public and private sectors were below the estimated targets – with the private sector achieving about 80-90 per cent of its targets compared to the 30-43 per cent achieved by the public sector. Although it is important to achieve the housing target, in particular in the low and medium-cost categories, what is of equal significance is to protect the house buyers through proper regulations enforcing standards and controlling practices of the housing industry in a clear and transparent way. This would further help the housing industry because then the legitimate housing developers would gain credibility and public confidence. It is felt that the targets set can be fully achieved by the private sector through the provision of greater incentives and government support, aimed at reducing the cost of production of low and medium-cost housing.

Low-cost housing

Low-cost housing has of late become a topical issue and attention is focused on it in Chapter 6. In Malaysia, the issue of low-cost housing has been the focus of much attention from the politicians and the press, with the developers often becoming the unfortunate targets of criticism. Yet, what is often not highlighted is the fact that Malaysia has one of the most successful programmes of housing for the poor.

Even as Malaysia is striving to meet its ambitious target for low-cost housing, demand for this category of housing has increased rapidly. So has production costs. The result has been a shortfall of low-cost housing produced by both the public and private sectors. During the Sixth Malaysia Plan period, only about 75 per cent of low-cost housing targets were fulfilled but the high and medium-cost units exceeded their targets. The reason appeared to be a lack of enthusiasm by private developers who generally feel that the ceiling price limit of RM25,000 for a low-cost unit, is far too low and is no longer viable.

The result is that some developers have failed to fulfil the quota. However, because of the weak distribution and delivery controls for low-cost housing, the system is open to abuse. For example, there are no restrictions on the resale price that a purchaser may demand from the next buyer, making the system vulnerable to speculative activities.

Various issues and problems have arisen on the question of low-cost housing, where both the public and the private sectors may bear some blame. First is the difficulty of obtaining suitable and affordable land. In cases when the land is available, there are issues and problems related to land conversion, approval of plans and various statutory requirements before a project can really take off. There are also problems of escalating costs (very often a result of long approval delays), stringent standards for low-cost housing and the increasing difficulty to make ends meet, not to mention profits, in low-cost housing.

Various recommendations have been proposed to improve the situation. It is believed that low-cost housing targets can be achieved if every player in the housing chain plays his part, from the various approving authorities, the building materials suppliers, the technical consultants, the developers and the financial institutions. Some of the strategies proposed include an open system for low-cost housing, expansion of the low-cost housing fund, provision of an infrastructure fund, standardising technical and planning standards, review of the RM25,000 limit, renting housing for the urban poor and implementing some other assistance programmes.

Rural and estate housing

This is one sector that has been relegated to a lower priority and importance, thus raising the question of whether developers are doing enough for rural housing. The various issues, problems and directions of this sector are discussed in Chapter 7. Several factors are at play here. In the first instance, rural and estate housing is not very profitable since these houses generally have relatively low prices as most potential buyers of this sector are from the low-income group. This sector is thus not attractive to private developers, especially the more established ones. Unless the government takes affirmative action, rural and estate housing would for a long time to come continue to be a relatively depressed sector vis-a-vis their urban counterparts.

It is estimated that approximately half of the country's population and living quarters are located in the rural areas. The rural areas are diverse in characteristics and comprise of traditional villages (commonly referred to as kampongs), new villages created during the Emergency era and many of which have expanded haphazardly, land scheme villages created largely by statutory organisations like the Federal Land Development authority (Felda), villages of living quarters in plantations owned by plantation corporations, orang asli settlements and transient communities of immigrants in ramshackle makeshift illegal clusters.

There are several issues concerning rural housing. The main issue is the lack of a clearly-defined policy for housing specific to target groups among the rural and estate population with community and individual dwellings. However, through the rural development programmes spread in the various national development plans, some improvements have been made to rural housing in which basic amenities, roads, electricity, water supplies and some basic health care facilities have been introduced.

Many factors still inhibit rural and estate housing development. Land alienation, conversion, subdivision and distribution are matters under state government jurisdiction and experience has shown how problematic these matters can be. In many rural lands, there are specific restrictions in land titles such as Malay reservations, customary lands, etc, which restrict land transactions thus discouraging the private sector from venturing into rural housing. With rapid economic development, many rural areas and plantations have transformed into urban and industrial townships, in the process displacing many unfortunate workers from their estate housing. Such a situation is unfair to the displaced workers and it is felt that certain compensations should be accorded to such workers. The best form of compensation would be to make provisions for alternative housing if such displaced rural workers have lost their rights of abode in the transformed lands or plantations. Potential areas for such compensatory house-ownership should be provided and low-cost houses, based on a very affordable subsidised basis, should be accorded to such displaced workers.

Another trend that emerged recently is for some developers to move to the rural areas for housing projects. Unfortunately, many such developers are only interested in putting up 'country lifestyle' upmarket housing to cater to the high-income group. The rural poor again lose out since this is not the type of housing catering to the demands of the rural population. The role of the government is vital to ensure that there is a balance in national housing development efforts not only in urban but also in the rural and estate sectors.

Bumiputera house ownership and participation in housing

This is an area which has drawn much attention and some of the issues, problems and policy directions involved are discussed in Chapter 8. Generally, Bumiputera house-ownership and participation in the housing industry involve the following characteristics:

- Price discounts for Bumiputera house purchases;
- Setting aside quotas of at least 30 per cent of the housing development for Bumiputeras; and
- Restrictions and development of Malay reserve land.

In spite of the discounts and various incentives given to the Bumiputera sector for house-ownership, responses from the Bumiputera sector have been quite disappointing in many cases except for the low medium-cost and low-cost units. This affects many sectors of the housing industry because the cost of granting discounts in housing prices to Bumiputeras is often passed on to other non-Bumiputera buyers. The setting aside of a 30 per cent quota of the housing units for Bumiputera purchasers, especially in cases of units priced above the low medium-cost levels, also poses problems for the developers because such units are often not fully taken up, thus causing delays in sales and resulting in additional holding costs. Although the quota for Bumiputeras can be released after a certain period of six to 12 months, these exemptions must be applied for and approved. This process again is a tedious one and can take months.

Although the Bumiputera housing discount and quota issues have given rise to some problems, they are no doubt necessary in line with the government's objectives to enable more Bumiputeras to own houses and to promote greater integration among the various ethnic groups in housing projects. Private sector housing developers, being key players in the industry, support the government's efforts in meeting the government objectives although they strongly feel that certain aspects of the Bumiputera quota imposition should be reviewed to avoid certain existing problems such as holding costs and the tedious process of application to get the quota restriction released.

When Bumiputera quota housing units fail to sell, many requirements have to be fulfilled for the quota restriction to be released. If these requirements are to be strictly followed, the duration to get the release should be shortened. This means that any authority vetting the requirements for release should expedite the application process. As an alternative, state governments should set up a housing fund to purchase the unsold units for eventual sales to Bumiputeras.

Some states, such as Melaka, have established independent agencies to handle the Bumiputera quota issue. In Melaka a Bumiputera company, Pertama (Perbadanan Kemajuan Tanah Adat Melayu), has been established ostensibly to deal with the task of assisting developers to find buyers for unsold Bumiputera lots and to advise and make recommendations to the Chief Minister for the release of Bumiputera quota units.

In Johore, a 7.5 per cent fee and a two per cent sales commission are imposed to secure the release of unsold Bumiputera units. In projects which

are not attractive to Bumiputera buyers and where the unsold quota is high, these special payments are an additional burden to developers who already have to face the heavy financial burden of holding costs. Inevitably the developers would pass these additional costs on to other buyers or to other categories of their housing units. The authorities and the developers should take a closer look at the implications of such a quota to determine if a review is now necessary in the interest of the overall housing industry while continuing to assist the Bumiputera community in house-ownership.

Bumiputera participation in the housing industry is one area that has room for improvement. Apart from a number of high profile Bumiputera developing companies, Bumiputera participation in the housing industry still lags behind that of the non-Bumiputeras. However, the Bumiputera sector has tremendous potential to directly participate in the housing industry because land ownership among Bumiputeras is very high especially in the rural areas. Furthermore, there are vast tracts of land in Malay reservations with good potential for development.

Currently, these lands are locked in with restrictions and red-tape and are consequently relatively low-priced. If these lands can be 'unlocked' through easier and speedier approvals for development, the Bumiputera community could eventually become the biggest house-ownership community in the country. However, one drawback in this is the consequent price increase of even the houses built on the relatively cheap Malay reserve lands, as more and more development encroaches on such lands.

Legal framework in housing industry

As various writers have pointed out in Chapter 9, the housing industry is one which is very complex and governed by over 30 sets of legislation ranging from laws on lands and buildings to the environment, workers' safety, health, infrastructure and drainage. Such complexities again are compounded by the fact that separate laws are administered by the federal, state and local government authorities. In addition, developers have also to contend with a host of policies, regulations, guidelines and procedures which are formulated by various government authorities from time to time.

A question that often emerges is whether the housing industry is over-regulated. Are the laws adequate enough to protect the house buyers against unfair and fraudulent practices? With such laws and regulations, are we achieving the government's objective to provide adequate, affordable and quality housing to the people including the lower income group, the middle class and the rich?

The existing laws do afford the unit purchaser a certain amount of protection. However, those laws also contain provisions which can be considered as unsatisfactory. For example, in land acquisition cases, while the legislation does specify the headings under which claims can be made, in practice those claims are either ignored or downplayed. The owner can appeal to the High Court. But this right of appeal is time consuming and costly. Maybe the answer lies in having a tribunal to hear such grievances in an informal setting.

In the case of the Town and Country Planning Act the provisions for the drawing up of structure plans and local plans are precisely spelt out. However, the local planning authorities have been slow in drawing up such plans. Even when the plans are drawn up and gazetted, the plans are not properly followed but are flexible in implementation.

The laws relating to streets, drainage and buildings are straightforward and offer adequate protection for the unit purchaser as far as safety and health are concerned. The problem arises when the local authority imposes new requirements on the developer for the issue of the certificate of fitness for occupation which were not stated when the plans were originally approved.

As for strata titles, the record shows a low issue rate of strata titles throughout Malaysia. The problem could be in the elaborate procedure and the number of documents required to apply for strata titles. The use of a checklist could be helpful in hastening matters.

Given that the various laws, regulations, guidelines and procedures are necessary to cope with the changing scenario arising from the rapid development of the housing industry, it is also important that an efficient administrative and enforcement framework be in place to ensure the healthy growth in the industry.

The main legislation governing the housing industry is the Housing Developers (Control and Licensing) Act, 1969. However, within a year, this Act was replaced by the Housing Developers (Control and Licensing) Rules, 1970. Through these Acts the housing developers are directly subjected to regulatory controls aimed at protecting the house buyers, basically for residential housing and excluding commercial, industrial land and other properties not developed by developers but by co-operatives and the like.

In 1982 the Housing Developers Regulations were further refined, principally to bring about better enforcement of a standard Sale and Purchase Agreement on landed property and the necessity to obtain an advertising permit before the sales of houses. The 1982 Regulations prohibit the collection of any payment except as prescribed in the standard Sale and Purchase Agreement and therefore developers can no longer collect a booking fee from potential house buyers. However, when the property market collapsed in the

mid-1980s, the inadequacy of the Act and Regulations were clearly demonstrated when many creditors and house buyers suffered heavy losses.

Although the provisions contained in the Act and Regulations are there to protect the rights of the unit purchaser, in practice many unit purchasers have been cheated by unlicensed developers. Buyers had often responded to advertisements that promised much but delivered little. They had been short changed on materials, value and the non-provision of promised facilities. They had also to put up with shoddy workmanship and other defects. Units were often not delivered on time. The Ministry of Housing and Local Development has responded and continues to respond to the various complaints against developers by taking legal action against them.

The lesson learnt in the mid-1980s thus brought into effect a series of amendments culminating in the Housing Developers (Control and Licensing) Amendment Act 1988 which, among other things, requires licensed housing developers to open and maintain a Housing Development Account. This was further refined again in 1991 with stringent regulations and conditions on developers drawing from the Housing Development Account and compensatory safeguards for buyers in the event of project failures.

Other rules and regulations guiding the housing development sector are the National Land Code, the Town and Country Planning Act 1976, the Uniform Building By-Laws 1984, the Sewerage Services Act 1993 and many others, all aimed at improving the housing and other construction and development projects in the country. Currently, the government is formulating the Building and Common Property (Maintenance Management) Act in order to regulate the management and maintenance standards of all subdivided buildings.

Given all that have been said, what is crucially important is that while the law is there to protect the unit purchaser from being exploited and cheated, it is the unit purchaser himself who must take the necessary steps to see that he is treated fairly and not cheated. He owes to himself that responsibility and should keep himself informed of all the laws and regulations that exist to protect him and should see that they are enforced. He should not be dependent solely on the government to protect him in every matter.

It is difficult to say at this stage whether the local housing industry is over-regulated or not. But the fact is, there is no lack of rules and regulations guiding the housing industry. At this time, especially when things are going well, perhaps many will say that we are over-regulated. But the real test of these rules and regulations would be in crisis situations such as another property collapse. Perhaps there is some margin for deregulation judging by the experience of the property collapse in mid-1980s. However, some over-regulation and prudence might be good.

Technology for housing

Adequate and affordable housing has become a crucial issue in almost all the Malaysian urban and suburban centres and even in certain rural sectors. With increasing affluence and greater rural-urban migration, a perceptible shift in housing features and characteristics is gradually changing the skylines of many Malaysian cities and even country-style residential areas. Improved technology has made it possible to build skyscraper condominiums, office-cum-residential complexes, 'intelligent' homes and luxurious residential houses at much shorter times than before. In examining these aspects, Chapter 10 discusses how the infusion of technology has affected the housing industry in Malaysia.

What has made this possible are the changes in house designs and building technologies which, incidentally, have also brought about a new demand shift in housing in the country especially among the upper-income groups. Twenty years back, few people would have considered having a condominium as a home but today condominium living has become the trend in many urban centres. Also, with rapid changes in commuting and travel brought about by technologically-advanced expressways, people are ready to stay in luxury country-style homes, sited long distances away from their offices.

Conversely, with increasing demands for housing and escalating land prices, improved technology has also made it possible to mass produce hundreds of house units crammed within a relatively small area by building upwards. Hilly areas with difficult terrain no longer pose difficulties to developers as advanced machines, equipment and other new technologies make it possible for these marginal lands to be flattened, terraced, filled or remoulded for mass and even rapid housing development.

Many Malaysian developers, especially the bigger ones, have responded to these changes and quite a number have adopted state-of-the-art designs and technologies. Many local developers, in addition to their ability to construct modern high-rise buildings, have also developed some specialised skills in system construction, system formwork, precast systems, composite systems, tunnel form construction, prefabricated systems, pre-cut reinforcements, slip-forms and load-bearing shear walls.

The housing building technology most commonly used in contemporary housing in Malaysia is the structural reinforced concrete frame and floor-slab construction method. Reinforced concrete works are constructed using concrete poured into conventional timber and plywood formwork. Frames are of filled-in conventional masonry brick-works which are subsequently covered by plastering and painting.

The installations of the electricity system, water mains, sewerage system and telephone cabling, generally concealed by the reinforced concrete works, complete the construction process.

However, it has been noted that the process of construction in Malaysia is slow. With large numbers being built in parallel and with a low level of construction help available, the modicum of self-quality control by the builders decreases as developers seek to maximise profits and in turn make increasing demands upon the vigilance of the architect to oversee quality.

There is a belief that the present building technology and the quality of the built unit (and with it comes most of the architecture), are concentrated on maximising the developers' profits based on locally available labour, materials and technology. Technology applications, it may seem, are basically to benefit the developers. They, therefore, need not necessarily result in lower costs for the consumers. However, it has been argued that while economies of scale in housing and innovative technologies would more often incur higher initial costs, they would result in later cost savings through better quality control and a reduction of follow-up rectification for bad or poor workmanship common in conventional construction.

On the surface, therefore, it appears that in spite of enhanced technology applications in the local building industry to mass produce housing units, house prices apparently have not decreased. As a matter of fact, house buyers have not benefited much, at least in price terms, from the infusion of new techniques and technologies.

Labour in housing industry

This aspect has been comprehensively discussed in Chapter 11 which states that in many respects, the cost of housing is also a direct response to the cost of labour and the labour situation in the country. However, direct labour cost is but a small fraction of the total cost component of the housing industry. What is of significance is the part played by labour in the industry. Although its contributions to direct cost are important, the impact it plays on the indirect costs, the waste of time in the constant search and high turnover of labour, and the continuity of its efficiency to put up quality buildings quickly, productively and competitively, will be even more important for the industry in the long term.

One fact that is of concern is the shortage of professionals and skilled construction workers in the industry. Except for the professional and higher skill levels of the industry, Malaysian workers are shying away from the industry. Over three-quarters of the workforce are contract labour and about 48 per cent are estimated to be imported foreign labour in 1997. If the current

trend continues, by the year 2000 about 58 per cent would be foreign. In spite of tough laws recently enacted on the employment of foreign labour with punishment to be enforced on the employers also, a large portion of the foreign labour force is still illegal especially among the smaller developers.

However, this is not the only labour problem inhibiting the industry. What is more serious is the general deterioration of skills and productivity within the industry. As the industry is increasingly relying on the relatively cheaper foreign labour force on contract, this structure is not conducive to the building of a permanent pool of experienced and progressively skilled labour force. Instead, skills and experiences in the industry are imparted to foreigners, many of whom will eventually leave the country. The long-term development of skills acquisition and experience in building is poor, and the cycle of training and experience building has to be repeated over and over again. Such a development does not help in the building up of productivity and efficiency in the industry which could directly and adversely impact the cost of construction.

What results are numerous complaints of shoddy workmanship in the industry – leaking roofs, uneven walls and floorings, leaking sewerage and water systems and, occasionally, cracking and collapsing walls and floors. These are all signals that over-reliance on foreign labour, though significant in helping to solve the immediate labour shortage problems, should not be taken as a permanent substitute for indigenous labour. More significantly, the housing industry, particularly the developers, should not be given the wrong signal that they can continuously rely on foreign workers to solve their labour situation.

It is important to note, therefore, that too much reliance on foreign labour is actually detrimental to the human resource development of local labour for the housing industry. At best, on-the-job training for any local labour or foreigner working in the industry has only produced skills of uneven quality. However, in the short-term cheap foreign labour has kept labour costs low and inhibited labour substitution.

Recognising human resource development to be a crucial factor in the long-term development of the housing industry, the government has established the Construction Industry Development Board (CIDB) which is working to increase the relevance of training in existing institutions and to design short flexible courses. It will also provide accreditation to both private and public training institutions and has begun accrediting the existing 60,000 skilled workers and site supervisors, thus providing a reliable inventory of skills. In addition, the government has also established the Building Academy of Malaysia (Akademi Binaan Malaysia), devoted entirely to training those already in the workforce. Its training courses are short and focused and open to foreign and local workers. It hopes to train between 5,000 and 10,000 workers a year.

In the Seventh Malaysia Plan, it is estimated about 36,000 skilled and semi-skilled workers would be needed from 1997 to 2000, far in excess of the estimated output of 18,000 workers from training institutions. There is a vast mismatch between supply and demand. Faced with some major constraints, it looks unlikely that this situation can be solved quickly. Some of the major constraints are:

- The lack of investment in training due to the short-term nature of employment and the large immigrant component;
- Courses offered by public training institutions are not focused, involve long training periods and are based on an outmoded curriculum;
- The breakdown of the apprenticeship system due to the out-migration of skilled workers in the 1980s and the availability of better opportunities locally; and
- The absence of an industry-wide skill accreditation mechanism.

Although there is no official data on the magnitude of the specific skills which are in short supply, indications are that skilled artisans like concretors, carpenters, bricklayers, masons, painters, tilers, and plasterers are in critically short supply. This has resulted in shoddy workmanship. Such effects are being minimised by reputable developers through increased supervision, although this is not the case with smaller developers.

Thus, even a dramatic increase in training enrolment is unlikely to reduce dependence on immigrant labour. This situation is not conducive for the long-term development of the housing industry. Immigrant labour must eventually be minimised in phases to permit employers to make the appropriate adjustments.

Building materials: Ensuring stable supplies and fair pricing

Building materials constitute an important component in the cost of development in the housing sector and Chapter 12 examines this aspect in relation to the overall impact of building materials to the housing industry.

Building materials essential to the housing industry are cement, timber, floor and wall tiles, bricks, reinforcement and structural steel, sand, sanitary ware and fittings, roofing materials, pipes and glasses. But of these, only two materials – cement and reinforcement steel – come under the purview of the Control of Supplies Act, 1961. Due to the extensive use of these two items, the government has to impose some form of controls over their prices, supplies and imports and exports.

However, the supplies, demand and prices of other building materials like clay bricks, sand, plywood and others are monitored by the government through the Special Panel on Building Materials. The role of the government

is to ensure that supplies are sufficient to meet demand and at the same time prices are fair to both the producers and consumers.

It is also noted that for the construction sector to continue to contribute to the national economy, there is a need to ensure the productive and efficient growth of the building material industry. Reliable and adequate supplies, consistent quality, timely deliveries and competitive prices of building materials are, therefore, crucial to achieve this objective.

In respect of price determination, it is noted that the competition for building materials by housing developers and those undertaking major projects have generally tended to push up prices. Such competition has, in many instances, also resulted in irregular supplies as well as shortage of certain building materials from time to time, which can also lead to price hikes.

Nevertheless, measures are being taken to ensure that the demand for the necessary building materials for the construction of low-cost housing units is not affected. The government has also taken steps to intervene and break up any cartel or price fixing practices among suppliers and manufacturers while it has, at the same time, encouraged more local production of building materials.

Housing delivery system

Chapter 13 outlines the various aspects that constitute the housing delivery system which requires performances and decisions from many quarters, all of which have different roles and objectives. Apart from the developers, other players in the system are the government servants, politicians, professional consultants, bankers and the house buyers. Although the housing developers are the principal players, others also have to pitch in to ensure that the system functions smoothly.

This demands that everyone within the delivery chain must operate efficiently and effectively within an established set of rules and regulations. It calls for a very dynamic and ethical housing development sector liaising with public sector employees and the various professional consultants, playing both regulatory and facilitating roles. Unless this situation prevails, the delivery system can be rendered very inefficient with long delays and many complicated and often unnecessary government regulations to fulfil.

However, the issue is not the elimination of development and other control regulations and procedure, but to institute or maintain regulations and procedures which are appropriate and effective and to eliminate avenues for lethargy and foul play by those making decisions. There are indeed many inherent weaknesses in the housing industry which directly affect the delivery

system, complex as the housing industry is. Some of these weaknesses are the long delays in the approval process, the labour shortage, inconsistencies between federal policies and local implementation, the long delays in loan processing and the absence of modular building systems.

There is no doubt also that the existing delivery system is not sympathetic to the production of houses, particularly low-cost ones, to cater to the poorer sections of the Malaysian society. The challenge facing the government is clear, and that is to enable and facilitate the private sector to build more low and medium-cost houses and to deliver them in time in liveable and good conditions, with the co-operation of all those involved within the delivery chain.

Given the current scenario and the sophistication of the present population, housing delivery today is not just about numbers. House buyers today have higher expectations and are setting higher standards for a better quality of life. Whether or not these expectations can be met or how quickly they can be met, would depend on the commitment and political will of the major players in the housing industry to meet these new challenges.

Housing and the environment

Chapter 14 discusses the concept of sustainable housing development and its impact on the environment in urban centres and rural areas. What is sought in sustainable development is not 'cities that can sustain themselves' but cities and rural areas where the inhabitants' development needs are met without imposing unsustainable demands on local or global natural resources and systems. Any consideration of sustainable cities must have the improvement of housing, living and working environment as a central focus. The housing industry, therefore, has an important role to play. The question to be addressed here is much more than just building wide tree-lined streets, pedestrian underpasses, parks and public spaces. It is more than providing shelter and equipping it with supporting infrastructure. It calls on how to plan and design a healthy and sustainable living environment that will allow people to live in harmony, and enjoy peace and a sense of security. It facilitates the access of all to the goods and services produced by society and it includes the preservation of historical heritage and capitalisation of the natural assets.

This gives rise to the need for intervention. There are already regulations and guidelines that are intended to manage growth and prevent inadvertent destruction. Such regulations and guidelines are the Town and Country Planning Act 1976, Local Government Act 1976, Land Acquisition Act 1960, Street, Drainage and Building Act 1974, Uniform Building By-Laws 1984 and Environmental Impact Assessment guidelines. It is inevitable that conflicts may arise in their application. For example, the attempt to achieve

one objective, such as protection of the natural landscape, might clash with another objective, such as land reclamation for housing development which may also cause discrimination against minority groups. It is important to note that whatever the combination of statutes, they should be made to harmonise with one another. Only then will we be able to protect and improve both the natural and the built-up environment.

It is sad to note that in spite of the many concerns about the environment and attempts to induce a more caring management and development of housing projects, many developers still pay scant attention to comprehensive zoning programming that would be tremendously useful to blend particular housing projects with their surrounding environment and nature. With a proper and comprehensive zoning planning, the overall development of housing projects can be designed to specify permitted land use, building height, floor area, density, carrying capacity and building placement. The comprehensive zoning could determine the future of every part of the area/city – residential, semi-commercial and commercial. It will also prevent bulky buildings blocking sun and air movement from coming up. Not only is the height limit important but the width separating one housing block or apartment from another is equally important as this serves as a safety measure in case of fire and other disasters. However, it must be pointed out that zoning must be appropriate to the existing conditions. No matter how carefully ‘use-categories’ are mapped, a substantial number of existing uses inevitably will fail to conform to the approved zoning. Non-conforming uses could pass away or be permitted to persist, so long as the degree of nonconformity is not increased.

Another aspect that has often brought about degeneration of the environment is where sections of urban centres and squatter areas, through lack of maintenance and funding, have been allowed to slide into slums. These, coupled with the poor conditions of extensions informally added to the original buildings, have in many instances also accelerated the deterioration of the neighbourhood. The inhabitants of such areas and those that ‘squat’ on publicly-owned lands often hope for the government to intervene to improve the health and living conditions of the sites or better still to legalise their tenure status. However, the government must take some firm actions. Continuing deterioration can be avoided with the neighbourhood revitalisation as a planning strategy.

The fact that many hills have been indiscriminately mutilated beyond recognition and beautiful tree cover destroyed for huge condominium projects on what used to be hilly and green nature, must be a cause for serious concern. While housing is a necessary part of progress and population growth, it is imperative that such development, while inevitable, must be keenly aware of the fragile balance between nature and man-made structures.

Attention must be drawn to the fact that in the development equation, the environment is a constant and that if the constant is eroded, ultimately the whole structure of the equation will collapse. Far too often many developers have not been aware of the sensitivity of nature and the environment. With the introduction of heavy and sophisticated earth-moving equipment, developers no doubt have a very important role and responsibility to reshape the environment. Many have introduced beautification programmes as they develop their projects but many too have been guilty in bringing about further deterioration of the quality of the green environment.

However, there is greater awareness now that all housing projects must be in compliance with environmental conditions and that destruction of hills, greenery, streams and other aspects of nature need not be a part of the housing development process. New laws are now being enacted by the government to complement this awareness and new ideas in housing are being tested to blend development in housing with the best in the environment. An interesting concept is the 'kampongminium' concept, a development that would blend condominium development with the idyllic setting and ambience of a kampong. This is a return to nature approach which should prove to be popular if affordability could be a requisite.

Housing and consumers' concerns

Chapter 15 explores the common concerns of consumers in relation to housing. It argues that housing and shelter are part of basic human needs and human rights. Accordingly, a primary role for the government and the housing industry is to provide cheap, affordable and quality housing for those who need it most – the lower income population. A major concern is that house prices have been on the rise, while the targets for low-cost housing have never been fulfilled. With the annual rise in population, the demand for low-cost and affordable housing will continue to be a major issue.

The continued existence and prevalence of malpractice and problems within the housing industry is another area of concern to consumers. Bogus developers, abandoned projects, poor workmanship, houses not built to specifications, late delivery of housing units, imposition of unjustified fees by housing developers and so on, are common complaints that consumers face. Several case studies are provided to illustrate the plight of consumers. Given the numerous problems faced by consumers, the chapter calls for a review of existing housing laws and enforcement mechanisms in an effort to combat such abuses, malpractice and problems within the industry. It also focuses attention on a wide range of consumer issues including the quality of housing and the surrounding environment. Apart from the quality of workmanship, a

recurrent concern is that of the design, size and nature of the housing provided. Are we building mere pigeon-holes with inhuman living conditions or are we concerned about building homes for people?

Attention is also drawn to problems such as disappearing open spaces, environmental problems such as flash floods, hill cutting, pollution and damage to property by adjoining developments. Another shortfall is that there is a lack of comprehensive and integrated town planning and co-ordination between the various authorities.

In the light of all these issues, the role of consumer organisations and consumer education is critical in improving the plight of consumers in the country. In particular, it calls for more education on the part of consumers so that they are aware of their rights and are able to articulate their concerns effectively.

Productivity in housing and international experiences

Chapter 16 presents a market study on experiences of other countries in managing their housing problems. In the course of the analysis, the chapter attempts to distil relevant lessons from efforts made by selected countries. The experiences and eventual outcome provide certain measurements of productivity parameters and these are used to compare the effectiveness and efficiency of housing management.

In essence, the chapter narrows the discussion on the premise that as the population growth of Asian countries is concentrated in the cities, urban housing management has more priority than rural housing. This argument is supported by data on land supply in rural and urban areas and the tendency of any urbanisation process to spin off city slums and urban squatter settlements. The experiences of two city states—Hong Kong and Singapore—are highlighted with extensive discussion on how city slums, squatter settlements and housing demands are managed by their respective housing authorities.

It is noted that construction of low-cost dwelling in Malaysia, particularly in the Klang Valley is insufficient to meet the needs of the city's large and growing squatter population brought about by rural-urban migration. Evidence suggests that the distribution of houses built by cost category did not reflect the real housing needs pattern of a substantial proportion of households rooted in the poor, low and low-medium income groups. The majority of new housing being built were more targeted for the medium to high-end market. Some 20 per cent of Kuala Lumpur's population of 1.1 million (in a 1992 survey) were squatters. The city's population is expected to grow to more than two million by the year 2000. The greater urbanisation in Malaysia will challenge the government's faculty in the provision of adequate and affordable shelters.

Having examined and outlined the approaches taken by Hong Kong and Singapore, the chapter offers a suggestion that the government must take a lead role in housing with the private sector playing a complementary role. A time-tested approach is the large scale emphasis on public housing in urban areas, either in the form of subsidised rental units or units for sale at affordable prices. The chapter concludes by stressing that the international assessment on successful or unsuccessful housing management elsewhere can help to provide valuable lessons for future housing policy formulation in Malaysia. The crux of the issue is to stimulate solutions, both short and long term, to accommodate the ever increasing urban population caused by rural-urban migration drift and to determine what formulae should be embraced to govern future housing policies.

Other aspects of the local housing industry

Given the complexities of the housing industry, it is not possible to cover every aspect in the chapter to chapter review. There are also some common views expressed by various writers which are taken up by several chapters in the book. To avoid repetition, this section will examine some of these common views.

- The issue of shoddiness in construction work is a factor that has been the cause of perennial complaints against the housing industry. With increasing reliance on lowly-skilled immigrant or contract workers, and with the demand for housing, especially for low medium and low-cost houses, well surpassing supplies, it is no surprise that the quality of construction works in housing has been a source of complaints.
- The late issuance of certificates of fitness has often been cited as the cause holding up the hand over of many physically-completed projects. It is no secret that in many cases, the delays in issuing certificates of fitness are the root cause of corruption. The efficiency management in this respect is an urgent factor if the supply and delivery systems of housing are to be improved.
- It is hard to explain why housing prices appear to be so high and constantly increasing, especially in some urban centres, and why there is never enough low-cost housing to satisfy demand. This happens despite direct government efforts and regulatory controls. On the other hand, there is also a perception that such government intervention have inevitably affected the costs and prices of housing although little has been done to estimate the actual impact on costs and benefits and their incidence.

In a ‘nutshell’ this overview has tried to bring into focus issues of significance. It is hoped that this discussion is helpful in leading on to further reading of the various chapters which would no doubt furnish more details on the relevant topics.

Issues and policy directions

It is not within the scope of this overview to present the numerous recommendations made throughout the various sections, especially since the final chapter already fulfils this role. However, to provide a preliminary overview, some of the most significant issues and areas of policy recommendations made are highlighted herre.

- The issue of low-cost housing has featured prominently in most of the reviews and analyses. Many recommendations have been addressed to the actual definition of low-cost housing, its ceiling price limitation, supply and demand, government intervention, and the need for a redefinition and revision of the ceiling price for low-cost housing.
- The issue of the general escalation of housing prices in general, and especially in urban areas, has also been discussed quite substantively. The argument is that affordability should be the hallmark of housing in the country and policy directions should adopt a new impetus to address the problems of house prices rising beyond the reach of many except a select high-income group.
- The issues of Bumiputera housing, Bumiputera participation in the housing industry, and the 30 per cent quota and discounts for Bumiputera house purchasers have also been subject to very substantive discussions. Recommendation and policy directions covering these sectors have been extensively discussed and highlighted.
- Rural and estate housing is a sector that has not been given much priority but there is now a growing recognition that this sector would need substantive assistance. A number of improvement measures have been recommended.
- The issue of labour in the local housing industry, especially the increasing use of contract and immigrant labour, has attracted a great deal of discussion and concern. Inevitably, many recommendations have been made to address this issue.
- On housing and the environment, there has been rising concern about the deterioration of the environment caused by many housing projects. There is unanimous consensus that the problem must be seriously addressed and various measures have been suggested to improve the situation.

- The issues of housing delivery and the issuance of certificates of fitness have also attracted much attention. There have been many complaints regarding these issues which seriously warrant redressal measures which no doubt have also been recommended.
- In respect of the legal and administrative framework, many questions have been raised about whether we are over-regulated and how effective the existing legislation and enforcement have been. Nevertheless, it is the consensus that the weak link is in enforcement and recommendations have been made to redress the shortcomings with some suggestions as well to improve some of the existing legislation.
- Additionally, some suggestions have also been made on financing house development and home ownership, drawing lessons from international experiences, improving productivity and technology in housing, addressing consumer needs, and facilitating land supply, acquisition and development of Malay reserve land.

Conclusion

Thus far, it has been noted that the largely ad hoc and reactive approach to solving housing woes has at best only resulted in partial solutions. The future calls for a whole new perspective and approach with proper and continuous co-ordination and co-operation between the government and the private sector to ensure that all Malaysians who desire to own their own houses are given the opportunity to do so.

As the situation stands currently, it has mainly been the developers who have been asked to make efforts to extend house ownership especially in low-cost housing. What about those who also directly benefit from the spin-offs in the housing industry such as the banking sector, building materials manufacturers and sellers, and the thousands of professionals (architects, surveyors, engineers and lawyers) who have benefited from the industry? There is no doubt that these sectors and people should also be made to contribute to the proper development of the industry as well as to assist the government in its social role in providing affordable and liveable housing for the poor.

Thus, as the government engages itself actively to manage the efficient and healthy development of the housing industry, the private sector must also help to provide easy and relatively affordable access to financial resources, to improve the delivery system, to be fair and ethical in their dealings, and to be responsible in putting up quality and liveable houses regardless of the types of houses that may be constructed.

In spite of the myriad problems that plague the industry, it is encouraging to note that the Malaysian housing industry still looks very healthy and

seems poised for greater achievements. Housing developers are increasingly responding to the government's call to help the low-income group own affordable houses and, as far as possible, are aligning their operations in line with government objectives. Malaysia can be proud of the fact that it is probably among the few countries in the world where the private sector plays such a prominent role in assisting the public sector to cater to the welfare of the poor in meeting their housing needs. The achievements and concrete actions of the private sector speak for themselves.

The outlook appears to be bright. After many decades of experiences and lessons from past mistakes and traumatic periods, the housing industry has managed to ascend to new heights of success. The survival instinct developed over a diverse background of ups and downs, has nevertheless made the industry relatively more resilient compared to what it was prior to 1985-86, the period of the worst housing collapse experienced during the recessionary period. What has emerged, therefore, is an industry that is more professional, technically more competent, competitive and forward looking – an industry that is capable of meeting the housing needs of a rapidly growing Malaysia, given the right policy and incentive support.

However, this should not prompt the industry to be complacent and to endlessly pursue high profits without due regard for the consumers. Like the government, the property developers also carry a very important social responsibility. However, the government, where possible, will work towards creating an environment to enable developers to continue to earn reasonable profits and build houses in line with the government objectives of affordability and availability of house ownership opportunities for all groups of society.

But the government can only do just so much. In formulating policies, the government must always be vigilant of the fact that policies directly and indirectly affect demand and supply. The organisation of land and housing development, the organisation of the property, construction and materials industries, the planning of infrastructure, the development of an efficient institutional framework and the involvement of the government in housing production, all have a direct bearing on the supply of houses and the consequent responsiveness to shifts in demand. Incentives may be good on one hand. However, the various players in the industry, the departments and the ministries, the local government, the developers, the professionals, the financiers, the materials suppliers and the consumers must put their acts together and work in consonance, complementing each other in what each one does best.

Historical Perspective on Housing Development

Mohd Razali Agus

Abstract

Rapid urbanisation has had a tremendous impact on urban areas in Malaysia in terms of population growth, housing needs, sustainable environment and employment opportunities. Low-income groups, comprising mainly of new residents to the city who lack the needed resources to cope with rapidly changing conditions, have particularly felt these effects. While there has been a persistent concern with the conditions of housing for lower-income groups, it was not until the beginning of Independence that new initiatives were developed to implement programmes specifically for their needs. The rapid urbanisation and industrialisation during the New Economic Policy (NEP) era (1971-90) saw a tremendous transformation of the need for housing in urban areas. Bumiputeras who were encouraged to migrate to urban areas became the new generation to own properties in urban areas. House ownership became part of the NEP's objective in creating a commercial and industrial Bumiputera urban community. New policies of low-cost housing in urban areas were formulated and implemented by various public housing development corporations and agencies. In the late 1980s, the promotion of public and private partnership in

housing development has been well-received by both the government and private developers. This chapter discusses the historical development of various housing policies in Malaysia and also assesses the role of both the public and private sectors in providing affordable housing, especially for lower-income groups. An overview of housing problems is highlighted and the current policy on privatisation of low-cost housing is assessed.

Introduction

One of the social objectives in Malaysia's development thrust is to provide public low-cost housing as a basic need based on the concept of home-owning democracy. This recognition has led to the formulation of new policies and programmes aimed at ensuring that all Malaysians, particularly the urban poor, have access to adequate shelter and related facilities.

During the colonial administration, housing problems were associated with squatter dwellings and overcrowded accommodation.¹ After Independence in 1957, the federal government paid more attention to the housing needs of the lower income groups. With the introduction of the NEP in 1971, housing programmes undertaken by both public and private sectors have been directed towards meeting the specific needs of the population.

The NEP was initiated to foster national unity and nation-building through the eradication of poverty, irrespective of race, and to eliminate identification of race with economic function and geographical location.² Under the NEP, the housing industry was envisaged to play a leading role in stimulating economic growth and in spearheading industrialisation and urban development.

Since the early 1970s, Malaysia has undergone rapid urbanisation and industrialisation. This can partly be attributed to the NEP, which addressed the problems of economic, ethnic and regional imbalances in the country and envisaged the restructuring of society in the areas of housing, commerce and industry. Urbanisation, industrialisation and Bumiputera participation in the urban economy were key strategies of the NEP. Non-Bumiputeras were encouraged to be partners in economic endeavours.³

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1. *Draft of the Development Plan of the Federation of Malaya, 1950-1952.*
 2. *Second Malaysia Plan, 1971-1975.*
 3. Mohd Razali Agus (1989c), 'Urbanisation and Low-Income Housing in Malaysia' and (1989d) 'Impact of Urbanisation on the Urban Malays of Malaysia: Problems of Homeownership of the Lower Income Groups'; and Kamal Salih (1979), *Urban Development in Malaysia.*

The urbanisation initiative in the NEP first focused on the development of housing estates and industrial centres in new areas, and the migration of rural Bumiputeras to urban areas.⁴ This was essential in achieving economic balance between urban and rural areas. In the various national development plans (Third Malaysia Plan, 1976-80; Fourth Malaysia Plan, 1981-85; and Fifth Malaysia Plan, 1986-90), this strategy was further expanded to include the following elements:⁵

- The spreading out of urban development rather than perpetuating the polarisation of such development in specific regions. New housing estates and industrial centres were set up in the less developed states to create a more balanced distribution of economic activities in underdeveloped areas;
- The integration of the development of these centres with their hinterlands to bring about greater urbanisation and industrialisation in the rural areas;
- The strengthening of linkages between the various corridors of development, new housing estates, industrial centres and new townships through the development of a denser system of urban centres and specialisations. This was to ensure the spread of industries, housing estates and, more importantly, urban employment opportunities and services to a wider range of the population, especially Bumiputeras.⁶

Housing policy and development

In many developing countries, public sector housing has been associated with low-cost housing for lower-income groups. Governments all over the world have been concerned with the provision of adequate housing to meet the needs of their people. Public intervention in housing markets ranges from the provision of subsidies for low-income households to the construction of public low-cost housing for poorer households. In Malaysia, the provision of cheap housing as a basic social need has been emphasised in its social development programmes.⁷

4. *Second Malaysia Plan, 1971-1975* and Mohd Razali Agus (1989d), 'Impact of Urbanisation on the Urban Malays of Malaysia: Problems of Homeownership of the Lower Income Groups'.

5. *Third Malaysia Plan, 1976-1980; Fourth Malaysia Plan, 1981-1985; and Fifth Malaysia Plan, 1986-1990.*

6. Kamal Salih (1979), *Urban Development in Malaysia.*

7. *Fifth Malaysia Plan, 1986-1990 and Sixth Malaysia Plan, 1991-1995.*

Table 1: Allocations for public housing in national development plans

Development plan period	Original allocation (RM million)	% of total	Revised allocation (RM million)	% of total
Second Malaysia Plan (1971-75)	171.89	2.4	239.97	2.7
Third Malaysia Plan (1976-80)	710.15	3.8	1,965.52	6.1
Fourth Malaysia Plan (1981-85)	1,458.00	3.7	4,066.48	8.3
Fifth Malaysia Plan (1986-90)	1,979.64	4.9	3,979.64	9.0
Sixth Malaysia Plan (1991-95)	803.00	1.5	2,056.00	3.5
Seventh Malaysia Plan (1996-2000)	2,875.00	4.3	na	na

Sources: First to Seventh Malaysia Plans and Mid-Term Reviews, Second to Sixth Malaysia Plans.

The public housing programme in Malaysia falls under the social sector of the national development strategy. Generally, the budget allocation for the social sector is of lower priority than the economic sector. In the Seventh Malaysia Plan (1995-2000), the social sector had the second biggest budget (29.3 per cent) after the economic sector (50.0 per cent) and followed by security (13.6 per cent).⁸ From 1971 to 2000, the allocation for public housing development expenditure has never touched 10 per cent of the total national development expenditure (see Table 1).

The housing allocation increased substantially from 2.7 per cent of the total public allocation in the Second Malaysia Plan (1971-75) to 9.0 per cent in the Fifth Malaysia Plan but was reduced to 3.5 per cent in the Sixth Malaysia Plan. Although the government is still concerned with the provision of housing to the masses, under the current plan the task of ensuring this has shifted to private developers. The concern and commitment on the government's part should be encouraged and continued so that the national development goals and objectives of providing housing for all can be achieved. Thus far, the performance of housing programmes, especially low-cost housing, has not been remarkable.

8. *Seventh Malaysia Plan, 1996-2000.*

The colonial housing policy

Before Independence, the concept of public housing was associated with the provision of 'institutional quarters'. The British administration had provided housing facilities for its employees in public institutions such as schools, police stations, hospitals and district offices.⁹ The only programme aimed at providing housing for the Malaysian people was the resettlement of Chinese residents in the New Villages during the Emergency period (1948-60)¹⁰. This programme was part of the British administration's strategy to weaken the support for communist insurgency.

Housing problems had been acknowledged by the British administration.¹¹ Provision of housing for civil servants and professionals in the British administration was badly needed to strengthen efforts to combat the communist insurgency.¹² The Draft Development Plan of the Federation of Malaya stated that housing problems had existed before the Japanese occupation.¹³ The colonial government had classified the 'hard core' of the housing problem to consist 'firstly, of houses which are inadequate both with regard to accommodation and conveniences and, secondly, of houses which are suitable in themselves but have become a danger to public health due to gross overcrowding'.

These problems had been aggravated by the rapid urbanisation then. The colonial administration had appointed a committee in December 1946 to consider and report the nature and the extent of the housing problem in Malaya and the financial and other measures required for its solution. The committee identified two types of housing which needed attention:

- Squatter type dwellings which were classified as hovels; and
- Overcrowded cubicles .

9. Tan Soo Hai and Hamzah Sendut (eds) (1979), *Public and Private Housing in Malaysia*; and Mohd Razali Agus (1987), 'The Role of the State in Distributing Low-Cost Housing in Malaysia: A Comparative Study'.

10. Mohd Razali Agus (1986b), 'Politics of Housing' and (1992b) 'Housing Development and the Urban Kampung'.

11. *Draft of the Development Plan of the Federation of Malaya, 1950-1952*; and GA Atkinson (1953), *Report on Housing for Government Officers in Division II and Lower, The Federation of Malaya*.

12. Newcombe, Vernon Z (1956), 'Low-Cost Housing in Malaya' (1955) and 'Housing in the Federation of Malaya'.

13. *Draft of the Development Plan of the Federation of Malaya, 1950-1952*.

The committee's report on housing problems in Malaya, contained in *White Paper No 70 of 1949*, recommended the establishment of a Housing Trust with powers to lease or purchase and hold land and buildings, to build houses, shops and shop-houses, and to sell, lease or let land and buildings. The Trust was empowered to acquire land in accordance with existing law, and to borrow and raise capital or make loans. The Housing Trust was also given the power to require the owners of vacant land in appropriate cases to develop them, or in default to pay special 'development rate', which would be accrued to the Trust.

The United Nations' Department of Social Affairs had at that time examined the living conditions of lower income families in Southeast Asia, including Malaya, focusing on low-cost rural housing, resettlement problems and the promotion of the self-help principle.¹⁴ In its report, it also highlighted the overcrowded and sub-standard housing in Malaya.

Policy on home-owning democracy

The post-Independence concept of public housing advanced from merely providing housing for government officials to the concept of home-owning democracy. In the Second Five-Year Plan (1961-65) the housing policy was concerned with the provision of cheap housing as a basic social need. This was based on the home-owning democracy concept introduced since Independence. Under this concept, rural public low-cost housing programmes implemented by the Housing Trust were targeted specifically towards rural poor households with incomes of below RM300 a month.¹⁵ For the first time the local population, particularly Bumiputeras, were included in a major social programme in a national development plan. The federal government also constructed housing units which could be rented or purchased with instalment credit.¹⁶ However, funding continued to be allocated for institutional quarters for civil servants.

The First Malaysia Plan (1966-70) stressed the role of the government in providing low-cost housing as 'one of the major efforts of the government to promote the welfare of the lower income groups'.¹⁷ The Plan stated

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14. United Nations Department of Social Affairs (1951), *Low-Cost Housing in South and South-East Asia*.
 15. *Federation of Malaysia Second Five-Year Plan, 1961-1965*, p48; and Mohd Razali Agus (1986b), 'Politics of Housing'.
 16. *Federation of Malaysia Second Five-Year Plan, 1961-1965*, p49.
 17. *First Malaysia Plan, 1966-1970*.

that the lower income groups were given special attention because 'the incomes of this economically weak section of the community are too low to encourage private developers to enter this field of housing development'. The services of the Housing Trust were provided to state governments on generous terms for undertaking low-cost housing projects.

Additionally, the federal government highlighted the need to tackle the squatter problem in larger urban areas. New construction techniques, including the prefabricated or industrial system of building construction, were introduced in three pilot projects. This was intended to speed up construction and to lower costs compared with the conventional method.

Housing and the New Economic Policy

While the first prong of the New Economic Policy was geared towards programmes to eradicate rural poverty and increase the productivity and income of the rural poor, these programmes were not sufficient to rectify prevailing inter-ethnic socio-economic and political imbalances. The second prong of the NEP was conceived not merely as an instrument to reduce inter-ethnic differences but, more importantly, to restructure employment and wealth ownership patterns such that all ethnic groups can meaningfully participate in and benefit from the process of economic growth and national development.

The second prong of the NEP was necessary because prevailing socio-economic imbalances persisted in all dimensions including income, poverty, employment, housing and ownership of wealth and assets.¹⁸ Differences in income level among the major ethnic groups were traceable to their respective distribution in employment in the various sectors of the economy. The Malays were mainly concentrated in agriculture where productivity is lowest. They were under-represented in the higher-paid occupational categories such as the professional and technical, administrative and managerial, and clerical groups.

The wide differences in participation of the various ethnic groups in the national economy were related to differences in control over the factors of production. Ethnic economic imbalances were even more pronounced in the ownership of equity capital, fixed assets and financial capital, including housing and property. Mohd Yusof Ismail in his study on 'Malaysia's New Economic Policy: Its Impact on Urban, Regional and Sectoral Distribution of Income, Inequality and Poverty' said Malays and Malay interests stood at 2.4 per cent in 1970, non-Malays at 34.4 per cent and foreigners at 63.3 per cent.

18. Mohd Yusof Ismail (1987), 'Malaysia's New Economic Policy: Its Impact on Urban, Regional and Sectoral Distribution of Income, Inequality and Poverty, 1970-80'.

The New Economic Policy was conceived to prevent further perpetuation of this imbalance with specific restructuring objectives:

- Increasing the share of Malays in employment in the modern sector and, within this sector, improving the income of Malays by upgrading their skills;
- Increasing the Malay share in corporate ownership, including housing and property;
- Increasing the number of Malay businessmen or entrepreneurs and the degree of Malay managerial control.

Policies to increase the rate of Malay employment, particularly in the private sector, extended from these employment policies. The principal legislation used to generate more recruitment of Malays was the Industrial Co-ordination Act 1968 which incorporated elements of regional location and tax incentives for compliance with the employment restructuring conditions.

Programmes for employment restructuring also included training and manpower development in specific areas where Malays were still lacking. To foster professional and skills training, existing facilities at the local universities were expanded to include courses on architecture, housing, planning and estate management. More important was the effort to restructure the pattern of ownership and control of assets and wealth, and to increase Bumiputera entrepreneurial and managerial talent to facilitate the creation of a Bumiputera commercial and industrial community.

In addition, the federal government introduced a quota system in housing development to ensure that at least 30 per cent of houses to be built were allocated for Bumiputeras. To achieve this target in ownership of capital assets, the federal government reallocated public development expenditure in housing and urban development programmes to bridge the economic imbalance. Thus public development expenditure has been used and is likely to continue to be used to reduce inter-ethnic economic differences and to ensure the Bumiputera housing ownership quota is met.

Public investment, one of the major tools for restructuring, has been effected through the creation of several public enterprises or corporations. Some public enterprises which were already in existence before the NEP, were engaged in various undertakings such as:

- Opening up of new land and settlement schemes by the Federal Land Development Authority (Felda);
- Provision of housing finance by Bank Bumiputera;
- Promotion of Malay participation in commerce by Majlis Amanah Rakyat (Mara, Council of Trust for Indigenous People) and in industry by Malaysian Industrial Development Authority (Mida); and
- Provision of training facilities and consultancy services (Mara).

With the implementation of the NEP, the tempo, volume of activities and level of funding of these organisations were rapidly stepped up. A prevailing view is that some of these enterprises were created merely to create visibility for the government's acknowledgement of obligation to help Bumiputeras in business and property development.

New agencies were therefore necessary. New corporations set up following the implementation of the NEP include Permodalan Nasional Berhad (Pernas), Urban Development Authority (UDA) and State Economic Development Corporations (SEDCs) with specific tasks of venturing into commerce and industry either singly or through joint ventures with other private or other public agencies. Through the public sector housing development agencies (the SEDCs and UDA) and Syarikat Perumahan Pegawai-pegawai Kerajaan (SPPK), the federal government has played an important role in public housing programmes both in urban and rural areas, and ensured that Bumiputeras were given opportunities to own houses in urban areas.

However, the overall national objective on housing remained the same during the second half of the NEP. The federal government ensured that all Malaysians, regardless of ethnic group or income, had access to adequate housing. A number of measures were taken to bring housing within the reach of the people, including innovations in planning and design of low-cost houses. Measures to reduce the costs of housing included higher-density construction, standardisation of infrastructural facilities and the use of lower-quality finishes with appropriate modification in design. A National Consultative Council on Housing was launched in 1980, representing both the public and private sectors, to provide a forum for continuous dialogue to resolve the problems affecting the housing industry. More specifically, public low-cost housing was given higher priority in housing development programmes in the NEP.¹⁹

The federal government had been encouraging Malays to migrate to urban centres as part of the NEP strategy to change the character of the Chinese-dominated urban population and also to create a new Malay commercial community in urban areas. As a result, acute urban housing problems began to emerge in many cities. The federal government initiated a low-cost housing programme by regulating the sales of low-cost housing with a ceiling price of RM25,000. A major portion of the public housing budget was allocated for the low-cost housing projects. This was also part of the federal government's efforts to encourage Bumiputera participation in the modern sectors of the economy.

19. *Second Malaysia Plan, 1971-1975*; and Lim Cheng Tatt (1982), 'Implementation of Low-Cost Housing Under the Fourth Malaysia Plan'.

In the Third Malaysia Plan, public housing programmes focused mainly on low-cost housing, the construction of houses in land settlement schemes, and the continuing provision of staff quarters. To ensure the smooth implementation of low-cost housing, the federal government reviewed, amended and enacted legislation on the specifications and requirements of urban buildings and urban planning.²⁰ To open up the interior hinterland within Peninsular Malaysia, Felda land schemes were initiated to bring rural settlers into small townships to gain economic efficiencies in the provision of housing and infrastructural services. This initiative continued to expand and in the early 1970s contributed to the Regional Development Authorities' programmes which in turn relied on Felda schemes to provide the nucleus for the development process.

Land development programmes implemented had been fairly successful. During the NEP, Felda continued to be involved in land development and was 'the single most important land development agency in the country'.²¹ Felda's objectives paralleled those of the NEP:

- The economic utilisation and development of sizeable areas of unused or underdeveloped land, thus ensuring minimum costs and maximum returns;
- The settling of deserving and qualified landless families on the land thus developed;
- The establishment of infrastructural services such as transport and communication facilities in the various settlement schemes;
- The establishment of social and public amenities such as schools, clinics, and water supplies to the settlers;
- The provision of modern processing and marketing facilities to ensure efficient production and fair prices for the settlers; and
- The provision of training and extension services for promotion of good husbandry and social development.

The land development target throughout the duration of the NEP (1971-90) had been set to exceed the area developed by Felda in 1956-70, which was 308,400 acres. The federal government had set a target of 200,000 acres for Felda during the Second Malaysia Plan and in the Third Malaysia Plan had revised targets from 350,00 acres to 500,000 acres. It is significant that the increases in Felda targets in the Second and Third Malaysia Plans were substantial – more than 50 per cent and 42 per cent respectively. This showed that the government was counting on Felda to implement land

20. *Mid-Term Review of the Third Malaysia Plan, 1976-1980*, p213.

21. *Second Malaysia Plan, 1971-1975*, p133.

development and housing for rural immigrants in the regional development areas. The government had targeted for a total of 109,300 families to be resettled by Fel'da – approximately 710,450 people or about four per cent of the total population in Malaysia. To sum up, Fel'da had several goals and strategies, the most important of which was to create employment for rural populations through agricultural and housing programmes.

In the Fourth Malaysia Plan, besides the Fel'da schemes, the federal government concentrated on low-cost housing and the provision of sites and services in rural areas.²² Private sector developers concentrated on medium- and high-cost housing. Another significant development during this period was the introduction of the prefabrication system of construction on a wider scale after the successful implementation of pilot projects during the Third Malaysia Plan period.

Since 1981, the Ministry of Housing and Local Government has introduced and implemented a concept of low-cost housing incorporating the following characteristics:

- Selling price: not exceeding RM25,000 per unit;
- Target groups: households with a monthly income not exceeding RM750;
- House type: flats, single-storey terrace or detached houses; and
- Minimum design: standard built-up area of 550-600 square feet, two bedrooms, a living room, a kitchen and a bathroom-cum-toilet.

The federal government's low-cost housing policy was implemented through two major housing programmes:

- Public low-cost housing programmes; and
- Site and services scheme.

Public low-cost housing programmes

Public low-cost housing programmes were accorded the highest priority in the Fourth Malaysia Plan and were built by both the Ministry of Housing and Local Government and SEDCs.²³ Under these programmes, the Ministry of Housing and Local Government provided guidelines to the state governments and implementing agencies such as SEDCs. Various federal agencies and SEDCs have promoted the active participation of Bumiputeras in urban economic activities

22. *Fifth Malaysia Plan, 1986-1990*, p521.

23. Ministry of Housing and Local Government Malaysia (1994a), *Housing Strategies and Programmes in Malaysia*; and (1994b), *National Housing Development*.

The state and federal governments played a crucial role in increasing the number of statutory bodies in urban and housing development programmes such as UDA, SEDCs, Regional Development Authorities, SPPK and Setiausaha Kerajaan Incorporated (SUK). The federal government authorised these agencies and companies with bigger capital outlays to enable them to manage their efforts more effectively and compete with other established non-Bumiputera housing developers. Non-Bumiputera companies were requested to support the NEP by assisting Bumiputeras and training them to participate in housing, commerce and industry as their partners. Thus, the state bureaucracy, with the support of some non-Bumiputera businessmen, was largely responsible for greater Bumiputera participation in housing and urban development in Malaysia.

The criteria for application for low-cost housing included the applicants' monthly household income, age, marital status, citizenship, household size, hometown and political affiliations. Except for income level, state governments were allowed to vary these conditions according to their individual requirements. Problems faced in the interpretation of these guidelines have affected the lower income groups' opportunities to own low-cost housing.²⁴

For public low-cost housing programmes, the financial assistance provided by Treasury to state governments has been administered through the Ministry of the Housing and Local Government. The National Housing Department planned and implemented these projects with the co-operation of state governments. These housing loans were normally issued on a 25-year term with an additional grace period of two years. Treasury charged the state governments an interest rate of not more than four per cent per annum. In turn, the state governments issued loans to buyers on 25-year terms at an interest rate of not more than 5.5 per cent per annum.

The site and services scheme

In the late 1960s, many developing countries were beginning to feel both the financial burden and political pressures from failed housing policies. Housing policy papers, often linked to national master plans, were drawn up in many countries. New approaches to housing provisions and methods to reduce the financial costs borne by the public sector were sought. One such policy discussion, held in Malaysia in the early 1970s, resulted in a request to the

24. Lim Cheng Tatt (1982), 'Implementation of Low-Cost Housing Under the Fourth Malaysia Plan' and Mohd Razali Agus (1995a), 'The State and Low-Cost Housing in Peninsular Malaysia'.

World Bank for assistance to provide shelter and services for the urban poor who were displaced from squatter areas in Kuala Lumpur.²⁵ Similar activities also occurred in Indonesia²⁶ and the Philippines.²⁷

The World Bank's housing development policy became evident with the publication of three documents which constituted a framework for its urban development programmes.²⁸ This represented a new approach to low-cost housing, recognising that more than half of the households in developing countries could not afford to own or build their own houses. The World Bank approach focused on the provision of affordable sites and services, and the upgrading of slums. Allocations were to be targeted towards low-income households but, significantly, subsidies were to be eliminated and cost-recovery emphasised. World Bank loans were to be regarded as seed capital from which replication could be pursued and, perhaps, by demonstration, more capital could be attracted into housing.

In the early 1970s, the United Nations Development Programme (UNDP) together with the World Bank recommended to the Malaysian government the need to relocate some urban squatters away from the site of the proposed Kuala Lumpur-Seremban highway.²⁹ The highway project was part of the World Bank's Urban Transport Programme in Kuala Lumpur. The Chinese squatter community in Kampung Salak South was identified for relocation. A site and services programme was proposed as the 'solution' to resettle these squatters.

The site and services pilot project was funded partly by a loan from the World Bank. The project catered for the provision of low-cost housing for 1,400 households to resettle squatters affected by the construction of the new Federal Highway-Route 1 (Kuala Lumpur-Seremban Expressway). It also included about 500 industrial and commercial sites and upgrading for approximately 2,000 households.

The project comprised three major components:

- New sites and services;
- Squatter area upgrading; and
- Sites and services units.

25. Wegelin, Emiel (1978), *Urban Low-Income Housing and Development*.

26. National Development Corporation, Indonesia (1976), *Housing Policy and Program in Indonesia*; and Soegijoko, Sugianto (1985), 'Managing the Delivery of Urban Services for the Poor in Indonesia: Case Study of KIP in Bandung'.

27. Santiago, Asteya M (1985), 'San Martin de Porres: A Case Study of Squatter Settlement Upgrading in Metro Manila'.

28. World Bank (1972), *Urbanisation*; (1974), *Sites and Services Projects*; (1975), *Housing*.

29. Mohd Razali Agus (1992b), 'Housing Development and the Urban Kampungs'.

It was divided into three phases. Phase 1 included new sites and services for 404 residential lots, 63 small industrial lots, 10 shop-houses and a community centre. Facilities and services were provided mainly for squatters displaced by the construction of the Kuala Lumpur-Seremban Expressway and the Southern Middle Ring Road project in the first phase.³⁰

Actual cost-recovery for the project was made through plot sales based on direct and averaging basis. The latter approach embodied some cross-subsidisation between the costs of residential, industrial and commercial lots. Industrial and commercial lots generated sufficient surplus to cover the deficits in the sales of the residential lots. With cross-subsidisation, plot dimensions and the standards of services varied, with higher cost units having better provisions. This created some segregation in the development of this programme. Some administrative weaknesses also resulted in the project implementation. As Peter W Amato highlighted, bureaucratic red tape delayed the progress of the project.³¹ Due to 'conditions of closed institutional settings' of the public agencies, new and innovative approaches in public administration and bureaucracy tended to be discouraged by the authorities. Foreign consultants also did not take into account the complexity of the project implementation in a multi-ethnic setting such as the Salak South sites and services project.

Unfortunately, earlier lessons from similar programmes in rural areas in the 1950s and 1960s were ignored by both local planners and foreign consultants. The rural sites and services programme was only partly successful because the concept of core housing was alien to local authorities and only a few states implemented it.

A number of problems emerged in implementing the sites and services programme in Kuala Lumpur. Some of these could clearly be expected with a programme as complex and new such as squatter relocation, and sites and services development in which several federal and local agencies were involved. For instance, the Federal Territory Land Office was reluctant to become directly involved in giving new land titles to predominantly non-Malay squatters because there were no consultations between the Urban Development Authority, Kuala Lumpur City Hall and other participating agencies in matters such as land acquisition, planning standards and financial assistance to squatters.³²

30. World Bank (1976), *Appraisal of Second Kuala Lumpur Urban Transport Project*; and Mohd Razali Agus (1992c), 'Spatial Patterns in a Growing Metropolitan Area - Kuala Lumpur'.

31. Amato, Peter W (1982), 'The Malaysian Urban Development Authority: A Case Study'.

32. Amato, Peter W (1982), 'The Malaysian Urban Development Authority: A Case Study' p272.

Disputes between these agencies and the contractors had affected the completion of the project. It took a full four years to construct these houses. They were only completed in 1980.³³ It took more than two years to redistribute them because UDA could not meet the new requirement of selling the houses to Malay squatters. As a result, many land plots reserved for Malay squatters were left vacant. About 30 per cent of them eventually resold their houses to middle-income Chinese buyers.

The Ministry of Housing and Local Government had, since the Fourth Malaysia Plan, been actively involved in the Site and Services Scheme – aimed at providing housing for households with incomes of less than RM500 per month. Two types of low-cost houses were constructed by the Ministry.³⁴ For the first option, only site and basic infrastructure were provided at a cost of RM5,000 for a lot size of about 395 square meters. The second option offered site and basic infrastructure plus a core house with about 400 square meters space, complete with sanitary services, at RM10,000 per unit. The core unit was planned to accommodate future expansion. The National Housing Department supervised and monitored the implementation of the Site and Services Scheme.

The human settlement concept

Under the Fifth Malaysia Plan, housing programmes began to be implemented along the concept of human settlement. Under this concept, the provision of social facilities such as schools, clinics, and community halls was emphasised, alongside the provision of basic infrastructural facilities and the promotion of economic opportunities. This was a continuation of the national development strategy to upgrade the quality of life and to promote national unity.

The implementation of the human settlement concept in the housing industry was accepted gradually, first by the public sector and later continued by private sector developers. Provisions were made for large-scale housing development projects in major urban centres to include social facilities and amenities for new settlements. Basic infrastructure, social facilities and commercial sites, including primary and secondary schools, community halls, mosques, clinics, shop-lots, open space and recreational areas, had to be allocated in the site and layout plans of these areas. In smaller housing estates, communities had to share common facilities provided by developers of neighbouring areas.

33. Johnstone, Michael (1983), 'Housing Policy and the Urban Poor in Peninsular Malaysia' p263.

34. Ministry of Housing and Local Government Malaysia (1994a), *Housing Strategies and Programmes in Malaysia*; and (1994b), *National Housing Development*.

The integrated human settlement programme was first introduced and implemented in Kuala Lumpur's New Growth Areas (NGAs) located at the fringes of the city.³⁵ Four areas were designated as New Growth Areas – Wangsa Maju, Bandar Tun Razak, Bukit Jalil and Pusat Bandar Damansara. New low-income settlements were part and parcel of this programme under the integrated human settlement approach.³⁶ This was key to the undertaking in addition to the provision of social facilities such as schools, clinics and community halls. These integrated settlements expanded the range of possibilities open to the urban poor for socio-economic improvement and created 'informal sector' job opportunities. The Kuala Lumpur Structure Plan (1984) stated one of its objectives to be to create four major sub-centres of self-contained mini-cities structured to meet the socio-economic needs of residents and the surrounding areas.³⁷

Planned with the objective of promoting neighbourliness among residents, Wangsa Maju town exemplifies the ideal, well-planned township.³⁸ It was designed to meet the need for quality living and equipped with social facilities and modern infrastructure. In line with the public housing policy, the development consisted of five-storey walk-up flats surrounded by pedestrian malls, free from traffic. Green belts lined the walkways. Wangsa Maju's comprehensive layout plan enhanced the natural undulating landscape with modern development. To date more than 80 per cent of the projected population have moved into this integrated settlement township. Public facilities such as schools, a mosque, surau/madrasah, a community hall, a public library, a clinic, a playground, shop-lots and a hawkers' centre have been provided. Adding to their convenience, these facilities were situated in the centre of the township and linked to the pedestrian malls.

The modern layout was designed to provide easy access for residents without sacrificing environmental aspects. A hawkers' centre was created to accommodate both legal and illegal hawkers under one roof. This was to encourage small enterprises in newer areas of the city to be formalised by Kuala Lumpur City Hall. Nevertheless, a few hawkers have returned to their former sites in the city centre.

35. Mohd Razali Agus (1989a), 'New Housing Policy in Malaysia: Public and Private Co-operation for the Development of Low-Cost Housing'.

36. Mohd Razali Agus (1987), 'The Role of the State in Distributing Low-Cost Housing in Malaysia: A Comparative Study'; and (1989a), 'New Housing Policy in Malaysia: Public and Private Co-operation for the Development of Low-Cost Housing'.

37. Mohd Razali Agus (1987), 'The Role of the State in Distributing Low-Cost Housing in Malaysia: A Comparative Study'; and (1989a), 'New Housing Policy in Malaysia: Public and Private Co-operation for the Development of Low-Cost Housing'.

38. Mohd Razali Agus (1992b), 'Housing Development and the Urban Kampungs', p35.

In rural areas, the human settlement concept was implemented through village regrouping programmes. When the concept was first introduced in 1986, it adhered to the objectives of providing social and basic infrastructural facilities, and promoting economic opportunities.³⁹ Implementing this concept in the local authorities' structure plans would ensure the availability of these facilities in housing projects.⁴⁰

The federal government also recommended the type and quality of houses to be built by developers. Affordable housing for rental to lower income groups was made available in major urban areas. The housing units under the programme were rented out for a minimum period of 10 years with an option to purchase at the end of the period.

As part of efforts to stimulate the economy during the mid-1980s recession, the federal government launched the Special Low-Cost Housing Programme (SLCHP) in 1986. Besides helping to stimulate economic growth the three-year programme, which was targeted for completion in 1988, was also meant to increase the supply of low-cost houses. Special privileges were given to the project to enable it to meet its objectives. These included the establishment of a single state-level agency to co-ordinate and regulate all the relevant rules, regulations and standards, as well as to the provision of easier access to funding from various financial institutions.

Malaysia Incorporated and housing policy

Clearly there are limitations to the public sector's capacity to produce low-cost housing and the government seems to have realised this.⁴¹ Added to this, there is a growing thinking among housing developers and professional bodies that the public sector in Malaysia has been burdened with too many responsibilities.⁴² Hence, it cannot be expected to change rapidly to meet new targets of constructing low-cost housing, especially in redeveloping low-income settlements in major urban areas. Since the public sector cannot be expected to undertake the task alone, a new policy has been formulated to incorporate new sectors such as the private and informal sectors in housing development programmes. In fact, the private sector has

39. *Sixth Malaysia Plan, 1991-1995*.

40. *Fifth Malaysia Plan, 1986-1990*, p526.

41. Lim, Cheng Tatt (1982), 'Implementation of Low-Cost Housing Under the Fourth Malaysia Plan'.

42. Sen, MK (1986), 'Problems and Obstacles from the View of the Construction Industry'; and Mohd Razali Agus (1986b), 'Politics of Housing'.

been designated to play the leading role and provide the dynamism in economic growth. As early as 1969, the federal government had proposed that the public sector merely facilitated private sector investments in large-scale development.⁴³ Public sector participation was limited to public works and agricultural development.

In 1981, the federal government encouraged the private sector to lead in providing the stimulus for economic growth and to spearhead further development in public housing programmes. Both the public and private sectors have participated actively in the construction of houses for the lower income groups. This strategy was aimed at reactivating and stimulating the construction sector as well as creating and providing more employment activities. The private sector's role in partnering with the public sector to develop such projects is now seen as one of the ways to enhance its image.

The private sector has often been stigmatised as a body which perpetuated only the interests of the middle and upper classes, and its own profit maximisation motives in its endeavours.⁴⁴ The private sector has been willing to invest in low-cost housing projects because government land is used for housing. Low premiums are paid for land identified for low-cost housing projects. It is also federal government policy to ensure that private housing developers conform to the compulsory construction of 30 per cent low-cost housing units in any housing development project – in line with the government's drive to encourage developers to fulfil their social obligation to the low-income groups.

In turn, the public sector has committed to reduce administrative delays in converting land for housing development since such delays increase development costs and finance charges.⁴⁵ Another aspect of the public-private co-operation is the incorporation of the informal sector by policy-makers in the low-cost housing policy.⁴⁶ Under this policy, squatter settlements are identified to be redeveloped by private housing developers. Both the commercial and

43. *Second Malaysia Plan, 1971-1975*.

44. Johnstone, Michael (1982), 'Residential Construction and Financial Institutions in the Periphery: A Case Study from Peninsular Malaysia'; Drakakis-Smith, David (1977), 'Housing the Urban Poor in West Malaysia: The Role of the Private Sector'; and Mohd Razali Agus (1995a), 'The State and Low-Cost Housing in Peninsular Malaysia'.

45. Lim, Cheng Tatt (1982), 'Implementation of Low-Cost Housing Under the Fourth Malaysia Plan'; and Tan Soo Hai (1983), 'Low-Cost Housing in Malaysia: a Review of Public Sector Involvement'.

46. Mokhtar, Long Idris (1993), 'Urban Housing With Special Emphasis on the Squatter population of Kuala Lumpur'; and Mohd Razali Agus (1993b), 'Squatter Settlements Should be Redeveloped'.

residential units are constructed by private developers and the relocated squatters are guaranteed low-cost housing units at RM25,000 or less. In implementing this policy, the government has provided general guidelines on the concept of partnership between the private and public sectors, and the participation of the lower income groups in low-cost housing programmes.⁴⁷ Thus, the low-cost housing policy under the National Development Policy (NDP) and the Second Outline Perspective Plan (OPP2) emphasised the enhanced role of private developers in the national economy and the greater support to be provided by the government agencies.

The privatisation policy

In the Sixth Malaysia Plan, the housing policy was geared towards attaining the objectives of the National Development Policy and the Second Outline Perspective Plan (1991-2000).⁴⁸ This housing policy still emphasised the development of low-income housing based on the human settlement concept, a continuation of the NEP programmes. However, a new policy of privatisation of public low-cost housing was introduced to solve the housing problem for the poor and lower income groups.⁴⁹ With privatisation, the federal government envisaged the housing sector playing the leading role in stimulating economic growth and in spearheading further industrialisation and urban development.⁵⁰

The NDP maintains the basic strategies of the NEP which aimed to eradicate poverty and restructure society to correct social, economic and regional imbalances and thereby contribute towards national unity. More importantly, the NDP provides the impetus for the country to achieve a fully developed nation status by the year 2020.

Two main dimensions of the National Development Policy that are related to public housing policy in Malaysia are discussed here.

47. *Sixth Malaysia Plan, 1991-1995; and Seventh Malaysia Plan, 1996-2000.*

48. Mohd Razali Agus (1995a), 'The State and Low-Cost Housing in Peninsular Malaysia'; and (1995b), 'Pembangunan Perumahan Wargakota'.

49. Mokhtar, Long Idris (1993), 'Urban Housing With Special Emphasis on the Squatter population of Kuala Lumpur'; and Othman, Abdul Halim, Abdullah Talib and Sanusi Osman (1982), 'Malaysia and the Housing Problems: Searching for Solutions'.

50. Drakakis-Smith, David (1977), 'Housing the Urban Poor in West Malaysia: The Role of the Private Sector'; and Mohd Razali Agus (1986a), 'The New Role of the Public and Private Sectors in Implementing the Special Low-Cost Housing Program: The Malaysian Experience' and (1989a), 'New Housing Policy in Malaysia: Public and Private Co-operation for the Development of Low-Cost Housing'.

First, there is now a greater emphasis on the anti-poverty strategy both in rural and urban areas with a view to eradicating hard core poor households by the year 2000. Second is the rapid development of an active Bumiputera Commercial and Industrial Community (BCIC) as an essential strategy to increase Bumiputera participation in the economy.

The public housing policy, especially the low-cost housing policy, stresses not only the need to eradicate poverty but also to create new Malay urban communities which are active in the national economy. Prime Minister Dato' Seri Dr Mahathir Mohamad has highlighted the need to increase the number of middle class Malay entrepreneurs by the year 2000. House-ownership has been given more attention by the federal government in expanding the urban Malay middle class.

The main objective of the housing initiative under the National Development Policy is to ensure that all Malaysians, particularly the lower income groups, have access to adequate and affordable housing and related community facilities.⁵¹ The emphasis is still on the human settlement concept with the introduction of new approaches. Under the earlier human settlement concept, community facilities were mainly provided by the local authorities. The main problem with this approach was the tendency of housing developers to depend on local authorities to provide community facilities and social services.

Under the new concept of human settlement, the federal government has encouraged private developers to provide new facilities and services as part of their social responsibility to the nation. The concept of social responsibility has found gradual acceptance among some developers who are committed to the implementation of 'caring society' programmes.⁵²

However, in 1996, Deputy Prime Minister Dato' Seri Anwar Ibrahim announced a new strategy to resolve the low-cost housing needs of the country. The announcement emphasised the role of the Employees Provident Fund (EPF) to undertake massive low and medium-cost housing projects throughout the country. According to the EPF, 60 per cent of the 20,000 housing units will be low-cost units to be sold at RM25,000 each. Another 20 per cent will be in the medium-low range to be sold at not more than RM60,000 each and the remaining 20 per cent will be medium-cost to be sold at not more than RM80,000 each.⁵³ This is in line with the Ministry of Housing and Local Government's plan to build 800,000 houses under the Seventh Malaysia Plan.

51. *Fifth Malaysia Plan, 1986-90.*

52. *Sixth Malaysia Plan, 1991-1995*; and Mohd Razali Agus (1994), 'Urban Growth, Poverty and the Squatter Phenomenon in Kuala Lumpur'.

53. *Seventh Malaysia Plan, 1996-2000.*

Sustainable low-cost housing policy

The concept of sustainable development involves the integration of technological, economic, social and political processes. In Malaysia, sustainable development literature has highlighted the fact that environmental degradation is often caused by poverty, especially in urban areas, as the urban poor are forced to exploit resources beyond their renewal limits.⁵⁴ Consequently, the government has identified eradication of poverty and restructuring of society as part of the main objectives of the national development plan. The implementation of low-cost housing programmes in Malaysia has emphasised the interaction of economic development, desired social structure and ecological sustainability.

More importantly, the strategy for an integrated housing development programme has been employed in the construction of low-cost housing in Malaysia.⁵⁵ In many housing development programmes, the public sector played a crucial role in the planning and implementation of low-cost houses. Although there appears to be adequate housing for the whole population there is considerable disparity in the quality of housing. The main areas of concern revolve around the lower income groups occupying squatter settlements or sub-standard housing, and the gap between the lower income and the other groups.

As a result of rapid urbanisation and industrialisation in Malaysia in the last two decades, there is a greater increase in urban population density with its attendant problems. Increased density means greater demands on the existing land for housing, employment opportunities and services. The continuing migration of the rural poor has literally transformed rural poverty into urban poverty.⁵⁶ However, the federal government has introduced several measures to reduce or eradicate urban poverty in Malaysia through a special housing programme for the hard-core poor.

Kuala Lumpur City Hall figures showed that in 1984, the number of households living below the poverty level, that is, with a monthly household income of less than RM350 was 4.9 per cent or 11,800 households. In 1987, this increased to 5.2 per cent or 12,200 households. Figures for 1992

54. *Fifth Malaysia Plan, 1986-90*; and Mohd Razali Agus (1993b), 'Squatter Settlements Should be Redeveloped'.

55. Mokhtar, Long Idris (1993), 'Urban Housing With Special Emphasis on the Squatter population of Kuala Lumpur'; and Mohd Razali Agus (1989b), 'Public Sector Low Cost Housing in Malaysia'.

56. Othman, Abdul Halim, Abdullah Talib and Sanusi Osman (1982), 'Malaysia and the Housing Problems: Searching for Solutions'.

showed that out of the total 190,899 squatters, 12.1 per cent had a monthly household income of less than RM300.⁵⁷ The Implementation and Co-ordination (ICU) of the Prime Minister's Department estimated that there were about 13,100 hard-core poor households with incomes of less than RM202 a month in urban areas in Peninsular Malaysia.⁵⁸

A study on household incomes carried out among squatters in Kuala Lumpur between 1983 and 1992 indicated that more than two-thirds earned less than RM500 a month.⁵⁹ However, some of these squatter settlements were not too badly off in terms of access to social and health amenities. Although these settlements are considered to be illegal, the government has since the mid-1980s adopted a more tolerant attitude towards squatters and squatter settlements. The accommodative gesture by the government is a pragmatic approach in dealing with the problem and with long-term national development strategies.⁶⁰ Aiming to have a more balanced ethnic population distribution, the government has encouraged Bumiputeras to migrate to urban areas as part of a strategy to change the character of the urban population, which has been dominated by non-Bumiputeras before 1971.

Squatter problems were more acute in Kuala Lumpur than in other cities because of several reasons. First, Kuala Lumpur, as the centre of administrative and commercial activities in Malaysia, attracted a large number of rural-urban migrants. Second, the government placed more priority in ensuring that Kuala Lumpur had a balanced ethnic composition of population.⁶¹ Third, this was part of the government's strategy to create a new Bumiputera community who actively participated in commerce and industry.

The process of squatter redevelopment was a very difficult exercise due to the lack of available and suitable land in urban areas. Nevertheless such an exercise did take place wherever possible. Redevelopment of squatter settlements under the public and private partnership had been carried out by Kuala Lumpur City Hall since the second half of the Fourth Malaysia Plan to ease overcrowding in these settlements. According to City Hall, 11 squatter settlements had been redeveloped by private housing developers. This is expected to increase to 21, involving a total area of about 1,500 hectares. The

57. Kuala Lumpur City Hall (1992), *Deraf Laporan Akhir Banci Semula Setinggalan Wilayah Persekutuan 1992*.

58. *Fifth Malaysia Plan, 1986-90 and Sixth Malaysia Plan, 1991-1995*.

59. Mohd Razali Agus (1994), 'Urban Growth, Poverty and the Squatter Phenomenon in Kuala Lumpur'.

60. Mohd Razali Agus (1995a), 'The State and Low-Cost Housing in Peninsular Malaysia'.

61. Kuala Lumpur City Hall (1984), *Kuala Lumpur Structure Plan*.

number of squatter dwellings affected is about 10,000 units. The entire programme is expected to accommodate 35,000 low-income households.⁶²

Between 1978 and 1988, City Hall relocated about 45,606 squatters, first to transit areas and later to public low-cost housing schemes.⁶³ Squatters were thus moved about from single-unit dwellings with few, if any, basic amenities, to temporary wooden row houses with about 10 dwellings in each unit. From there, they were eventually transferred to five-storey walk-up flats or, commonly, to high-rise units. A large number of squatter families thus had to undergo a period of rapid adaptation, beset with discontinuities, before being located in settled conditions with the advantage of basic amenities. Emiel Wegelin's detailed study of three low-cost housing projects in Kuala Lumpur revealed that resettlement of squatters in low-cost housing brought about substantial improvements in the housing environment in physical terms.⁶⁴ Such improvements included sanitation, piped water, electricity, security and privacy.

Kuala Lumpur City Hall estimated there were about 25,000 squatter families and a total squatter population of 103,370 in the city in 1970. Malays comprised about 20 per cent of the total squatter population, Chinese 67 per cent and Indians 13 per cent. From 1970 to 1980, the squatter population rapidly increased to 46,000 squatter families and a total population of 236,101. The Malay squatter population grew most rapidly, followed by Indians. In terms of total percentages, the Chinese squatter population declined from 67 per cent in 1970 to 53.6 per cent in 1980 and subsequently to 44.5 per cent in 1992.⁶⁵

The slight decline in the total population of squatter settlements and redevelopment of selected squatter settlements between 1980 to 1992 were a result of City Hall policies. Squatter movements were monitored regularly and checks imposed both on the expansion of existing squatter settlements and on the formation of new ones. About 202 squatter settlements still remain in Kuala Lumpur, located in various areas between the central business district and the periphery of the city.⁶⁶

62. Mokhtar, Long Idris (1993), 'Urban Housing With Special Emphasis on the Squatter population of Kuala Lumpur'; and Mohd Razali Agus (1993b), 'Squatter Settlements Should be Redeveloped', and (1994), 'Urban Growth, Poverty and the Squatter Phenomenon in Kuala Lumpur'.

63. Kuala Lumpur City Hall (1992), *Deraf Laporan Akhir Banci Semula Setinggalan Wilayah Persekutuan 1992*.

64. Wegelin, Emiel (1978), *Urban Low-Income Housing and Development*.

65. Kuala Lumpur City Hall (1992), *Deraf Laporan Akhir Banci Semula Setinggalan Wilayah Persekutuan 1992*; and Kuala Lumpur City Hall and Centre for Housing, Development and Planning Studies, USM (1993), *Bancian Semula Setinggalan Wilayah Persekutuan Kuala Lumpur 1992*.

66. Mohd Razali Agus (1994), 'Urban Growth, Poverty and the Squatter Phenomenon in Kuala Lumpur'.

Migrants continue to replace the relocated squatters. Overall, the number of squatters has decreased from 45,048 households making up a total population of 234,693 living in 32,066 dwellings in 1990, to 36,168 households with a total population of 190,899 living in 34,353 dwellings in 1992. Kuala Lumpur City Hall has said that the financial allocation for public low-cost housing is inadequate.⁶⁷ In the Sixth Malaysia Plan, Kuala Lumpur City Hall planned to build 30,396 units of low-cost housing costing approximately RM703 million. However, only RM79.35 million was approved by the federal government. Only 4,424 units were built by City Hall in the 1991-95 period.

Low-cost housing expenditure

Public low-cost housing has been given priority in the development thrust since 1971 with a large portion of the public housing budget allocated for low-cost housing projects. Expenditure for low-cost housing expenditure has increased steadily from 42.5 per cent in the Second Malaysia Plan to 54.5 per cent in the Seventh Malaysia Plan (see Table 2). In value terms, the increase has been very significant, increasing manifold year by year from RM102 million in the Second Malaysia Plan to RM633 million in the Third Malaysia Plan, RM1,700 million in the Fourth Malaysia Plan, RM2,000 million in the Fifth Malaysia Plan, RM2,013 million in the Sixth Malaysia Plan and RM3,340 million in the Seventh Malaysia Plan. For the period of 1996-97, the allocation for low-cost housing has been increased further, especially housing for the hard-core poor programme.

Table 2: Allocations for low-cost housing in national development plans

Development plan period	Low-cost housing allocation (RM million)	Low-cost housing allocation Total public housing budget (%)
Second Malaysia Plan (1971-75)	102	42.5
Third Malaysia Plan (1976-80)	633	32.2
Fourth Malaysia Plan (1981-85)	1,700	41.8
Fifth Malaysia Plan (1986-90)	2,000	50.0
Sixth Malaysia Plan (1991-95)	2,013	52.3
Seventh Malaysia Plan (1996-2000)	3,340	54.5

Sources: First to Seventh Malaysia Plans and Mid-Term Reviews, Second to Sixth Malaysia Plans.

67. Mokhtar, Long Idris (1993), 'Urban Housing With Special Emphasis on the Squatter population of Kuala Lumpur'; and Abdullah, Taufik (1982), 'Housing Finance-Policies and Objectives'.

Implementation and performance

In the pre-Independence years of 1953-57, the Housing Trust, which had been assigned the task of acting as the government's agent in low-cost housing construction, had built a total of 1,496 houses (see Table 3). During 1966-70, the Housing Trust was most productive in offering its services to state governments to construct low-cost houses. The Housing Trust's achievement in constructing low-cost houses in pre-cast concrete was highlighted by Newcombe.⁶⁸ Salient design features of Housing Trust houses included a north-south orientation, preferably facing the prevailing breezes, one-room width to ensure through ventilation, well-insulated over-hanging roof, and uninsulated curtain walls with large openings. These houses were built at an angle to the road to intercept the prevailing breeze and floor areas ranged from 510-910 square feet.

The Federal and Colonial Housing Society, founded in Singapore in 1950, was renamed Malaya Borneo Building Society (MBBS) in 1969. MBBS was later split into Malaysian and Singapore branches, and in March 1972, the present Malaysia Building Society Berhad (MBSB) was formed with the objective of providing loans for lower cost housing projects.⁶⁹

Table 3: Number of houses built by the Housing Trust, 1953-74

Year	Housing units	Year	Housing units
1953	120	1964	1,489
1954	30	1965	933
1955	161	1966	1,086
1956	378	1967	1,142
1957	807	1968	2,285
1958	660	1969	10,748
1959	592	1970	1,464
1960	146	1971	1,081
1961	431	1972	338
1962	1,176	1973	174
1963	1,197	1974	341

Source: Jagatheesan, N (1979), 'Housing Finance in Malaysia' in *Public and Private Housing in Malaysia*, edited by Tan Soo Hai and Hamzah Sendut, Kuala Lumpur: Heinemann, p 29.

68. Newcombe, Vernon Z (1955), 'Low-Cost Housing in Malaya'.

69. Mohd Thalha Ali Thambi (1979), 'Administration of Public Housing'.

Table 4: Public housing performance, 1971-85 (units)

Development plan period	Planned	Completed	%
Second Malaysia Plan:			
All public housing programmes	100,000	86,076	86
Low cost housing programmes	44,000	13,244	30
Third Malaysia Plan:			
All public housing programmes	220,000	121,500	55
Low cost housing programmes	73,500	26,250	36
Fourth Malaysia Plan:			
All public housing programmes	398,570	201,900	51
Low cost housing programmes	176,500	71,300	40
Total public housing programmes	718,570	409,476	57
Total low cost housing programmes	294,000	110,794	38

Sources: First to Seventh Malaysia Plans and Mid-Term Reviews, Second to Sixth Malaysia Plans.

Table 5: Public and private sector low-cost housing performance, 1981-85 (units)

Programme	Planned	Completed	%
Public sector	398,570	201,900	50.6
Public low cost housing	176,500	71,310	40.4
Housing in land schemes	110,010	34,980	31.8
Institutional quarters	58,500	25,450	43.5
Medium and high cost	53,560	70,160	130.9
Private sector	524,730	204,170	38.9
Private developer low cost housing	90,000	19,170	21.3
Private developer medium and high cost housing	259,470	85,630	33.0
Co-operative societies	25,260	4,570	18.1
Individuals and groups	150,000	94,800	63.2
Total	923,300	406,070	43.9

Source: *Fifth Malaysia Plan 1986-1990*, Kuala Lumpur, p522.

The public sector's performance in housing development has become of lesser significance since 1971. In the Second Malaysia Plan, the public sector completed 86 per cent of total units planned (see Table 4). This decreased to 55 per cent in the Third Malaysia Plan and 51 per cent in the Fourth Malaysia Plan. The public sector performed poorly in developing low cost housing, completing only 30 per cent of planned units in the Second Malaysia Plan and 36 per cent in the Third Malaysia Plan. During the Fourth Malaysia Plan, the public sector concentrated mainly on low cost housing programmes in urban areas and the provision of sites and services in rural areas. The private sector concentrated on medium and high-cost housing programmes in urban areas, completing more than 400,000 units from 1971-85.

The overall achievements of both the public and private sectors were not satisfactory in the Fourth Malaysia Plan (see Table 5). The public sector completed 51 per cent of planned units while the private sector achieved only 39 per cent. The public sector had been expected to build more low-cost housing but completed only 40 per cent of the total 176,500 units planned. From 1981-85, some state housing corporations were heavily involved in developing industrial sites and construction of medium and high-cost housing, and exceeded their housing targets (completing 130 per cent of planned unit). These corporations competed with the private developers and diverted some of the funds meant for low-cost housing to medium and high-cost housing.⁷⁰

Under the Fifth Malaysia Plan, the public sector was expected to construct about 149,000 units of houses – 120,900 low-cost units and the rest medium and high-cost units. State governments completed about 18,000 low-cost housing units for the rental scheme and about 17,800 units for sale. The government jointly with the private sector developed an additional 37,200 units.

During the Sixth Malaysia Plan, a total of 573,000 unit of houses were planned for construction to meet requirements and replacement of dilapidated units.⁷¹ The performance of the housing industry during this period was very encouraging with the completion of 647,460 units or 113 per cent of the target. The public sector had completed only 48.6 per cent of the 174,000 units planned (see Table 6) while the private sector completed 399,000 units or 141.1 per cent of the target (see Table 7).

In the Seventh Malaysia Plan, the federal government had proposed to build 800,000 housing units (see Table 8). This comprised 35,000 units for the poor, 200,000 low-cost units, 350,000 low/medium-cost units,

70. Mohd Razali Agus (1989b), 'Public Sector Low Cost Housing in Malaysia'.

71. *Seventh Malaysia Plan, 1996-2000*, p556.

Table 6: Public housing performance, 1991-95

Programme	Target				Completed (%)			
	Low-cost	Medium-cost	High-Cost	Total	Low-cost	Medium-cost	High-cost	Total
Public low-cost housing	24,430	-	-	24,430	43.7	-	-	43.7
Site & services	15,570	-	-	15,570	30.2	-	-	30.2
Housing by commercial agencies	13,100	29,900	2,300	45,300	143.5	69.6	117.8	93.4
Housing by land schemes	56,100	-	-	56,100	13.4	558.0	-	93.4
Institutional quarter & staff accommodation	17,600	14,700	300	32,600	27.3	94.1	47.0	57.6
Total	126,800	44,600	2,600	174,000	36.7	78.9	109.6	48.6

Source: *Seventh Malaysia Plan, 1996-2000.*

Table 7: Private housing performance, 1991-1995

Programme	Target				Completed (%)			
	Low-cost	Medium-cost	High-Cost	Total	Low-cost	Medium-cost	High-cost	Total
Public low-cost housing	44,080	-	-	44,080	183.0	-	-	183.0
Site & services	171,620	-	-	171,620	76.5	-	-	76.5
Housing by commercial agencies	-	145,800	-	145,800	-	164.7	-	164.7
Housing by land schemes	-	-	24,900	24,900	-	-	399.8	399.8
Institutional quarter & staff accommodation	1,300	10,100	1,200	12,600	222.0	71.0	103.9	89.7
Total	217,000	155,900	26,100	399,000	99.0	158.6	386.2	141.1

Source: *Seventh Malaysia Plan, 1996-2000.*

Table 8: Housing needs by state and category of houses, 1996-2000

State	Housing for the poor	Low-cost	Low-medium	Medium-cost	High-cost
Johor	1,400	24,000	52,000	23,000	12,600
Kedah	3,000	16,000	25,000	4,900	2,100
Kelantan	5,500	17,000	18,000	2,000	1,500
Melaka	400	4,400	9,000	2,800	1,400
Negeri Sembilan	600	7,900	14,000	4,500	2,500
Pahang	800	10,000	19,000	4,300	1,900
Perak	1,800	17,200	29,000	8,000	3,000
Perlis	300	1,700	3,000	1,000	500
Pulau Pinang	500	7,000	17,000	7,000	4,500
Sabah	2,600	35,900	52,000	12,000	7,500
Sarawak	12,400	15,600	26,000	12,000	8,000
Selangor	1,200	26,800	59,000	38,000	32,000
Terengganu	4,300	8,700	11,000	2,000	1,000
Kuala Lumpur	100	5,900	14,000	8,000	6,000
Labuan	100	1,900	2,000	500	500
Total	35,000	200,000	350,000	130,000	85,000

Source: *Seventh Malaysia Plan, 1996-2000.*

130,000 medium-cost units and 85,000 high-cost units. The private sector would play a more significant role in completing 570,000 units or 71 per cent of the total. Specifically, the private sector would construct 140,000 units of low-cost housing, 240,000 low/medium units and 80,000 high-cost units.⁷²

Two important observations can be made. First, the private sector was not involved in the Housing for the Poor programme. Second, the private sector was given the task of constructing 80,000 high-cost units which is well below its capability. In the Sixth Malaysia Plan, the private sector had completed 100,728 high-cost housing units – nearly five times the original target of 26,100 units.

72. *Seventh Malaysia Plan, 1996-2000.*

Housing for the hard-core poor

An allocation of RM1.4 billion was made in the Budget to implement housing for the poor in 1994. This involved an allocation of RM504 million in financial year 1994 and the creation of a RM900 million Low-Cost Housing Fund to be administered by Bank Negara Malaysia to administer two programmes.⁷³

In the first programme, about RM 300 million was set aside to provide financing for housing development. Housing developers were to be charged a nominal interest of 2 per cent per annum to utilise the funds for bridging finance. These developers must have already obtained layout and building plan approval from the relevant state and local authorities. Bank Negara Malaysia would ensure that the financial institutions complied strictly with federal government guidelines in utilising the above funds. Lower income groups who were eligible to buy the low-cost houses were to be provided with financing of up to 95 per cent of the value of the houses, payable over a period of 25 years with an interest rate not exceeding 9 per cent per annum.

For the second programme, an allocation of RM600 million was set aside for the construction of flats in major towns with acute squatter problems. About 15,000 units for rent to the hardcore poor were in various stages of construction. Another 21,585 low-cost housing units were being built with financing charged at 2 per cent interest to developers. It is anticipated that about 36,585 poor households would enjoy decent shelter under these two programmes.

In its efforts to overcome the low-cost housing shortage, Kuala Lumpur City Hall has allocated RM88.5 million under its 1996 budget to build housing projects under the Housing for the Hardcore Poor scheme.⁷⁴ In the first project at Kampung Datuk Keramat, two blocks of 17-storey flats consisting of 441 units are being built. The completed houses are to be rented out at a monthly rental of RM124 for a duration of five years to lower income groups earning a monthly household income of between RM200-RM500 in Kuala Lumpur. The other schemes are in Gombak Phase 1 and 2 (912 units), Genting Kelang (1,824 units), Kampung Limau and Kampung Selamat in Jalan Pantai Dalam (900 units) and Bandar Tun Razak (912 units). Other state governments have also launched low-cost housing programmes. Johore is undertaking a massive housing programme called 'Rumah Rakyat' (People's Housing) involving more than 32 private developers and an investment of RM3.7 billion to build 133,646 units of low and medium-cost houses over the next four years.

73. Ministry of Housing and Local Government Malaysia (1994a), *Housing Strategies and Programmes in Malaysia*; and (1994b), *National Housing Development*.

74. Shaik Osman Majid (1996), Low-Cost Houses: Whose Baby Is It?, *New Straits Times* January 14, p29.

Housing problems

Several problems in the implementation of housing have been identified and many of these issues have been raised by the private sector, especially the Housing Developers Association (HDA). Highlighted here are the problems faced in housing development by both the public and private sectors.

Land use

The most common complaint is the delay in processing and approval of applications for land development, conversion, subdivision, and issuance of titles. Both the state and district land offices are held responsible for the delays. At the district level, the District Officer and the Senior Assistant District Officer are responsible for processing applications on land matters before consideration by the state land office. At the state level, the land portfolio is usually chaired by a senior executive councillor, an assemblyman elected during the general election with a five-year term of office unless he is re-elected. Besides being responsible for his constituency, he also has to make major decisions for other areas in the state.

Delays sometimes result because some private developers who are involved in public low-cost housing projects do not understand the procedures for sending in their applications. For instance, plans must be submitted to the planning section, while land titles and applications for the conversion of land usage (such as from agricultural to residential status) have to be submitted to the Collector of Land Revenue/District Officer.

Building codes and planning

At the national level, the local authority is the local planning agency as stipulated under the Town and Country Planning Act of 1976. A housing developer has to submit his plans (eg, layout, site and engineering plans) to the local authorities such as City Hall, and the municipal and district councils. The private sector has to comply with the many conditions imposed by the approving authorities and respective departments. There are numerous laws governing housing development on such matters as building lines, size of lots, density of development and infrastructural matters (roads, drainage, sewage, etc.). The developers also have to pay an additional fee for processing their proposed plans.

Many of these authorities lack professional manpower and only the Technical Assistant is able to review these plans at the planning division. Building codes vary from one locality to another and from one state to another. In applying for a subdivision of buildings, an index plan must be submitted and

a fee paid to the Collector of Land Revenue. Delays can sometimes take more than two years to resolve before a final decision is made. Such delays adversely affect the feasibility and implementation of these projects.

Production and construction

At the national level, both the public and private sectors are given the task of constructing houses as laid down by the National Housing Consultative Committee. Although state corporations were expected to play a major role in constructing and distributing low-cost housing, they preferred to construct medium and high-cost housing. This diversion from their original goals has affected the performance of public low-cost housing programmes. With the private sector also concentrating heavily on medium and high-cost housing, there seems to be a duplication of resources in this area.

Housing construction technology has changed from the conventional system to a wider application of industrialised building system. The concept of industrialisation of the construction industry has been strongly supported by the federal and state governments but this proved to be ineffective in overcoming the housing shortage and solving the problems of unemployment in urban areas. In fact, the increase in prices of raw materials such as cement, steel bars, bricks, and timber partly has affected the ability of housing developers to hold prices of houses down.

Management and distribution

State governments have imposed several guidelines to control the distribution of low-cost housing by the private sector. First, the ethnic quota system requires at least 30 per cent of units in urban areas to be reserved for Bumiputeras. Second, house-buyers have to meet several criteria in terms of household income, number of family members, political inclination, and provide application referees. Such criteria vary from state to state. Both at local and state levels, varying interpretations of federal government guidelines have affected the distribution of low-cost housing.

There seems to be a lack of organisational and functional co-ordination among various government housing corporations at various levels – federal, regional, state and local. This can partly be attributed to the shortage of manpower, especially of technical and professional personnel at the state and local levels. For housing development to be more successful, the active participation of professional bodies such as the Architects Association of Malaysia (PAM), the Malaysian Institute of Planning (MIP) and the Association of Banks Malaysia (ABM) should be welcomed and encouraged.

Finance

Funding by various financial establishments such as commercial banks and finance companies has increased substantially over the last 16 years. At the end of 1981, 40 per cent of the funding for housing development and ownership was provided by commercial banks, about 30 per cent by the Treasury Housing Loan Division and 17 per cent by Malaysia Building Society Berhad.

Under the Fourth Malaysia Plan, the federal government allocated a sum of RM1 billion for low-cost housing. However, the bulk of the credit facilities for housing development went to the middle and upper income households and not to the urban poor who were actually the target groups.⁷⁵ In the Seventh Malaysia Plan, a total of RM3.34 billion has been allocated for public housing programmes. Institutional quarters and staff accommodation continued to receive the biggest allocation of RM2.5 billion compared to low-cost housing with an allocation of RM742 million.⁷⁶ A comprehensive policy of financial assistance to the urban poor needs to be formulated by the credit and financial institutions to address this issue.

Privatisation and social responsibility

In the current housing development policy, the private sector is obligated to set aside at least 30 per cent of planned housing for low-income groups. Profits from the sales of medium and high-cost housing would be channelled towards the construction of low-cost housing. This practice of cross-subsidisation, which is part of the social obligation of private developers of large-scale developments, has been implemented quite successfully. With the emphasis on provision of low and medium-cost housing, the role of private developers in constructing low-cost housing has gained importance. It is the policy of the federal government to resettle squatters and other lower income groups in planned housing estates with adequate infrastructure facilities and social amenities including schools, clinics and community halls.⁷⁷ In addition to the provision of infrastructure facilities, the promotion of programmes to foster neighbourliness is encouraged. Private housing developers have been encouraged by state governments and local authorities to follow such principles, especially in implementing large-scale mixed development housing projects.

75. Johnstone, Michael (1982), 'Residential Construction and Financial Institutions in the Periphery: A Case Study from Peninsular Malaysia'; and (1983), 'Housing Policy and the Urban Poor in Peninsular Malaysia'.

76. *Seventh Malaysia Plan, 1996-2000*, p585.

77. Wegelin, Emiel (1978), *Urban Low-Income Housing and Development*; Johnstone, Michael (1981), 'The Evaluation of Squatter Settlements in Malaysia'; and Kuala Lumpur City Hall (1992), *Deraf Laporan Akhir Banci Semula Setinggan Wilayah Persekutuan 1992*, Kuala Lumpur.

The concept of social responsibility has been further enhanced with the participation of target groups in the planning process. This element in the social responsibility concept is also in line with the government's Vision 2020 programme to create social justice, economic development and quality of life in the housing sector. Thus, the planning of affordable low-cost housing is not merely confined to the housing needs of the urban poor but also extends to the improvement of job opportunities, social services and physical infrastructure to enable the target groups to achieve higher residential standards. This development will set the pace to enable Malaysia to become a fully developed nation by the year 2020, not only economically but also in terms of quality of life, ecological considerations and administrative efficiency of the government. Greater public participation in the planning of low-cost housing will ensure that other aspects of community development, including ecological and socio-economic considerations, are given more attention in the future by housing developers.

Conclusion

The progress of housing development in Malaysia has been gradual and quite impressive despite various constraints and weaknesses. One observation that can be made is that with public housing programmes continuing to include the implementation of medium and high-cost housing units, the performance of the low-cost housing programme has been adversely affected. In view of this, public sector involvement in medium and high-cost housing should be downplayed and greater attention paid to the construction of low-cost housing. In constructing low-cost housing, both the public and private sector developers should be encouraged to play complementary roles, instead of competing with each other. The private and public sectors working in partnership with each other can generate positive results through the balancing of the quest for profits with considerations of the socio-economic needs of the lower income groups.

Land availability is a prerequisite for efficient urban development. Lower land costs would make it more feasible to construct low-cost houses affordably. The identification of suitable sites for housing development should not surface as a problem again since the government has committed to minimise any delays. Improvements have been made in the procedures for processing applications at the land and district office. To enhance the process further, state governments should establish a comprehensive housing information system which would help create more efficient distribution.

The federal government should pay more attention to improve the capacity and efficiency of local authorities in housing management, planning and manpower training. An effective planning policy should be accompanied by increased public participation in the planning and delivery of social services, especially to urban poor. Standardised building codes and planning procedures should be applied both at the state and local levels. In this respect, the Town and Country Planning Act of 1976 should be reviewed to accommodate the smooth implementation of housing development.

New construction technologies should be adopted, especially if they complement the labour-intensive conventional construction system. Local entrepreneurship and innovation should be encouraged and supported in this area. All sectors have a valuable role to play in establishing an efficient and productive national development strategy.

Training programmes should be provided for employees of local authorities who are dealing with housing development. Co-operation and co-ordination at the federal, state and local levels should be enhanced. The federal government should address any weak areas in the local authorities and state housing corporations and look into decentralising various policies. Standardisation of criteria that are applicable to all localities and states should be formulated and implemented. This will assist the private sector to expedite the process of construction and distribution of low-cost housing.

Allocations for housing development should be increased in the future because housing is not only seen as a basic need but also as a stimulus of economic growth and national development. However, both the public sector and commercial banks should be more conscious of the needs of lower-income groups and more efforts made to enable them to own houses or upgrade their present houses. If implemented with sincerity and determination, lower income groups could benefit more from these financial policies.

While the importance of the redevelopment of low-income settlements has been largely ignored in planning and urban development in developing countries, Malaysia has recently given new emphasis to the provision of affordable low-cost housing in major urban areas. More importantly, adopting the concept of social responsibility, private sector participation has been incorporated in implementing affordable housing development programmes. The private sector in partnership with the local and state authorities should provide the basic socio-economic needs of the lower income groups while meeting their housing needs. Provision of

affordable low-cost housing enhances the prospects for environmental upgrading as well as for the development of small and medium-scale enterprises or industries.

Lastly, a comprehensive national housing and urban development policy should be formulated by the federal government and implemented as soon as possible. This policy should incorporate all sectors such as the public, private and informal sectors so that the objectives and goals of national development policies could be more meaningful and beneficial.

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CHAPTER 2

Housing Today

Goh Ban Lee

Introduction

The chapter provides an insight into the housing situation in Malaysia. It begins with a brief discussion on Malaysia's commitment to adequate housing, followed by a review of the housing stock, type, occupancy, vacancy and ownership. Discussion then focuses on the quality of housing, including the availability of basic amenities and facilities in housing estates, and a review of the housing market. Major issues such as low-cost housing, standards and regulations, and the role of developers and professionals are also highlighted. It concludes with some recommendations to facilitate a more robust housing industry in Malaysia.

National and international agenda

Malaysia is committed to providing adequate and affordable shelter for its population. This is reflected not only in announcements made by its political leaders, but also in the government's annual budget and development plans. Deputy Prime Minister Dato' Seri Anwar Ibrahim has stated that 'we cannot have a nonchalant attitude when it comes to providing low-cost houses for the

people. We must work hard and have a commitment (and) only then will we be able to provide houses for the tens of thousands of poor people in the country... The numerous achievements of the country would be meaningless if the basic needs of its people could not be provided for'.¹ This commitment to 'adequate and affordable housing for the people' was also adopted in the National Front (Barisan Nasional) manifesto during the 1995 General Elections. Malaysians gave the National Front a landslide victory and the government has renewed its commitment on this. As stated in the Seventh Malaysia Plan (1996-2000), 'the objective of the housing development programme is to provide Malaysians of all income levels accessibility to adequate, affordable and quality houses'.² Also, 'the government will provide the necessary support and regulatory measures to ensure the efficient development of the housing industry'.³

Malaysia, of course, is neither unique nor rare in having such a strong commitment to adequate housing for its citizens. Member countries of the United Nations which met in Istanbul in June 1996, declared their endorsement of 'the universal goals of ensuring adequate shelter for all and making human settlements safer, healthier, more liveable, equitable, sustainable and more productive'. Popularly known as the Habitat II City Summit, the Declaration also stated that as 'we move into the 21st century, we offer a positive vision of sustainable human settlements, a sense of hope for our common future and an exhortation to join a truly worthwhile and enjoying challenge, that of building together a world where everyone can live in a safe home with a promise of a decent life, good health, safety, happiness and hope'.

While it may be easy to make promising statements and high-sounding declarations, it is not quite so easy to actually build houses and human settlements, although this task is perhaps one of the oldest human endeavours of civilised societies since man moved out of caves.

Housing stock

Despite the pessimistic views of some critics, the housing situation in Malaysia is far from bad. Available data shows that the country may already be over-building, at least in terms of quantity. The problem is more of accessibility and affordability.

In the 1995 Statistics Department report on the housing census of 1991, there were 4,060,900 housing units in the country catering to about 18.379 million people or 3.538 million households. This figure did not take into

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1. *The Star*, May 31, 1994, p1.
 2. *Seventh Malaysia Plan 1996-2000*, p555.
 3. *Seventh Malaysia Plan 1996-2000*, p572.

account collective living quarters, such as hostels, temporary labour camps and hospitals, and makeshift structures such as schools, garages and mosques which were not intended for habitation but used as such during the census day. Seventh Malaysia Plan statistics showed that another 647,460 housing units were built from 1991 to 1995. According to the Valuation and Property Services Department, which provides the most conservative figures on housing accounting only for individual dwelling units in housing estates, an additional 78,694 houses were built in 1996. Therefore, as of 1996, there are about 4,787,000 housing units for a population of about 20 million people.

The housing industry, at least in terms of the number of houses constructed, has been very active. Between the two housing censuses carried out in 1980 and 1991, there was an increase of 1,501,300 housing units or an increase of 59 per cent in 11 years – an average of 136,482 units per year. The average rate of increase in the construction of housing units from 1991 to 1995 was about 129,492 units per year.

Table 1: Distribution of housing units by state, 1991

State	No of units (thousands)	Percentage of total	Average rate of increase from 1980-91 (%)
Johore	501.1	12.3	6.3
Kedah	320.6	7.9	3.7
Kelantan	263.6	6.5	3.9
Malacca	120.8	3.0	3.8
Negeri. Sembilan	179.4	4.4	4.8
Pahang	237.5	5.8	4.4
Perak	470.1	11.6	3.6
Perlis	44.4	1.1	3.1
Penang	228.4	5.6	4.4
Sabah	364.8	9.6	10.0
Sarawak	354.2	8.7	5.2
Selangor	538.1	13.3	8.5
Terengganu	164.1	4.0	3.8
Kuala Lumpur	262.7	6.5	5.3
Labuan	11.2	0.3	11.4
Total	4,060.9	100.0	5.3

Source: Department of Statistics Malaysia, *General Report on the Housing Census, 1995*, p11.

Housing units were not evenly distributed throughout the country. At the state level, Selangor had the highest number, accounting for about 13 per cent of the total housing stock in the country in 1991. The Federal Territory of Kuala Lumpur had 262,700 units or another seven per cent. The other leading states in terms of housing units were Johore and Perak, which was not surprising because of their relatively larger land areas (Table 1).

Between 1980 and 1991, the housing stock in Labuan and Sabah increased by 11 and 10 per cent respectively. One reason for the relatively fast growth is that these two areas started with rather low numbers of housing units in 1980. However, states such as Selangor and Johore, which already had relatively large numbers of units in 1980, also registered high growth rates of about nine and six per cent respectively, exceeding the national average of about five per cent. Perlis had the lowest growth rate of only three per cent between 1980 and 1991. Five states – Kedah, Kelantan, Malacca, Perak and Terengganu – had annual growth rates of less than four per cent for the same period.

Prospects for the local housing industry appear to be buoyant in the foreseeable future with many houses either under construction or in the pipeline. In 1996, according to the Valuation and Property Services Department, about 204,000 housing units were under construction while another 140,000 units were in the pipeline. These figures did not include units approved by the government, for which construction had not started in that year. It is possible that not all the houses which had been approved were actually built, due to instances of abandonment. On the other hand, there is a strong possibility that more houses were actually constructed than is shown by the figures, since the accounting method adopted by the Valuation and Property Services Department is very conservative.

The Seventh Malaysia Plan envisages that 800,000 dwelling units are needed from 1996-2000 – an average of 160,000 units per year. Based on the past track record for the production of houses, this does not seem to be a difficult target to achieve. Indeed, with more financially strong firms such as public-listed companies going into the housing industry, it would be possible to build even more units if there is an accompanying demand for houses and proper support from the government.

The problem is more likely to be the pricing of the houses. The government expects the following distribution for the 800,000 housing units:

- Low-cost: 235,000 units or 29 per cent;
- Low medium-cost: 350,000 units or 44 per cent;
- Medium-cost: 130,000 units or 16 per cent; and
- High-cost: 85,000 units or 11 per cent.

Table 2: Housing units, 1996

State	No of units in 1995	Increase in no of units in 1996	Percentage growth in 1996	No of units under construction in 1996	No of units in the pipeline in 1996
Johore	210,961	14,362	6.8	50,115	53,615
Kedah	108,320	5,712	5.3	22,296	34,800
Kelantan	19,460	1,175	6.0	6,098	860
Malacca	52,579	6,138	11.7	10,349	-
Negeri Sembilan	71,225	5,840	8.2	21,050	7,332
Pahang	53,996	5,332	9.9	24,294	6,846
Perak	145,561	5,951	4.1	17,668	11,768
Perlis	8,493	346	4.1	868	1,374
Penang	57,221	2,154	3.8	13,686	2,620
Sabah	45,931	1,731	3.8	7,823	3,834
Sarawak	14,455	726	5.0	1,036	1,436
Selangor	397,412	21,090	5.3	68,496	24,008
Terengganu	18,817	1,268	6.7	7,162	6,041
Kuala Lumpur	165,862	6,869	4.1	28,320	50,126
Malaysia		78,694		203,603	139,811

Source: Ministry of Housing and Local Government Malaysia, *Property Market Report 1996, 1997*

Notes: – Figures refer only to individual dwelling units in housing estates and exclude temporary and semi-permanent units, institutional quarters, individually designed units and abandoned projects.

– Under construction refers to units in which construction works were in progress or certificate of fitness have not been issued.

– In the pipeline means units approved by state authorities but construction has not commenced.

This is not likely to be achieved unless the government redefines the price range of the various categories of houses.

It is interesting to note that compared to Malaysia's annual population growth, which was 2.3 per cent between 1970 to 1980 and 2.6 per cent between 1980 and 1991, the rates of household formation for these periods were relatively higher at 3.4 per cent and 3.8 per cent respectively. There is

a possibility that the rate of household formation would reach 4.0 per cent in the 1990s. Based on this assumption, and calculating from a total of 3.5 million households in 1991, the number of households is expected to reach 1.6 million by the turn of the century. The anticipated production by the housing industry of 800,000 units of housing from 1996 to 2000 should be adequate to cater for the expected increase in the number of households.

Housing type

Through the ages housing has taken many forms and shapes, influenced by a combination of factors such as climatic conditions, availability of materials, social and cultural conditions, and technological innovations. Even in Malaysia, there is a wide variety of dwellings, ranging from lean-to sheds to million ringgit mansions, from bamboo wall, thatch-roof, earthen floor huts to glazed-tiled roofing, Italian marble floor bungalows, from dwellings without bath and toilet facilities to those fitted with golden faucets and jacuzzis.

For simplicity and generalisation, it is convenient and adequate to classify housing units in Malaysia into five main groups: houses, apartments or flats, shophouses, rooms, and others. Each category may be further subdivided, such as detached houses, semi-detached houses and so on.

Currently, most of the dwelling units in Malaysia are in the form of houses. In the 1991 housing census, 92 per cent of the housing stock in the country were in this category, while flats or apartments accounted for only seven per cent, and shophouses accounted for three per cent. The Statistics Department states that about 67,000 housing units or three per cent of the housing stock in 1991 could be classified as 'others', which includes rafts, motorboats and caves.

The largest single sub-category of housing units was the detached houses, which accounted for 49 per cent of the total housing stock in the country in 1991. It should be noted that in government statistical definition, a detached house can range from an isolated timber and attap house in Kemaman, to a concrete and marble mansion in Bukit Tunku in Kuala Lumpur.

The next most popular type of housing in Malaysia was the terrace or link houses, which accounted for about 27 per cent of the housing stock in 1991. Unlike the detached houses, which are found both in rural and urban areas, terrace houses are mainly located in urban areas, especially the suburbs. They became popular in the 1960s and 1970s when housing developers first emerged on the housing scene. Terrace houses have become the backbone of the housing industry in Malaysia and are favoured by the growing middle-income groups who find them affordable. Normally, these are housing units with a built-up area of about 1,200 sq ft with a small piece

of land area in front which also serves as parking space for one or two cars. The finishing is comfortable but not overly luxurious. The houses normally have three to four bedrooms with two to three bathrooms.

Flats and apartments, which are currently emerging in major urban areas, accounted for only seven per cent in the 1991 housing census. They are noticeable largely because of their clusters and their height, which makes them visible even from far. The types of flats and apartments range from luxurious condominiums of between 3,000-6,000 sq ft each to walk-up flats of 500 sq ft each. The living conditions of each sub-category of apartments can differ greatly. Again, for the purpose of generalisation, it is possible to sub-classify the apartments into three categories: condominiums, medium-cost apartments and flats.

Condominiums typically refer to apartments of more than 1,000 sq ft each (usually more than 1,500 sq ft each) with luxurious finishing. They usually come with facilities such as a swimming pool, sauna, tennis and squash courts, gymnasium, landscaped garden and one or more covered parking bay for each unit. Medium-cost apartments are usually apartments of between 700-1,000 sq ft each with semi-luxurious finishing, such as tiled flooring. Facilities normally include a small swimming pool and the provision of open-air unreserved parking bays. Flats generally refer to apartments of between 500-700 sq ft each with two to three bedrooms. These have bare finishing and no facilities except parking bays, the number of which may not be as many as the number of flats in any particular scheme. Unless the flats are above five storeys, they are generally not equipped with lifts.

There have been significant changes in the types of housing units in Malaysia. As Table 3 shows, by 1991 the trend was clearly seen. The number of terrace houses increased from about 456,700 units in 1980 to 1,074,000 units in 1991. Their contribution to the housing stock increased from 18 per cent to 27 per cent over the same period. In terms of percentage, the increase in the apartments was even more spectacular, from about four per cent or about 88,700 units in 1980 to about 283,700 units in 1991.

It is also common to classify Malaysian housing stock in terms of pricing. At present, government publications usually classify dwelling units into four categories:

- Low-cost housing, meaning houses or apartments which are each priced at RM25,000 or below;
- Low medium-cost housing priced between RM25,001 to RM50,000;
- High medium-cost housing priced at between RM50,001 to RM100,000 each; and
- High-cost housing for units selling at above RM100,000 each.

Table 3: Comparison of types and number of housing units, 1980 and 1991

Type	No of units in 1991 (thousands)	Percentage of total units in 1991	No of units in 1980 (thousands)	Percentage of total units in 1980	Average annual increase (%)
Detached house	1,998.8	49	1,570.2	61	2.5
Semi-detached house	424.3	10	287.2	11	4.3
Terrace house	1,074.0	27	456.7	18	12.3
Longhouse	76.0	2	59.2	2	2.6
Apartment	283.7	7	88.7	4	20.0
Chafes	135.1	3	57.8	2	12.2
Others	68.9	3	39.8	2	6.6
Total	4,060.9	100	2,559.6	100	5.3

Source: Department of Statistics Malaysia, *General Report on the Housing Census, 1995*, p12.

For specific locations, it is generally possible to co-relate pricing with housing type although this would not apply on a country-wide basis. For example, in George Town, a low medium- cost unit would normally be in the form of high-rise flats of about 500 sq ft each with the barest of finishing and facilities. On the other hand, a RM50,000 dwelling unit in Jerantut or Jeli can take the form of a single-storey terrace house.

Despite the frequent complaints of a lack of affordable housing for the masses, available data shows that the number of low-cost and low medium-cost housing built since 1991 has been remarkable. Out of a total of 403,025 housing units built from 1991 to 1993, 173,522 units or 43 per cent were in the form of low-cost houses or apartments, and another 53,913 units or 13 per cent in the form of low medium-cost.⁴

Considering the housing units built between 1991 and 1995, the contribution of low-cost houses and apartments to the total new housing stock has been as impressive. Out of the total 647,460 units built in the Sixth Malaysia Plan period, 222,672 units or 34 per cent were low-cost dwelling units.⁵ Another 66,402 housing units were built by government agencies and co-operative

4. *Housing Statistics Bulletin* 93, 1994.

5. *Seventh Malaysia Plan 1996-2000*.

Table 4: Housing production, 1991-95

Housing type	No of units	Percentage of total
Low-cost housing	222,672	34
Public low- cost	(10,669)	(2)
Private sector low- cost	(80,678)	(12)
Special low-cost programme	(131,325)	(20)
Medium-cost housing	240,069	37
High-cost housing	99,541	15
Institutional quarters	18,776	3
Others	66,402	10
Total	647,460	99

Source: *Seventh Malaysia Plan 1996 - 2000*, p557.

Note: 'Others' include site and services scheme housing, housing by government commercial agencies, housing under land schemes and housing by co-operative societies.

societies. Although the prices of these dwelling units were not stated, it is strongly believed that most of them were low-cost or low medium-cost dwelling units. It is also important to note that about 19,000 institutional quarters were built from 1991 to 1995 to cater for government servants, including those in the uniform services. The Sixth Malaysia Plan period also saw the building of 240,069 medium-cost units or 37 per cent of the total. (The Seventh Malaysia Plan does not provide data on low medium and high medium-cost houses.) From 1991 to 1995, 99,541 units of high-cost houses were built, accounting for about 15 per cent of the total new housing stock.

As will be discussed in greater detail later, records of residential property transactions show that the proportion of properties selling at RM25,000 or below was only 14 per cent in 1996. Units of between RM25,001 to RM50,000 accounted for 15 per cent. Although the government may want to see the production of more low and low medium-cost housing, the reality of the housing market is that these houses accounted for less than 30 per cent of total housing market transactions in 1996.

The production of low-cost and low medium-cost housing varies in the various states. The more urbanised states of Penang, Selangor, Malacca and Kuala Lumpur seem to face difficulties in meeting the ratios for low-cost housing. Between 1991 to 1993, these states only achieved percentages of between 22-38 per cent in the construction of new low-cost and low

Table 5: Housing production by state and price category, 1991-93

	Total no of units	Percentage of low-cost units	Percentage of low medium- cost units	Percentage of high medium- cost units	Percentage of high-cost units
Johore	66,064	47	9	26	18
Kedah	42,483	71	13	11	5
Kelantan	4,832	35	32	29	5
Malacca	13,970	28	17	47	10
Negeri Sembilan	17,205	54	23	20	3
Pahang	14,692	60	13	23	5
Perak	30,517	50	27	20	3
Perlis	3,313	60	21	15	5
Penang	35,104	38	11	36	15
Selangor	126,074	32	11	35	22
Terengganu	6,956	74	9	18	0
Kuala Lumpur	36,257	22	14	36	28
Sabah	2,043	88	10	2	0
Sarawak	3,515	78	2	19	2
Malaysia	403,025	43	13	29	15

Source : Ministry of Housing and Local Government Malaysia, *Housing Statistics Bulletin 93, 1994*, pp 47-51.

medium-cost housing in terms of total housing construction, compared to percentages of more than 70 per cent for states like Kedah, Terengganu, Sarawak and Sabah (Table 5). However, in terms of the number of housing units, the urbanised states would probably be building more. In fact, the proportion of low-cost housing built in Kuala Lumpur from 1991 to 1993 was only 22 per cent, the lowest in the country. This was even lower than the proportion of the high-cost units achieved – about 28 per cent.

Occupancy

The housing stock only provides a partial picture of the housing situation. It is also important to look at the occupancy of the housing stock since not all available houses are occupied while some houses have too many occupants.

Table 6: Occupancy of housing units, 1991

Status	No of units	%
Occupied with occupants on census day	3,422,200	84
Occupied without occupants on census day	71,100	2
Vacant	567,600	14
Total	4,060,900	100

Source: Department of Statistics Malaysia, *General Report of the Housing Census, 1995*, p15.

Table 7: Number of households in occupied housing units, 1991 (in thousands)

No of households	No of units in urban areas	%	No of units in rural areas	%	Total no of units	%
1 household	1,673.3	97	1,676.8	99	3,350.3	98
2 households	32.7	2	17.0	1	49.7	1
3 or more households	17.2	1	5.1	0	22.3	1
Total	1,723.3	100	1,698.9	100	3,422.2	100

Source: Department of Statistics Malaysia, *General Report of the Housing Census, 1995*, p18.

Of the over four million housing units surveyed on census day in 1991, only 3,422,200 units were actually occupied. The occupants of another 71,100 units were not present when the census takers called, although these units showed signs of being used. Another 567,600 housing units were vacant.

During the survey, the 3,422,200 occupied housing units were inhabited by 3,527,600 households – an average of 1.03 households per occupied housing unit. This figure can be considered respectable as it is common to have more than one household in one dwelling unit. In comparison, the 1980 housing census showed that 1.1 households were occupying each housing unit. The ideal situation of course is to have a separate dwelling for every household which desires to have one.

Since the above figures are averages, they would not show up the extremes. In fact, 98 per cent of the occupied housing units were

Table 8: Number of households and persons in types of housing units, 1991 (in thousands)

Housing unit	No of households	No of persons	Average household size
Detached house	1,819.7	9,322.6	5.1
Semi-detached house.	371.1	1,721.5	4.6
Terrace house	874.5	3,937.3	4.5
Longhouse	68.1	282.1	4.1
Apartment	232.8	972.5	4.2
Shophouse	108.9	472.8	4.3
Room	26.2	106.4	4.1
Makeshift hut	23.7	91.7	3.9
Others	12.7	53.2	4.2

Source: Department of Statistics Malaysia, *General Report of the Population Census, 1995*, pp 788-789.

occupied by one household each (Table 7). But 22,300 occupied housing units, mostly located in urban areas, were occupied by three or more households each. In other words, at least 66,900 households had to share their houses with two other households each. In percentage terms, the number of multi-household units may not be very significant but nevertheless for those who have to share their living space with other households, this can be inconvenient, to say the least.

Furthermore, there were 49,700 occupied housing units with two households each in 1991. This means that another 99,400 households were sharing their housing units. Ideally, there should be one household per unit – especially for housing units in the form of rooms, makeshift structures and other forms of structures. As shown in Table 8, about 26,200 households were staying in rooms as their dwelling units, another 23,700 households were in makeshift structures and another 12,700 living in an assortment of structures such as houseboats and caves.

Even though this mode of identifying insufficiency is rather inadequate, it is perhaps the most practical one because it is always difficult to measure housing adequacy, which changes in definition according to the socio-economic development level of the society. It is therefore common for many countries to estimate housing needs by the number of dwelling units and the number of households.

Table 9: Number of extended family households and persons in occupied housing units, 1991 (in thousands)

Housing unit	No of households	No of persons	Average household size
Detached house	146.7	1,163.8	7.9
Semi-detached house.	16.8	130.6	7.8
Terrace house	36.2	268.0	7.4
Longhouse	9.7	61.8	6.4
Apartment	4.9	33.5	6.8
Shophouse	6.6	51.0	7.8
Room	1.2	9.5	7.9
Makeshift hut	0.5	3.5	7.5
Others	0.3	2.2	7.8

Source: Department of Statistics Malaysia, *General Report of the Population Census, 1995*, pp 780-781.

Note: Extended family households in this table refers to households consisting of parents and married child/children with or without spouse(s) or married heads of households (with or without spouse) and both parents of heads.

The inadequacy of housing can also be seen in the number of extended family households sharing a dwelling unit. Extended family households here refer to households consisting of heads of households and their spouses and at least one married child with or without a spouse, or married heads of households with or without a spouse and both parents. For extended family households staying in houses or even shophouses, the situation may not be bad. Indeed, some may prefer this situation. But for about 4,800 extended family households staying in apartments and flats, and over 2,000 households staying in rooms, makeshift huts and other forms of small dwelling units, such living conditions were definitely inadequate, especially in view of the social economic status of the country. The situation is likely to have improved since, with the addition of more than 600,000 units of housing built since 1991. However there is no doubt that a substantial number of Malaysians still live in inadequate dwelling units such as dilapidated and tenement buildings in urban centres and in squatter areas along railway reserve land and river banks.

It should be noted that the number of Malaysians living in inadequate housing conditions was and still is a small minority. Nevertheless this highlights the fact that although the country has mastered the technology

of building houses and has a relatively efficient housing system, there is no real safety net to cater for those who are unable to compete in the market process for access to adequate housing.

The existence of this situation in the midst of Malaysia's rapid economic development is considered a source of embarrassment and a topic of concern to national leaders. As Deputy Prime Minister Dato' Seri Anwar Ibrahim has commented: 'The nation is progressing very well, but for whom? To me the nation is considered handicapped if there are not enough houses for the people, especially low and medium income ones.'⁶

Vacancy

It is ironical that while there was insufficiency as reflected in multiple households having to share houses, others having to stay in rooms and makeshift huts, and extended families having to cope with small dwelling units, there were vacant housing units present. The 1991 housing census had shown that there were 567,600 such dwelling units in the country—representing about 14 per cent of the total housing stock or almost all the housing units built in five years from 1991 to 1995.

As Table 10 shows, the percentages of vacant housing units varied among the various states. Negri Sembilan had the highest number of vacant housing units with 20 per cent, while Kuala Lumpur had the lowest number with 9.7 per cent. Perlis, which had an average occupancy rate of one household per occupied housing unit, also had a low rate of vacant housing units at 9.9 per cent. The other states (except Labuan) all registered double-digit vacancy rates. There is no up-to-date data on the vacant housing situation. However, with the relatively large number of housing units built from 1991 to 1996, coupled with stable property prices and rentals, it is strongly believed that the number of vacant units has gone up rather than down. This is especially apparent in the case of high-rise apartments. A casual observation at night will show that many units do not seem to be occupied.

Vacant buildings fall into various categories. The Statistics Department found the most significant category of vacant buildings comprised of houses for sale or rent. In 1991, this accounted for 49 per cent of the total vacant units. There is a need to improve the property market mechanism to ensure better information flow between owners who have properties for sale or rental and those who looking for places to rent or buy. Better information flow will also help to ensure price stability because an inefficient property market is one of the main causes of property price escalation.

6. *The Star*, September 11, 1996, p1.

Table 10: Percentages of vacant housing units by states, 1991

State	Percentage of vacant units	State	Percentage of vacant units
Johore	17.3	Kedah	15.6
Kelantan	11.8	Malacca	16.0
Negeri. Sembilan	19.9	Pahang	12.3
Perak	16.1	Perlis	9.9
Penang	11.3	Sabah	12.9
Sarawak	11.5	Selangor	14.1
Terengganu	11.7	Kuala Lumpur	9.7
Labuan	9.8	Malaysia	14.0

Source: Department of Statistics Malaysia, *General Report on the Housing Census, 1995*, p75.

Table 11: Categories of vacant housing units, 1991

Category	No of units	Percentage
For sale/rent	278.1	49
Repair/renovation	39.7	7
Unfit for living	51.1	9
Holiday house	11.4	2
Others	193.0	33
Total	567.6	100

Source: Department of Statistics Malaysia, *General Report on the Housing Census, 1995*, p79.

The recent move by the Valuation and Property Services Department to produce the Malaysian Housing Price Index is in the right direction. Information on rentals should also be included in the index.

Other categories of vacant units included holiday homes and houses under repairs or unfit for living. The number of units under these categories was not large and was at expected levels. However, the rather large 'others' category in Table 11 is a cause for concern. The main reason for this classification was because the owners had not decided what to do with the houses, such as rent, sell or keep as an investment. To all intents and

purposes, the vacant houses under this category are kept out of the housing market and contribute to the inefficiency of the housing delivery system, which is in turn a serious cause of property price increase.

There is a possibility that many vacant units also include those which have been completed but for which the certificates of fitness have not been issued. Although there are no statistics available to show the extent of this occurrence, this is regarded to be an issue of concern. It has also drawn the attention of national leaders, including the Prime Minister and the Minister for Housing and Local Government, who have urged local authorities not to delay the issuance of certificates of fitness unnecessarily.

Without undertaking a proper study, it is not possible to cite the authorities or pin down the reasons to blame for delays in issuing certificates of fitness for buildings which appear to be completed and ready for occupation. Reasons for building delays are complicated and generally involve many parties including the developers, the local authorities and the building consultants. Causes for delays can involve such factors as planning and building standards, procedures of processing applications for land development submitted by the developers, and conditions imposed by the authorities.

Some houses can also remain vacant because they are part of the allotment reserved for Bumiputera buyers. Developers normally have to hold such units for six to nine months or even longer and show proof that they have taken steps to find Bumiputera buyers. Until the relevant government agency authorises the release of such units in the open market, some of these units can be left vacant for a long time.

The nation's building industry has been producing about 130,000 to 140,000 housing units a year. A vacant rate of 14 per cent of the total housing stock, which is more than 500,000 housing units, is a big waste of limited resources. This leads us to question the point in building so many houses when only a portion is going to be occupied. There is, therefore, a serious need to take a close look at the percentage of vacant housing stock and the housing market.

Ownership

Most housing units in Malaysia are owner-occupied. For instance, out of a total of 3.4 million occupied housing units in the 1991 housing census, 67 per cent or about 2.3 million units were used by the owners themselves. This is a respectable proportion of owner-occupiers. Comparable data for other countries is not available because data on owner-occupation is based on total households or families and not total number of housing units. Nevertheless, it may be useful to note that in

Australia, about 69 per cent of the households were owner-occupied. In South Korea, 51 per cent of the population were owner-occupiers.

Conversely, about 1.6 million occupied housing units or 32 per cent of the total units were used by those who did not directly own the premises. Out of these, about 604,000 units were owned by private individuals and another 464,000 owned by institutions such as the government, government agencies or private firms. Some of the occupants of units owned by private firms were the owners of the firms, who therefore indirectly owned the housing units they occupied. However, such instances are few and should not affect the overall statistics. Although the statistics available are somewhat dated, the current situation is not expected to have changed much.

Taking the average of 1.03 households per occupied housing unit, the 1.068 million housing units which were occupied by non-owners would have been occupied by about 1.1 million households. It would be fair to assume that most households which were living in rented premises would have liked to live in their own properties.

Despite the popularity of the term, 'home owning democracy', especially among politicians, it is inevitable that there will be some people who cannot afford to or are not interested to buy their own houses for a variety of reasons. Although the government can, and should, continue to implement programmes focusing on the priority of making housing affordable to the masses, it should also give attention to building houses for rentals. This is especially important for young individuals and newly married couples who are just starting out on their own as most housing units being built today are meant for family units with only four to five persons. The objective to strive for is to ensure that adequate and affordable housing

**Table 12: Ownership status of occupied housing units, 1991
(in thousands)**

Housing type	Owner-occupied	Individual owners	Institutional owners	Unknown ownership
House	2,166.5	497.0	336.4	42.7
Apartment, shophouse	120.4	91.6	105.0	5.2
Others	18.0	15.3	22.6	1.4
Total	2,304.9	604.0	464.0	49.3

Source: Department of Statistics Malaysia, *General Report of the Housing Census, 1995*, pp 172-173.

should not just mean ownership of houses, but should also imply proper access to adequate shelter. It is therefore imperative that a robust rental market for housing be established.

Basic amenities

As a country develops, the quality of housing conditions becomes an increasingly important agenda. It is no longer adequate to say that the citizens must have a roof over their heads. The amenities and facilities available to the occupants are equally important. The amenities that determine the quality of living conditions include the availability of piped water, electricity and toilet facilities. On the whole, it can be safely said that most Malaysians have access to these amenities.

In 1991, the most recent year for which comprehensive data is available, 77 per cent of the occupied housing units in the country already had piped water supplied to their premises, 91 per cent had electricity and 88 per cent had flush toilet facilities. For a developing country, these statistics are considered respectable.

What is equally impressive is the vast improvement in the provision of all these three amenities from 1980 to 1991. For instance, while only 48 per cent of the occupied housing units had piped water connected to the premises in 1980, by 1991 the number had increased to 77 per cent. The electricity supply to houses increased from 64 per cent to 91 per cent for the same period. The provision of flush toilets improved from 57 per cent to 88 per cent. With the recent emphasis

Table 13: Percentages of basic amenities provided in housing units, 1991

Amenities	1980	1991
Electricity	64.0	91.0
Piped water *	47.5	77.3
Flush toilet **	57.0	88.0
Total no of housing units ***	2,332.6	3,422.3

Source: Department of Statistics Malaysia, *General Report of the Housing Census, 1995*.

- Notes:
- * Connected to inside housing units. Common piped water outside housing units not counted.
 - ** Both pour flush and mechanical flush systems.
 - *** Numbers in thousand units and referring to occupied housing units.

on infrastructure development and government assistance to improve toilet facilities in rural areas, the numbers should have improved considerably.

Urbanites who have only had experience with the mechanical flush toilet system would find it noteworthy that in 1980, eight per cent of the housing units utilised the bucket system for human waste disposal, 15 per cent the pit system, four per cent only had enclosed space over water, and 16 per cent had no toilet facilities at all – meaning that the occupants had to use makeshift pits along beaches and isolated spots in bushes as their toilet facilities. By 1991, the bucket system had almost been eliminated, five per cent of the occupied housing units used the pit system and two per cent had enclosed space over water as toilet facilities. The percentage of occupied housing units without toilet facilities was reduced to five per cent. Apart from the flush system, all other systems of disposal of human waste are not considered conducive to a healthy living environment.

There is still much to be done in terms of human waste disposal. Most toilets with the pour flush system are not connected to a central sewerage facility where the waste is properly treated before disposal. In fact, some central sewerage systems, such as the one in George Town, merely channel human wastes into the sea, untreated. There is still a lot of room for improvement in terms of upgrading the waste disposal system.

Despite the overall improvement in the provision of basic amenities, the picture is not the same throughout the country. More urbanised states like Penang, Selangor, Negri Sembilan, Johore and Kuala Lumpur have better access to amenities than poorer states. For instance, in Sabah in 1991, only 45 per cent of the occupied housing units had piped water connected to the premises while 64 per cent had electricity and 45 per cent had flush toilet facilities. These figures were low compared to figures for Penang, which were 91 per cent, 98 per cent and 97 per cent respectively (Table 14).

Having facilities connected to the premises does not mean that the residents can enjoy them all the time. Power blackouts and dry taps can happen. Although no comprehensive data is available to show the extent of these occurrences, newspaper reports, particularly in *The Malay Mail*, show that they commonly happen.

Human settlement

If adequate housing were to be defined as just the provision of an adequate number of housing units with basic facilities, then there would not be many housing problems. It is relatively easy to build houses with only basic facilities such as piped water, electricity and flush toilets. The problem of

Table 14: Percentage distribution of occupied housing units with selected basic amenities by states, 1991

State	Piped water	Electricity	Mechanical flush toilet	Pour flush toilet
Johore	85.6	95.2	54.5	42.8
Kedah	68.3	93.3	29.1	60.3
Kelantan	59.3	92.4	14.6	75.3
Malacca	94.8	77.9	48.2	49.7
Negeri Sembilan	89.4	95.5	53.0	41.8
Pahang	78.7	89.5	41.3	50.8
Perak	86.2	92.8	51.4	39.3
Perlis	62.8	95.7	24.0	70.4
Penang	90.9	97.9	55.2	41.8
Sabah	45.3	64.0	29.2	15.6
Sarawak	64.5	80.1	35.8	39.3
Selangor	90.2	95.2	67.4	24.5
Terengganu	63.4	94.7	19.7	68.5
Kuala Lumpur	94.4	98.0	81.6	16.3
Labuan	72.2	93.5	54.4	13.0
Malaysia	77.3	90.5	46.3	41.4

Source: Department of Statistic Malaysia, *General Report on the Housing Census, 1995*, pp 56, 61 and 65.

shortage of adequate shelter for all, particularly the poor, arises because of the need to build human settlements, rather than just houses. The rather long gestation period to complete a housing project from start to finish and the relatively high building costs result because of the need to ensure that the housing units are accompanied with proper access roads, drains, open space, religious facilities, civic and community centres, police stations, kindergartens, markets, shops, schools and even hawker complexes, apart from basic facilities like piped water, electricity lines, telecommunication lines and sewerage system. A pleasant landscape is now also often required.

Apart from the statutory requirements of planning and building standards imposed by local authorities and other government agencies, housing developers and their consultants have recently incorporated more facilities into their housing schemes to make their projects more attractive

and saleable. It is now quite common to see condominium projects incorporating covered car parks, jogging track, barbecue pits, swimming pool, tennis and squash courts, gymnasium, children's playground, sauna and even cafeteria and multi-purpose hall.

High-cost bungalows or bungalow plots are usually sited in environments which are close to nature and yet enjoy conveniences and facilities such as golf courses, equestrian parks and fruit orchards, apart from more basic amenities such as roads, electricity, piped water, telecommunications and security system. However, it should be noted that such facilities and conveniences do not come 'free' even though the advertising claims may state otherwise. The property buyers ultimately have to pay for them, added with whatever margin of profit the developers can extract. On the whole, it is fair to say that Malaysians are today living in better housing conditions and with more modern facilities than their parents and grandparents.

Housing market

In a property-owning society, it is imperative that the housing market must be efficient not only to ensure that those who want to buy houses have knowledge and access to them but also to prevent property prices from rising as a result of artificial shortages. Such shortages usually occur because of insufficient knowledge of the availability of housing in the market. In this sense the Malaysian property market has been rather robust. In 1996, a total of 170,016 housing transactions with a monetary value of RM18,753 million was recorded by the Valuation and Property Services Department in the various states. Residential property prices in 1996 ranged from a minimum of RM30,000 to well over RM1 million, except for transactions of low-cost housing. About half of the transactions were for properties priced below RM75,000 each and about 65 per cent of transactions were less than RM100,000 each.

Over the years, the number of transactions of low-end residential properties has been decreasing. From 1993 to 1996, the number of transactions of low-cost housing units fell from about 18 per cent to 14 per cent. The number of transactions of properties priced at RM75,000 and below decreased from 57 per cent in 1993 to 49 per cent in 1996. Conversely, the number of transactions of dwelling units within the RM150,001 to RM500,000 price range has increased every year from 1993 to 1996. Properties priced at RM200,001 to RM250,000 accounted for 1.8 per cent of total transactions in 1993, 2.6 per cent in 1994, 3.3 per cent in 1995 and 4.0 per cent in 1996.

Table 15: Residential property transactions by price range, 1995 and 1996

Price range	1993		1994		1995		1996	
	%	Cumulative %	%	Cumulative %	%	Cumulative %	%	Cumulative %
0 - 25,000	17.6	17.6	16.3	16.3	14.6	14.6	13.9	13.9
25,001 - 50,000	19.4	37.0	20.0	36.3	17.8	32.4	15.2	29.1
50,001 - 75,000	20.3	57.3	20.1	56.4	20.6	53.0	19.6	48.7
75,001 - 100,000	16.4	73.7	15.9	72.3	16.1	69.1	16.7	65.4
100,001 - 150,000	14.7	88.4	14.1	86.4	13.8	82.9	15	80.4
150,001 - 200,000	6.1	94.5	6.7	93.1	7.1	90.0	7.7	88.1
200,001 - 250,000	1.8	96.3	2.6	95.7	3.3	93.3	4.0	92.1
250,001 - 500,000	2.6	98.4	3.2	98.9	4.1	97.4	5.9	98.0
500,001 - 1,000,000	0.8	99.7	0.7	99.6	1	98.4	1.2	99.2
Above 1,000,000	0.3	100.0	0.4	100.0	1.6	100.0	0.8	100.0

Source: Ministry of Housing and Local Government Malaysia, *Property Market Reports, 1995, 1996, 1997.*

Tables 16 and 17 show the trends of property transactions for the whole country. Property prices were substantially higher in urban areas. Double-storey terrace houses in major urban areas were transacted at above RM100,000 per unit. In major urban areas, such as Kuala Lumpur, George Town, Petaling Jaya and Johore Bahru, the prices of such properties were mostly closer to RM350,000, although there were some odd cases of such properties being transacted below that figure. There were exceptions. For instance, Ipoh stood out as a state capital with relatively low house prices. In 1996, it was still possible to find double-storey terrace houses being transacted for less than RM100,000 each. In smaller towns, such as Lipis, Kuala Pilah, Batu Pahat or Taiping, or on the fringes of the bigger urban areas, it was possible to purchase double-storey terrace houses for between RM150,000 to RM170,000 each.

Double-storey semi-detached houses, generally regarded as a higher class than double-storey terrace houses, were transacted at well over RM200,000 each in 1996. In major urban centres such as Johore Bahru, George Town, Kuala Lumpur and Petaling Jaya, such houses were transacted at RM430,000 and above, with some at well over a million ringgit each. Part of the reason for such high prices is the limited

**Table 16: Prices of properties in selected locations, 1996
(in RM thousands)**

State	Town/District	Double-storey semi-detached house	Double-storey terrace house	Condominium unit	Flats
Johore	Johor Bahru District	600-750	243-318	116-388	125-170
	Kluang	167-181*	94-150	na	na
Kedah	Kota Setar District	115-138	115-127	na	na
	Kuala Muda District	164-171	103-114	na	na
Kelantan	Kota Bharu District	220*	150	95-125	na
	Machang	na	na	na	na
Malacca	Malacca Town	173-295*	115-122	139-725	76-126
	Outside	163-330*	98-165	na	77-92
Negeri Sembilan	Seremban	168-275	87-199	270*	78-94*
	Kuala Pilah	na	85-90	na	na
Pahang	Kuantan	185-230	125-188	128-286	55-65
	Lipis	na	57	75-120	na
Perak	Ipoh	239-249	83-171	125	30-33
	Taiping Town	150-178	75-138	na	na
Perlis	Kangar	120-150*	155	na	na
	Kuala Perlis	na	35-80	na	na
Penang	Georgetown	430-1000*	320-550*	331-1708	108-168
	Sg Petani Tengah	290-300	109-178	na	94-95
Sabah	Kota Kinabalu	235	110-171	243-400	32-120
	Sandakan	150-210	100-140	na	40-83
Sarawak	Kuching	189-285	135-173	276-450	na
	Sibu	120-260*	68-150*	na	na
Selangor	Petaling District	550-900*	208-260	154-506	114-131
	Hulu Langat	120-460	123-300	na	59-282
Terengganu	Kuala Terengganu	302	50-250*	155-225	90*

Source: Ministry of Housing and Local Government Malaysia, *Property Market Report 1996, 1997*.

Note: Prices are for newly launched properties except those marked * which denote prices of existing properties.

Table 17: Rentals of housing units for selected locations and house types, 1996 (in RM thousands)

State	Town/District	Double-storey semi-detached house	Double-storey terrace house	Condominium unit	Flats
Johore	Johor Bahru	1200-1300	800-1500	1000-4000	350
	Kluang	na	200-400	na	na
Kedah	Kota Setar	180-440	170-350	na	na
	Kuala Muda	500-600	180-500	na	na
Kelantan	Kota Bharu	350	200-550	na	na
	Machang	na	230-260	na	na
Malacca	Malacca Town	na	400-500	2000-3500	350-380
	Outside Town	800-1800	280-800	2000-4000	450
Negeri Sembilan	Seremban	800-900	300-500	na	na
	Tampin	250-350	200-350	na	na
Pahang	Kuantan District	500-680	350-600	280-800	na
	Temerloh District	na	280-400	na	na
Perak	Ipoh	300-350	200-450	na	na
	Kampar	na	140-280	na	na
Penang	George Town	1000	750-900	200-4500	300-450
	Sg Petani Tengah	550-1800	400-700	na	220-400
Sabah	Kota Kinabalu	na	650-800	na	500-750
	Sandakan	550-1800	400-650	na	400-600
Sarawak	Kuching	480-650	380-500	na	na
	Sibu	400-600	350-450	na	na
Selangor	Petaling District	2000-2500	850-1500	na	450-600
	Hulu Langat	700-1000	450-1500	1000-3500	na
Terengganu	Kuala Terengganu	na	300-600	200-540	na
	Marang District	na	900-1200	950-1100	400-600
Kuala Lumpur	Kuala Lumpur District	1800-4500	550-2500	1100-5500	300-480
	Setapak	na	900-1200	950-1100	400-600
Perlis	Kangar	250-350	300	na	na
	Jejawi	200-250	100	na	na

Source: Ministry of Housing and Local Government Malaysia, *Property Market Report 1997*.

number of such houses in the market. Semi-detached houses, with their relatively wide frontage and the need for a strip of land at one side of the house, required relatively large land areas. On the average, a developer could only put up six to eight units of such houses on an acre of land, compared to about 12 to 14 units of terrace houses or 30 to 60 units of apartments.

For those in the lower income group in major urban areas, a reasonable expectation in looking for a dwelling unit to purchase is to aim for apartments. In 1996, on the island of Penang, for example, it was possible to get an apartment of about 700 sq ft in which the architects have managed to include three bedrooms, a lounge, a kitchen and a bathroom for between RM115,000 to RM150,000. In locations which were not so attractive, it was still possible to buy a house or apartment for less than RM100,000 each. In Kuantan, for instance, it was possible to purchase an apartment for between RM55,000 to RM65,000 each while in Ipoh, apartments were transacted at between RM30,000 to RM33,000 each.

The prices of condominium units are difficult to generalise as they can range from above RM100,000 each to over a million ringgit. In George Town, for instance, the highest transaction recorded was priced at RM1,708,000.

For lower-income groups hoping to buy their own homes, the only legal alternative was low-cost housing, commonly termed 'Type-Three houses', meaning houses built with half timber and half concrete on rented land. Unfortunately, the number of low-cost houses is very limited largely because there are no incentives, in the form of monetary rewards, for developers to undertake to build low-cost houses. Furthermore, once sold to individuals, the pricing could no longer be controlled and the same units could then be transacted above the RM25,000 limit – which is considered to be an unrealistic price. There is a serious need for a thorough review of the policy and strategies on low-cost housing, its production, marketing and management.

Rental housing

For those who cannot afford to buy houses or who do not wish to do so yet for a variety of reasons, the alternatives are to rent or to become squatters. Squatting, although illegal, has been an important avenue for some Malaysians to provide shelter for themselves and their family members. Despite the inclination and desire of planners and politicians to eliminate squatting, this looks like being a part of the housing scene for some time to come. Although the living conditions in some squatter areas are not as bad as

commonly depicted in terms of filthiness, haphazardness and crime, it has to be acknowledged that squatter areas lack basic amenities critical for urban living, such as proper access roads, sewerage, drains, electricity, piped water and playgrounds. Squatter areas are also prone to floods and fires. Moreover, squatting is illegal and should never be considered a long-term alternative for shelter.

For rental housing, monthly rates vary considerably depending on the location and type of dwelling units. Rental records compiled by the Valuation and Property Services Department for 1996 show that monthly rentals ranged from RM200 to RM4,500. For instance, the rental for a luxurious condominium in George Town was RM4,500 per month while that for a terrace house in Tampin was RM200 per month.

Although rentals in major urban centres are generally higher than in smaller towns, some state capitals still have houses with relatively low rental rates. For example, rentals in Ipoh, Alor Setar, Kota Bharu and Kuantan were much lower than in George Town, Kuala Lumpur, Petaling Jaya and Johore Bahru. The difference for similar types of housing can be two- to three-fold. Surprisingly, rentals in Sabah and Sarawak were generally higher for similar types of properties and sizes than in urban areas in Peninsular Malaysia. For instance, in Sandakan, the rental for a double-storey terrace house in 1996 was between RM400 to RM600 per month while that in Kampar was between RM140 and RM280 and in Tampin between RM200 and RM350.

Current issues and recommendations

As housing is considered to be both a basic need and an investment option, it generates a lot of controversy and interest. Housing is also a topic with which almost everyone has some experience, either as speculator, owner, tenant, prospective buyer, developer, professional consultant or government official involved in processing development plans, or even a combination of these roles. Thus almost everyone has an opinion on housing. Each individual's opinion usually has validity from that individual's viewpoint, although this may not be the case from other points of view, such as the society, the country or the industry as a whole. In many instances, the grievances expressed about housing might have nothing to do with inadequate housing per se, but rather with missed opportunities to make handsome capital gains. Unfortunately, when comments are expressed by opinion leaders or public figures and are publicised in the media, they can either influence or even form the basis of government policies, thus causing confusion about the housing situation.

The necessity of finding ways to build more houses within the affordability of the poor is already proving to be a big challenge. The issue becomes more complicated when calls are made to make low-cost units more 'liveable and comfortable'. An example is highlighted in the following excerpt from a newspaper report:⁷

... there must be some guideline or rule about the size of a flat unit.

Perhaps it should not be less than 1,000 sq ft. Also, the building should be kept at about 10-storey or so minimum height.

Developers should perhaps provide some kind of clothes dryers inside the house and they should set up a common television aerial or satellite dish for all residents of a particular block.

There should be ample parking space, eating outlets and stalls, and a large open space. There should also be a large community hall and a small library in every block.

There should be provisions within the housing scheme for mosques or suraus and houses of worship for Hindus, Christians and Buddhists.

Also, recreation and sporting facilities must be made available for the youths.

... the provision of a small plot of land, at a small cost, for flat dwellers who wish to grow plants or vegetables within a fenced area or the ground.

Some suggestions may be valid but most are absurd if prices of low-cost housing were to be maintained at RM25,000 each or even allowed to reach RM35,000.

As this discussion highlights, the housing achievements in Malaysia have been very satisfactory, especially in terms of quantity achieved. Many Malaysians, particularly those from the middle-income group and a substantial number from the lower-income group, have been able to enjoy relatively safe, healthy and comfortable living conditions. For higher-income groups, some recent projects have made available to them ideal homes in really pleasant environments. However, it should also be noted that the houses do not come cheap and most Malaysians are saddled with huge mortgages.

Many Malaysians have made hefty financial gains from property investments in the 1960s and early 1970s as a result of the tremendous increase in property prices. For instance, detached houses in the Bangsar area in Kuala Lumpur, bought for less than RM100,000 each in the early

7. Sri Tanjung column in *New Straits Times*, April 26, 1997, p21.

1970s are now worth about RM1.5 million to RM2 million each. Many housing developers and those in related professions, including consultants, architects, engineers, surveyors, lawyers, bankers, valuers and contractors have also made very substantial financial rewards.

The process of building houses itself has progressed significantly, especially in the development and acquisition of various aspects of building and planning technology, and housing delivery. In fact, Malaysia now exports its expertise in the housing industry to countries such as Vietnam, Cambodia, China and South Africa. However, there are some major issues that must be addressed if the housing industry is to gain a more robust footing.

Low-cost and low medium-cost housing

There is no doubt that there is a real need for many more low-cost and low medium-cost houses. The various government agencies, including the State Economic Development Corporations, are facing difficulties in building the large numbers required of such houses and the government has turned to the private sector to share the task. It is neither possible nor feasible to discuss in this chapter, all the regulations drawn up to get developers to build low-cost houses. Suffice to say that building houses which comply with all the planning and building regulations and standards, and selling them at RM25,000 each is no longer feasible, especially in the urban areas.

Although developers are expected to subsidise the construction of low-cost units with profits made from other types of housing, such a procedure is not sustainable as the low-cost units will only be a relatively small portion of the total number of housing units in a scheme. Moreover, it means that buyers of other units, most of whom can barely afford the purchase, have to subsidise the low-cost house buyers. It can be counter-productive to maintain the selling price of low-cost houses at not more than RM25,000 each. Delays in launching projects can sometimes result because of this when developers attempt to appeal to the government to waive the low-cost housing requirement by giving a variety of reasons, some of which are apparently legitimate, when capitalism, residential housing mix and cost of land are taken into account.

It is time for the government to take the bold step of allowing developers, both private firms and government agencies, to build and sell housing units in major urban areas at prices above the RM25,000 benchmark. For the low-cost housing programme to be sustainable, developers must be allowed to make profits from their projects. Without the profit incentive, a few projects may be built, either to comply with established

quotas or as gestures of goodwill in response to calls by the authorities. Under both circumstances, the production of low-cost houses will not be sizeable or sustainable.

In a capitalist society, where almost every private business venture is motivated by profits, financial incentives are needed to spur developers to produce more houses, including those catering to the poorer sections of the society. It should be noted that the process of housing development often requires ingenuity, perseverance and hard work on the part of developers and their consultants to overcome obstacles and challenges. Such efforts should not go unrewarded or without being provided with a feasible opportunity to make a profit.

It is strongly believed that many potential buyers who are on the waiting list for low-cost houses can afford units of up to RM50,000 each. However, because such housing is unavailable, these people have to continue to wait for low-cost houses. This is well demonstrated in Penang, where the building of low medium-cost houses in lieu of low-cost units were allowed in the north-east district of the island in the early 1990s. This spurred the production of thousands of apartments selling for not more than RM50,000 each. Although it is too soon to pass judgement on the soundness of such a policy, it has allowed those who could not wait for low-cost houses and could not afford medium-cost apartments priced at above RM90,000 each, to own houses.

Lately, some national leaders, including the Prime Minister, have voiced the view that it may be time to reconsider the RM25,000 limit on low-cost houses in some urban areas. States such as Perlis and Johore have reportedly decided to allow developers to sell low-cost houses at above the RM25,000 benchmark.

Shoddy and faulty workmanship

The insufficiency in the number of low-cost and low medium-cost houses available is a major housing problem which needs to be resolved. At least, though, the issue is recognised as an agenda in development plans, both at the federal and state government levels. An equally urgent issue which has not been reflected in the national and state agenda is the quality of existing houses, although the problem is highlighted almost daily in the media.

One problem which is beginning to attract attention is the shoddy and even unsafe workmanship in housing construction. Examples of such poor quality work are badly plastered walls and beams, uneven stairs, cracks in the walls and floors, leaking roofs and damaged sewage pipes.

Building quality in some projects is so bad that the houses have turned into health hazards rather than shelters. For instance, residents of Taman Bandar Indera Mahkota near Kuantan, a housing scheme of 17 blocks of five-storey flats of 1,360 units, had to be relocated because the units were found to be unsafe for habitation. Blatant short cuts in the construction of the buildings included stuffing cement bags and styrofoam into hollow walls in place of bricks. Despite this, certificates of fitness for occupation were issued.⁸ While recognising the need to build more houses to cater to an increasing population, especially the lower income group, an equally important challenge facing the housing industry is to ensure reasonable building quality, especially for buildings catering to the poor.

Having paid a lifetime's savings and at the same time mortgaged to the hilt to acquire properties which later turned out to be defective, the owners can be justified in feeling cheated and very frustrated with their housing conditions. Ironically, most of these defective units were designed and planned by qualified professionals approved by the government, built under the supervision of highly-paid consultants and certified as suitable for occupation by the local authorities.

There should also be a consciousness on the part of the developers to ensure that the quality and safety of existing buildings do not deteriorate. This is especially so in high-rise buildings where individual owners have neither the funds nor the capability to undertake repairs or maintenance works to keep their buildings safe, healthy, pleasant and comfortable. The serious lack of effective maintenance in existing dwelling units, especially low-cost and low medium-cost units which are usually in the form of high-rise blocks, is one of the main causes of poor housing conditions in the country. The damaged water tanks in a high-rise building in Johore Bahru which resulted in destruction of lives and properties is an extreme example of what could happen if proper maintenance work is not carried out. Buildings do not have to reach this level of degradation to cause misery to their residents. Leaking sewage pipes, roads filled with potholes, faulty lifts, dark corridors and even mouldy and peeling paintwork can severely affect the comfort and morale of residents.

The establishment of the Construction Industry Development Board to register, regulate and educate industry practitioners, and the proposal to set up industry standards to ensure quality are laudable steps. However, much more needs to be done, such as providing more facilities for the training and certification of construction workers and builders. The ultimate aim is to have builders who are able to regulate themselves and to inculcate a sense of pride of workmanship in them.

8. *New Sunday Times*, November 24, 1996, p1.

The proposal to set up a system to evaluate the quality of houses, particularly low-cost units, to ensure zero defect is a necessary step under the present circumstances. Until the building industry can regulate itself, such an evaluation system is needed. However this should be a temporary measure because it adds another bureaucratic hurdle in the process of building houses.

While it is praiseworthy for the Ministry of Housing and Local Government to propose a panel of experts to evaluate the quality of workmanship and the proposed Construction Industry Development Board to prepare standards, there must be follow-up action on these proposals. In 1994, the Malaysian Architects Association (PAM) and the Board of Architects proposed a Building Charter which was to unite the main players in the building industry to improve and self-regulate the industry, and to address problems of late delivery, poor quality and lack of accountability. Unfortunately, these problems still exist and the proposed Building Charter has not been heard of for sometime.

Unfriendly and unhealthy human settlements

Despite the increasing number and variety of facilities to make life more comfortable and enriching, the quality of such facilities in many places is usually below expectation. In many areas, including residential areas which are considered middle-class but especially in locations occupied by the poorer groups, such as Rifle Range in Penang and Pandan Perdana in Kuala Lumpur, the residents are denied the use of such facilities due to the lack of maintenance, repairs and upgrading works. The deterioration and degradation of these facilities as well as instances of uncollected garbage, clogged drains, roads marred with pot-holes, derelict playground facilities, flash floods, and leaking water and sewage pipes have often been highlighted in the media. Indeed, some of the facilities have been so neglected that they have become dangers to public health, such as broken swings and slides in children's playgrounds and broken manhole covers along the roads. With concerted efforts, especially in enforcing or facilitating compliance and scheduling maintenance works, and with relatively little costs, the housing conditions and safety of many Malaysians can be vastly improved.

Many residents in the urban fringes are also finding their serene environment threatened with destruction by nearby projects. A case in point is the proposed development of Bukit Seputeh, which is adjacent to Taman Seputeh, a middle to high-class residential neighbourhood in Kuala Lumpur. A proposal has been made to turn Bukit Seputeh into a mixed commercial and residential area incorporating low-cost flats, medium to

high-cost apartments, office buildings and shopping space in buildings ranging from six to 15-storeys high. The approximately 15-hectare Bukit Seputeh has been a green lung consisting of matured trees, plants, flowering shrubs and clear streams, apart from birds, insects and other creatures. Nearby residents in Taman Seputeh claim that development on the scale of what is proposed would not only destroy the green lung but also lead to more people, vehicles, noise, dust and traffic jams.

However, Bukit Seputeh is a private property and the owner has the right to make use of the land to derive income. It has also been argued that the development project would allow others, including poorer Malaysians, to enjoy living near the heart of Kuala Lumpur. While some Malaysians are fortunate to live in exclusive areas, others who are less fortunate should not be denied opportunities to do so. Being the first to live in an area does not give anyone the right to declare exclusivity. For the local authority, in this case City Hall, it is difficult to decide on the approval for the proposed project and to balance the interests of both sides – the landowner versus the earlier residents.

At a more general level, the question of whether to approve or to object to a proposed project is not easy to answer. This is especially true in cases of proposals to develop private properties which had been left in their natural state for some time, thus misleading local residents into regarding them as green lungs. Thus when the proposals are approved, local residents often accuse the developers of being greedy and uncaring, and the local authorities of siding with the developers.

Such accusations and controversies need not happen. After all, the introduction of town planning in the early 1920s was supposed to ensure proper development of urban areas and to allow local residents and landowners to know exactly what to expect in the development of their neighbourhood. Unfortunately, after having practised town planning for nearly 50 years, including the introduction of the current planning system for more than 20 years since 1976, the local authorities have not been able to make full use of the established planning system and the expertise available to regulate urban development and enhance the quality of urban living. Although many local authorities have their own structure plans, this forms only part of the picture. The authorities must prepare and gazette their local plans not only to inform landowners about what can be built on their land but also to inform local residents about what to expect in their neighbourhoods in the foreseeable future. Gazetted local plans will also commit the local authorities to their obligations to proper and predictable land development.

Regulations and facilitators

As a result of the shortage of low-cost housing and the poor conditions in existing buildings and the environment, calls have been made to implement more regulations and building standards. Some recent proposals to regulate the actions of developers include the imposition of a deposit payment to local authorities to ensure compliance with all regulations, creation of funds to repair damages caused by developers, and the restriction on the number of houses to enable more trees to be planted. Although urban societies do need regulations to function smoothly, having too many regulations might instead lead to adverse effects such as creating a culture of encouraging lobbyists to go around looking for loopholes and waivers for exceptions to the rule.

The local building industry already has too many rules and regulations. The present state of affairs in the housing estates is largely the result of a lack of compliance with the multiple rules and statutory standards. In his comments on the Highland Towers Tragedy, New Straits Times Group Editor A Kadir Jasin said in his column in *New Sunday Times* on December 19, 1993:

Stacked together, the statute books governing the construction industry and the environment could very well be as tall as some of the tallest condominiums in the city, but enforcement is a different story altogether.

The most shameful thing of all is the habit of finger pointing among government agencies and departments. It is happening even as efforts are under way to look for survivors in the rubble of the collapsed Highland Towers building.

To facilitate a robust housing industry, the key is to maintain liberalisation while ensuring compliance. Since the process of housing production is fraught with many hurdles, the National Housing Department and the various state housing departments should act as facilitators rather than regulators as is happening at present. In other words, housing department officers should be available to solve problems faced by developers and the housing industry as a whole.

The National Housing Department and its state counterparts should help to overcome the urgent need for more information on the housing industry. Lack of information on the housing industry has contributed to the production of housing units which do not meet the needs and affordability of certain sectors of society. Worse, it has led to calls for more rules and regulations and the imposition of unrealistic higher standards which further restrict the building industry.

Housing production today takes place at various levels of ignorance. No one knows the current housing stock, the number and types of houses required, the location they are required in or the number of houses in the pipeline. The various government reports provide only a partial picture and are thus useful only to a limited extent. This state of affairs is inexcusable because with some effort and a little expenditure, it is possible to collect, process and publish up-to-date data on housing, if not monthly, at least yearly, so that those in the housing industry can make well-informed decisions.

Developers and the professionals

Apart from calling for more regulations, some quarters have also been putting the blame on those whom they accuse of being culprits for what they see as housing problems. The most frequent and popular targets are the developers. A recent report in *New Sunday Times*, January 7, 1997 highlighted:

Whatever its travails in the last decade, the property sector can be in doubt that it is now plum in the middle of a boom that shows no sign yet of abating. Malaysian developers have never had it so good - not in their past experience, nor in comparison to their compatriots in other countries. Property and real estate sectors, no matter how much they appear to be a part of free markets overall, can never be free of social and political requirements and constraints. Developed countries almost enjoy making new developments difficult, for a host of reasons, including environmental, traditional or cultural ones. Land developers should count themselves lucky enough to cash in on a boom with as little as is currently expected of them.

But the frustrations of many critics about the housing industry are directed at the wrong group of people. The developers certainly deserve some brickbats, but not all of them. They are entrepreneurs and their main objective is to make profits for both themselves and their shareholders, although as Malaysians they can never be free of social and political obligations to take care of their fellow Malaysians who are poor. The laws do not require them to have professional training or education on social and civic obligations. If anything, most are only following their entrepreneurial spirit, that is, to work hard and get rich. Their only qualifications to be developers are an enterprising spirit, some capital and a licence from the Ministry of Housing and Local Government.

However, the laws do require that before the developer can cut down a tree or dig a shovel of earth, he is required to obtain permission

from a myriad of government agencies, particularly the local authorities. The laws also stipulate that only recognised professionals can prepare and submit applications to the various government institutions. To obtain the professional qualifications requires 15 to 20 years of education. In every stage of the education process, the professionals are constantly taught civics, ethics and professional standards and conduct, besides the usual readings on social justice, equality and love for mankind and the environment. In addition, every professional institute has its own list of ethical standards and conduct for its members to follow. If there is any shortcoming or shoddy work in the buildings or the living environment, the culprits responsible should be the professionals.

The pace of urban development is so rapid that it is becoming impossible for the government agencies and departments to regulate every aspect of land development activities. The laws already require and place on the professional consultants certain responsibilities to ensure that land development in Malaysia is not only safe and healthy but also satisfy aesthetic needs. The professional consultants in the building industry must now be given the responsibility, commensurate with the recognition given to them by law, in the form of various acts of Parliament. This will help decrease the heavy workload of professionals in the government sector, thus minimising delays in the processing of plans, and ensure greater transparency and accountability in land development activities since the private sector consultants would not be able to hide under the Official Secrets Act when called upon to account for their actions.

Conclusion

To many visitors to Malaysia, the country seems to be a huge construction site. Apart from the huge commercial projects in the urban centres, housing projects can be seen everywhere—from the airports to the city centres and from the city centres to other towns. The current issue is not whether there are enough houses, but whether we have the ability to build houses within the affordability of the various strata of society, and the ability to ensure that the houses and the built environment are safe, healthy and comfortable befitting the socio-economic development of the country. The basic ingredients in overcoming these two central issues are in place. What is needed is a common sense of purpose to provide adequate housing for Malaysians and not to be distracted by minor issues. Hopefully, this chapter has provided the discussion points to help us focus on this common sense of purpose.

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CHAPTER 3

Financing Housing Development and Home Ownership

R Thillainathan

Introduction

This chapter deals with key trends, developments and issues in financing housing development and home ownership from the 1970s. It provides a quick overview of housing development and of the respective roles of the public and the private sectors in financing housing development. The chapter also features an extensive discussion of the financing of house ownership. It examines the role of all the key players in the origination and financing of housing loans, namely the commercial banks, the finance companies, the Treasury Housing Loan Division (THLD) and the two building societies – Malaysia Building Society Berhad (MBSB) and Borneo Housing Mortgage Finance Berhad (BHMFB). The chapter also deals with the flow of funds into housing loans; the changing dynamics and pricing of housing loans; the origination, financing and refinancing of housing loans; and issues related to mandated lending for

The assistance of my colleague Mr P Balasundram in the compilation, processing and analysis of certain data is acknowledge with grateful thanks. I also wish to acknowledge my deep thanks to Mr Ban Poon Huaat of Citibank Berhad for sharing freely his knowledge of the bridge and end finance business of the housing industry.

housing. The role of the Employees Provident Fund (EPF) in housing development and housing finance is also discussed.

Housing development: a quick overview

The private sector has been playing a dominant role in housing development in Malaysia (see Table 1). Except for the first half of the 1980s, when its share was only half, the private sector has accounted for two-thirds to three-quarters of houses developed during the 1970s and the second half of the 1980s. During the first half of the 1990s its share amounted to 87 per cent.

Housing development targets have been set since the Fourth Malaysia Plan period, that is, from the first half of the 1980s. However, there was a massive shortfall during the 1980s, amounting to a shortfall of 56 per cent during the first half and 57 per cent during the second half. The private sector shortfall was somewhat higher than that of the public sector. As there has been no deterioration in the problem of overcrowding, squatter settlement or slum living, this massive shortfall may suggest an overly ambitious target. During the first half of the 1990s, the target has been exceeded by 13 per cent with the private sector experiencing a massive 41 per cent surplus in spite of the public sector experiencing a 50 per cent shortfall.

Data on performance in relation to target by the cost of houses developed is available fully only for the last 10 years (see Table 2.) During the second half of the 1980s, low-cost housing experienced the most severe shortfall and failed to meet the set target by two-thirds whereas the shortfall was one-third for medium-cost housing and one-fourth for high-cost housing. During the first half of the 1990s, low-cost housing still experienced a 25 per cent shortfall whereas there was a 41 per cent surplus for medium-cost housing and a two-and-a-half fold surplus for high-cost housing.

Even the public sector has been more successful in developing medium and high-cost housing than low-cost housing. This is readily evident from the data in Table 2. As land is a state matter, the federal government has used the state or local governments as the implementation arm of its low-cost housing programme. Apart from fixing the price at which the low-cost housing units are to be sold, the federal government has confined its role to that of financing the implementation agency, the extent of financing being based on the price plus the number of housing units to be developed. Due to cost over-runs (either because of an underestimation of cost or because of unanticipated inflation), these agencies have not been able to develop the low-cost housing units within the budget allocated. Given the budgetary constraints of these agencies, there has therefore been significant shortfalls in attaining whatever targets have been set for the low-cost housing programme.

Table 1: Public and private sector housing performance during various plan periods

	No of units completed					7MP Target	No of units completed as % of respective plan target		
	1971-75	1976-80	1981-85	1986-90	1991-95		1981-85	1986-90	1991-95
PUBLIC SECTOR									
Public low-cost housing	13,244	26,250	71,310	26,172	10,669	29,000	40.4	61.0	43.7
Housing rehabilitation						20,000			
Site & Services					4,707	15,000			30.2
Housing by land development agencies	41,965	36,770	34,980	32,056	8,075	9,300	31.8	55.7	14.4
PRIVATE SECTOR									
Institutional quarters & other staff accommodation	24,240	20,560	25,450	11,284	18,776	102,700	43.5	41.8	57.6
Housing by commercial agencies	6,627	37,930	70,160	27,614	42,315	54,000	131.0	147.7	93.4
Sub-total	86,076	121,510	201,900	97,126	84,542	230,000	38.9	65.2	48.6
PRIVATE SECTOR									
Private developers	64,862	199,490	104,800				30.0		
Individuals and groups	105,287	159,070	94,800	196,319	551,613	555,000	63.2	36.2	142.8
Co-operative societies	3,585	4,120	4,570	7,483	11,305	15,000	18.1	59.9	89.7
Sub-total	173,734	362,680	204,170	203,802	562,918	570,000	38.9	36.9	141.1
Total	259,810	484,190	406,070	300,928	647,460	800,000	44.0	42.9	113.0

Source: Economic Planning Unit, various Malaysia Plans, Kuala Lumpur

Table 2: Public and private sector housing performance during various plan periods

	No of units completed				7MP Target	No of units completed as % of respective plan target	
	1971-75	1976-80	1981-85	1986-90	1991-95	1996-00	1991-95 1986-90
PUBLIC SECTOR							
Housing for the poor							
Low-cost	55,209	63,020	106,290	74,332	46,497	35,000	61.5
Low medium-cost						60,000	
Medium-cost				21,354	35,195	110,000	76.5
High cost				1,440	2,850	20,000	720.0
Sub-total	86,076	121,510	201,900	97,126	84,542	5,000	65.2
PRIVATE SECTOR							
Low-cost			19,170	6,124	83,564	140,000	4.6
Special low-cost				83,940	131,325		35.0
Low medium-cost				95,428	247,241	240,000	62.7
Medium-cost						110,000	
High-cost				18,310	100,788	80,000	70.2
Sub-total	173,734	362,680	204,170	203,802	562,918	570,000	36.9
Total	259,810	484,190	406,070	300,928	647,460	800,000	42.9
Percentage share							
Public	33.1	25.1	49.7	32.3	13.1		65.2
Private	66.9	74.9	50.5	67.7	86.9		36.9
Total	100.0	100.0	100.0	100.0	100.0		42.9
Low-Cost			30.9	54.6	40.4		33.2
Medium-Cost				38.8	43.6		64.8
High-Cost				6.6	16.0		75.2
Total	100.0	100.0	100.0	100.0	100.0		42.9

Source: Economic Planning Unit, various Malaysia Plans, Kuala Lumpur

The fixing of an artificially low price for low-cost housing units is also the key reason for the massive shortfall in the number of such units developed by the private sector. A company, unless it is a long-term property developer, does not have the incentive to build the low-cost housing units or build them on time. In respect of the long-term developer, the required cross-subsidisation of low-cost housing units by the medium or high-cost housing units may in fact constrain the overall development of houses. The low-cost housing programme has also been affected by problems related to land conversion, delay in removal of squatters and inadequate infrastructure as the land earmarked for the low-cost housing programme will not be choice land given the price ceiling imposed on the low-cost housing units to be developed.

The poor record of housing development during the 1980s is not difficult to explain. It can be discussed in relation to demand as well as supply factors. During the early and mid-1980s, interest rates were very high and economic growth rates were significantly lower. In fact in 1985-86, real GDP growth rate was slightly negative but the decline in GNP was even more severe because of a massive cutback in public expenditures and a collapse in key commodity prices. The low growth and high interest rate environment was further aggravated by a tightening in the mandated lending programme¹ which discouraged overall as well as specific lending by banks.

The lower demand indirectly made for a lower supply. The high interest rate also made for lower supply directly by squeezing profit margins. Slower land conversion approvals and high rent payments to regulators aggravated the supply situation. Although the economy bounced back from mid-1987, the need for rebuilding household savings to more prudent levels after it had been ravaged by the difficult years of the early and mid-1980s meant that the demand for durable goods including housing picked up only slowly in the late 1980s. The revival in demand was helped in no small measure by the much lower interest rate environment from 1987 and by a liberalisation in government housing loan conditions that had been tightened from the mid-1980s because of the government's austerity programme.

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1. Prior to March 1982, the mandated lending to housing of 10 per cent of total loans of the base year (1981 in this instance) was a global target without a sub-target for low, medium or high-cost housing. An interest rate ceiling of 10 per cent applied only to houses priced at RM100,000 or less. As most banks minimised their lending for such houses '... the lending guidelines of March 1982 introduced for the first time specific commitments by the commercial banks and finance companies in respect of houses costing RM100,000 and less each'. (Bank Negara Malaysia, 1982, p13)

The public sector in Singapore, unlike that in Malaysia, has played a key role in meeting the demand for houses in particular for low and medium-cost housing units. The Singapore government's success in housing has been attributed largely to its Housing and Development Board (HDB). There have been many attempts, dating back to the 1970s, to set up an HDB-type organisation in Malaysia but without much success. As Malaysia is a federation and land is a state matter, such an organisation would have faced many problems with respect to land acquisition, land conversion and planning approvals. Singapore did not encounter such problems as it is a small island state with a unitary government.

Financing of housing development

As a developer, the public sector has confined its role to that of financing and the task of construction has been invariably sub-contracted out to the private sector. The declining role of the public sector in housing development is also readily evident from its diminished role in financing. This is displayed in Table 3 and the accompanying notes spell out the basis on which the data on the comparative performance of the public and private sectors with respect to the financing of housing development has been generated.

Where a developer relies on external financing for its property development activity, it is usually in the form of bridge finance to be retired from the end finance marked out for house buyers and released progressively in accordance with pre-specified construction and payment milestones (see Schedule I). The bridge finance requirement for property development in Malaysia is lower as pre-selling of houses is permitted and buyers are required to meet the pre-specified progress payments.²

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2. This certainly applies to a developer with its own land bank. This may not necessarily be the case for a developer who borrows to purchase development land and whose opening sales are not strong. In the latter case the bridge finance required will be quite high.

Before an end financier will release funding, it has to agree with the bridge financier on the sum for redeeming the unit for which the end finance has been marked out. The bridge financier has a charge on the mother title. By its agreement on the redemption sum, and so long as the redemption sum has been paid, the bridge financier waives its right to any claim on the unit which is the subject of the end finance in the event of foreclosure action on the mother title. To evidence this, the end financier obtains the consent of the chargee to register its interest with the land office on the subject unit on full payment of the redemption sum.

Schedule of payment of purchase price

Instalment payable	%
1. Immediately upon signing of Sale & Purchase Agreement	10
2. Within fourteen (14) days after receipt by the purchaser of the Vendor's written notice of the completion of:	
(a) the foundation and footing works of the said building	10
(b) the reinforced concrete framework of the said building	15
(c) the walls of the said building with door and window frames placed in position	10
(d) the roofing, electrical wiring, plumbing (without fittings), gas piping (if any) and internal telephone trunking and cabling (if any) to the said building	10
(e) the internal and external plastering of the said building	15
(f) the roads, drains and sewerage works serving the said building	15
3. On handing over of vacant possession of the said building with water and electricity supply ready for connection	15
4. Upon handing over of vacant possession as in item (3) and to be held by the Vendor's solicitor as stakeholder for payment to the Vendor as follows:	
(a) 2.5 per centum (2.5%) at the expiry of six months after handing over of vacant possession	2.5
(b) 2.5 per centum (2.5%) at the expiry of 12 months after handing over of vacant possession	2.5
	100

A developer is required to set up a dedicated project bank account for each housing scheme and collections of progress payments from sales of each scheme have to be banked into this dedicated account. The credit balance in a given account can only be used for financing or retiring the bridge finance raised for the appropriate housing scheme. This project account system, which was implemented in 1990, protects house buyers from any potential misuse or misapplication of funds by a developer, which was not uncommon in the past.

To minimise the use of bridge finance, a developer will rely on market studies to ensure a launch date such that there is no big mismatch between the demand for and supply of houses to be developed for the mix of development envisaged. By employing reliable contractors, developing a long-term relationship with suppliers of key building materials (some of which are subject to price

Table 3: Financing of housing development on a cumulative basis over various plan periods (RM million)

Period	Public sector	Private sector
1970-75	970	483
1976-80	2,010	1,849
1981-85	1,754	5,688
1986-90	1,452	6,145
1991-95	1,825	12,433

Source: Public sector financing data was extracted from various Malaysia Plans and private sector data was computed from growth in housing loans (see Table 4) based on considerations set out in the notes to this table.

Notes:

- Public sector financing figures are for housing. As far as can be ascertained, these figures do not include housing loans extended to individuals by the Treasury Housing Loan Division. Expenditure on institutional quarters and housing in land schemes is not reflected in the figures for the 1980s and the 1990s. These have become less important over time because of the declining importance of land development and because of the policy of encouraging government servants to own their own homes through Treasury housing loans.
- Published data is available for housing loans to individuals by the public and the private sectors. However, no such data is available for private sector financing of housing development. Such data is captured under lending by banks and finance companies for real estate as well as for building and construction. Such lending includes end finance or term loans for all types of real estate (but not housing loans to individuals which is captured separately under housing) as well as bridging and working capital finance for residential, non-residential and civil engineering projects. Term financing for certain classes of infrastructure projects is probably captured under lending for building and construction. In the absence of any specific data, the extent of private sector financing of housing development during any period (on an annual or cumulative basis) has been guesstimated at 50 per cent of housing loans to individuals during that period (see Table 4). This guesstimate is based on the following considerations:
 - Under Malaysian law, on execution of the Sale and Purchase Agreement, a developer is given 24 months to complete the construction of the houses and the required infrastructure for the housing scheme.
 - 95 per cent of the house price is payable over the construction period in eight progress payments and the balance of five per cent is payable six months and 12 months after hand-over of vacant possession of the house. A stylised representation of the payment milestone, the timing of payment as well as the percentage of each progress payment made (for a typical housing scheme whose construction period is 24 months) is set out below:

Payment milestone	1	2	3	4	5	6	7	8	9	10
Month of payment	0	3.5	7.0	10.5	14.0	17.5	20.5	24.0	30.0	36.0
% of each progress payment	10	10	15	10	10	10	15	15	5	5

- (c) On execution of the Sale and purchase agreement, only 10 per cent of the Purchase Price can be collected.
- (d) On the average, a developer can be assumed to take 3.5 months to collect each progress payment.
- (e) The value of land may constitute a-third to half of the price of the house. For an apartment or condominium complex, the value of land in percentage terms will be significantly lower.
- (f) There are two types of developers a bank can finance, one with its own land bank and the other which needs to borrow to finance its development land.
- (g) Lending to the first type of developer is extremely safe. It may borrow only if the sale is not good or if it expects to command a better price by delaying sale or if the size or the location of its land requires heavy initial investment in infrastructure. There are many developers now with a strong land bank and in a good cash position. Their requirement to raise bridge finance will not be as pressing. One can hazard the guess that developers falling within this category may raise bridge finance of around 25 per cent and no more (as a percentage of such a project's average size of end finance requirement).
- (h) The second type of developers will raise finance for the acquisition of the development land, for paying conversion premium, for constructing access roads and/or for commencing earthworks. The less accessible the land the more has to be spend on infrastructure.
- (i) A bank will be willing to lend up to 60 per cent of the market value of the land for financing the above activities provided the land has clear development potential as well as conversion and development approvals are in hand or are highly likely.
- (j) The end finance will go towards retiring the initial working capital or bridging finance and the higher this initial finance the longer the developer has to wait before the end finance drawdown can contribute to its cashflows net of debt retirement. The financing requirement of this category of developer is likely to be around 75 per cent with bridge finance around 100 per cent of end finance drawdown during the first half of the construction period and half that during the second half. For the purpose of arriving at the orders of magnitude, note that if end finance is 100 per cent at the end of a project's construction period, then it will be 50 per cent at the half way mark. One can then relate bridge finance drawdown to this average 50 per cent level for end finance.
- (k) If we assume that both types of developers are equally likely (especially if we take into account developers of landed houses as well as of high rise apartments), then bridge finance requirement may amount to around 50 per cent of end finance requirement.
- (l) From footnote 3 in the text, we note that lending for housing projects accounted for 53.7 per cent of loan outstanding for the real estate as well as building and construction sectors in 1985. However, we have not used this figure to arrive at the quantum of current financing for housing development. This is because, unlike before, certain categories of lending to the infrastructure sector is also captured under real estate and construction loans.

Table 4: Increase in housing loan finance outstanding by institutions and periods (RM million)

	Commercial Banks	Finance Companies	Treasury Housing Loan Division	Cagamas Berhad	Building Societies	Others	Total
1970-75	413	114	287		138	14	966
1976-80	1,731	480	816		642	29	3,698
1981-85	4,074	1,209	5,011		932	149	11,375
1986-90	3,289	1,536	4,487	3,082	-296	198	12,290
1991-95	7,152	3,957	3,691	8,800	618	648	24,866

Source: Computed from Bank Negara Malaysia Annual Reports and *Money and Banking in Malaysia*, (various editions).

Table 5: Size and growth of outstanding loan to real estate and construction

	Real estate		Building and construction	
	Total	Growth over 5-year periods	Total	Growth over 5 year periods
1970	-	-	229	-
1975	373	373	531	302
1980	2,171	1,798	1,746	1,215
1985	9,493	7,322	4,429	2,683
1990	12,047	2,554	7,617	3,188
1995	19,252	7,205	18,458	10,841

Source: Computed from data for commercial banks and finance companies contained in Bank Negara Malaysia's Monthly Statistical Bulletin.

Notes:

1. Lending to real estate consists of bridge finance to housing and real estate development projects as well as end finance for real estate (excluding housing loans to individuals).
2. Lending for building and construction consists of working capital finance to the civil engineering sub-sector as well as term finance for construction of highways. Contractors bid for projects on a deferred payment basis. The credit period extended to housing developers may be one to three months. They may raise working capital from banks to commence construction work. Such bank finance will fall under this category.

control) and minimising mismatches between contracts for construction and sale, a developer will also ensure that completion and delivery deadlines are met and risks are minimised.

The banking industry in Malaysia has been fairly prudent in its lending practices to the property and construction sector in spite of its observed or apparent tendency to over-lend to this sector. This is evident from its minimal exposure to land acquisition financing, from the limits imposed on property development financing, and from the spreading of credit risk by lending to a variety of projects or dispersing its risks on lending to large projects through syndication or participation in a syndication.

Even in the midst of the mid-1980s economic and banking crisis, a Bank Negara Malaysia (Central Bank of Malaysia) survey of property and construction projects financed by the banking system on June 30, 1985 showed 'that contrary to popular expectations, the concentration of property loans was not in large projects, but in a large number of small and medium-size projects in the major urban sectors... The lack of concentration in very large projects in their financing, with nearly one-third of them being syndicated, demonstrated that the banking system is well-placed to sustain any shocks from possible defaults in the event some of the property projects fail.' (*Bank Negara Malaysia Annual Report, 1985*, p159).³ Being the only comprehensive survey available on the lending practices of the banking industry to the property sector, full use has been made of it in this article.

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3. This Bank Negara Malaysia survey of all construction and real estate projects of more than RM2 million each covered 733 syndicated and 1,514 non-syndicated loans, accounting for 46.5 per cent of total loans to construction and real estate in mid-1985. Small property projects of less than RM2 million each accounted for more than half of the value of total property loans of the banking system then. Syndicated property loans accounted for 27.5 per cent of total property loans outstanding in the banking system. 'Syndications were particularly prevalent for commercial projects, hotels and the purchase of land. As much as 40 per cent of total loans outstanding for commercial projects and land purchases was syndicated. The proportion for hotels was 55 per cent. The 2,247 loans surveyed involved total loan approvals of RM9.4 billion and loans outstanding of RM6.5 billion, as against total project costs of RM34 billion,' indicating some prudence in the lending margin. Commercial buildings accounted for 24.7 per cent of total loans outstanding, housing projects for 53.7 per cent, flats and apartments for 6.2 per cent, land purchase for 3.9 per cent and construction work for public sector infrastructure projects, such as roads and highways, 10.3 per cent. In terms of projects by size of loan approval, eight loans of more than RM100 million each and 25 loans of more than RM50 million each accounted for 7.1 per cent and 13.3 per cent of total outstanding loans. More than 40 per cent of the value of loans was accounted for by 285 loans, the value of each being within RM10 million to RM50 million, while the balance of 46.5 per cent was represented by 1,937 loans each valued at RM2 million to RM10 million. (*Bank Negara Malaysia Annual Report 1985*, pp 157-9).

Since the mid-1980s, strict prudential regulations have been imposed on banks including single borrower lending limits, guidelines on interest suspension and specific provisions with respect to non-performing loans as well as restrictions on lending to related parties. With these regulations, the current lending practices should be better and not worse than what they were in the 1980s.

Malayan Banking Berhad Chairman Dato' Mohd Basir Ahmad has referred to the low gearing of Malaysian property developers as providing comfort on their ability to absorb the impact of any softening in property prices. He said their current debt to equity ratio is 0.24 on the average, whereas the corresponding ratio for Thai developers is 1.6. He argued that the healthy position of Malaysian property developers was due to the fact that the majority today are either ex-plantation companies or companies with huge land banks acquired earlier at relatively low cost (see *Business Times*, July 12, 1997, p7). If the property developers have a low gearing, this can be considered indirect evidence to argue that the banking industry's current exposure to the property sector is likely to be fairly well spread.

While the banking industry itself was generally prudent in its lending practices to the property sector, the housing development business can still be a risky one to lend to if the risks are not properly controlled. In 1990, for instance, as shown in Table 6, there were 277 abandoned housing projects, with 63,560 houses under development at a value of RM3,630 million but buyers only numbered 36,130.⁴ In relation to the total value of houses developed in the 1980s,⁵ the value of the houses in these abandoned housing projects was around 10 per cent – which is indeed a high figure.

The early and mid-1980s, the start-up period for these abandoned housing projects, was an exceptional period. Interest and unemployment rates were very high, economic growth was very low and cash-flow extremely bad, not only because of the high interest rate and low growth environment, but also because of the massive cutbacks in public expenditures and the collapse in key commodity and asset prices. One can therefore appreciate the reasons for the high failure rate of housing projects during the period.

The losses arising from these failed projects would have been borne not only by the bankers but also by the buyers, the developers and the contractors. The

4. Economic Planning Unit, *Sixth Malaysia Plan*, 1991, p367.

5. The value of additional housing loans given out during the 1980s was RM23.7 billion. Assuming an end finance margin of 70 per cent, the value of houses developed during the 1980s can be estimated at RM33.9 billion.

Table 6: Abandoned housing projects by state, 1990

State	Project	No of houses	No of buyers	Estimated values (RM million)
Johor	40	14,747	10,472	733
Kedah	8	2,095	1,259	81
Kelantan	17	1,942	946	113
Melaka	19	3,544	2,310	176
Negeri Sembilan	29	6,264	3,450	310
Pahang	18	2,610	1,625	124
Perak	40	8,177	4,482	472
Perlis	8	1,012	499	64
Pulau Pinang	21	4,692	1,819	366
Selangor	5	13,640	7,435	777
Terengganu	18	374	326	46
Kuala Lumpur	7	4,463	1,507	368
TOTAL	277	63,560	36,130	3,630

Source: Economic Planning Unit, *Sixth Malaysia Plan*, 1991-1995, 1991, p367

losses suffered by the bankers would have been lower, had the bridge finance been lower and the utilisation of end finance higher, and the down payment made by the buyers higher. Where the bridge finance had been retired by the end finance, the lending banker would have had recourse to the end borrowers. To the extent that the lending bankers had a charge over the housing land or the houses, they would have been able to minimise their losses through foreclosure actions.⁶ The regulatory environment for banking and property development is better as well as developers are in a stronger position now and the likelihood of abandoned housing projects as well as of non-performing loans is lower.

The raising of financing for property development has never been a problem in Malaysia. However, the financial institutions have from time to

6. The government came out with a RM900 million fund in 1990 to revive and complete these abandoned housing projects and to assist buyers to secure financing for their houses. 'About 12,395 units of houses, involving financial assistance of RM223 million from the Fund, were successfully revived. Since March 1992, new applications to the Fund were not accepted in view of the increasing ability of developers to secure finance for reviving the projects', Economic Planning Unit, *Seventh Malaysia Plan*, 1996, p 558.

time been subject to control by Bank Negara Malaysia in their lending activities to the property sector. In the past Bank Negara Malaysia had been contented to exercise moral suasion on the financial institutions to restrain or even cutback on such lending. Where lending guidelines were set, this was with respect to the margin of finance that could be extended for housing loans. However, since March 1997, Bank Negara Malaysia has set an overall sectoral limit on lending to the property sector of 20 per cent (as well as a limit on share financing) to deal with the problem of excessive credit growth and with asset price inflation. As these lending guidelines were not received well by stock market investors, the exemption of certain categories of loans from the sectoral limit (such as loans for housing priced below RM150,000) was extended to first-time loans for houses priced above RM150,000 as well.

As there has been a rapid expansion of base money, the broad monetary aggregates as well as of credit from end 1993, the selective control of credit is a second-best policy. The selective control of credit is preferred to not doing anything but the best policy is to tighten monetary policy. There has been some tightening of monetary policy from 1995 but this has not been adequate as all relevant monetary aggregates have been growing around double the pace of real economic growth. The selective control of credit in the face of rapid monetary expansion can provide a temporary relief but only if the ceiling has not been breached. It appears that many financial institutions still have a sizeable capacity for making such loans, especially given the exemptions.⁷ And the overall growth in credit will provide further opportunities. There are many obvious ways of circumventing such controls in the long run (including through a diminution in the role of traditional financial intermediaries and instruments).

Apart from its ineffectiveness in the long run, the selective control of credit can be questioned on grounds of efficiency as well as equity. A glaring example is that borrowing for a second house is subject to restrictions (irrespective of the number of children one has and in spite of the lower rental this can make for) whereas loans for cars or motor-bikes (irrespective of how expensive they are or how many one buys) are unrestricted.

In spite of the high growth in monetary aggregates, consumer price inflation has been subdued. We should not let ourselves become complacent

7. Apart from first-time housing loans, end finance extended to owner-occupied retail space and bridge finance for development of houses costing RM150,000 and less, are not required to be taken into account in computing a financial institution's exposure to the property sector.

on account of that. The high monetary growth has led to asset price inflation. Its impact on consumer prices has been contained by an appreciation of the ringgit, reduction in tariffs and freer imports. Therefore, to avoid any unexpected developments, a more restrained growth in money supply is a must.⁸

Financing of home ownership

Flow of funds to the housing sector

The flow of funds to the housing sector considered here is for the financing of home ownership. There is no readily available data on the flow of funds for the financing of housing development. Such data is in fact lumped together under building and construction, as discussed earlier.

To clearly identify the flow of funds into housing loans, it is best to discuss these flows in relation to the originators as well as financiers of the housing loans.

In the private sector, housing loans can be originated both by institutions within the financial system (for which data is readily available) as well as by non-financial private enterprises (for which data is not readily available). Non-financial public enterprises give out loans almost exclusively to their employees (and invariably on subsidised terms). The absence of data for housing loans provided by non-financial public enterprises is not material (so long as we do not consider privatised government enterprises on which more will be said later) as very few such enterprises provide housing loans to their employees. The housing loans originated by institutions within the financial system are financed or refinanced by some entities within the financial system whereas this is not necessarily the case for housing loans originated by non-financial public enterprises.

The housing loans originated by the public sector, which are entrusted to the Treasury Housing Loan Division, can be financed either by the public sector or by the financial system. The Treasury Housing Loan Division is a big originator as well as a financier of housing loans.

Tables 7 and 8 highlight data on the absolute as well as the relative size of the flow of funds into housing loans (including the sources of this data or the basis for their estimation). From 1960-95, financing of home ownership accounted for between eight per cent and 13.4 per cent of the total loans and advances of the financial system.

8. Apart from containing inflationary and external payment pressures, control over money supply is also necessary to ensure that it does not exceed long-run growth in real GDP. Otherwise, a debt deflation will be required to rescue an economy which has become used to an easy money policy for too long.

Table 7: Loans and advances of the financial system to housing and the broad property sector

	Average annual growth rate (%)									
	1960	1970	1980	1990	1995 ¹	1960-70	1970-80	1980-90	1990-95	1960-95
(Breakdown by RM million)										
Housing ²	87	315	3,884	17,657	37,485	13.7	28.6	16.3	16.2	18.9
Building & construction (incl. real estate)	20	260	4,115	21,717	40,805	29.2	31.8	18.1	13.4	24.3
Broad property sector	107	575	7,999	39,374	78,290	18.3	30.1	17.3	14.7	20.7
Total loans	680	3,931	28,921	141,560	305,571³	19.2	22.1	17.2	16.6	19.1
(As percentage share of total loans)										
Housing	12.8	8.0	13.4	12.5	12.3					
Building & construction (incl. real estate)	2.9	6.6	14.2	15.4	13.3					
Broad property sector	15.7	14.6	27.6	27.9	25.6					
Total loans	100.0	100.0	100.0	100.0	100.0					

Sources: Bank Negara Malaysia, *Money And Banking in Malaysia*, 3rd & 4th Editions, 1989 & 1994 and Bank Negara Malaysia, *Annual Report*, 1996

Notes:

1. The 1995 total loans data was extracted from Table A.37. The figure for loans to building and construction is only for commercial banks, finance companies and merchant banks (and to that extent it is marginally underestimated) as extracted from Tables A.43-A.45 of Bank Negara's 1996 *Annual Report*. The 1995 housing loans data was extracted from Bank Negara's 1996 *Annual Report* but adjusted to include the loans sold to Cagamas Berhad based on data supplied by Cagamas Berhad.
2. These housing loan figures are only for loans given out by the financial system and do not include the loans to employees by the public sector (see Table 2) and by non-financial private enterprises. Estimates of the flow of funds to housing are not available for the last category.
3. It is assumed here implicitly that the total loans of the financial system includes the housing loans which have been refinanced by Cagamas Berhad

Table 8: Housing loans of the Treasury Housing Loan Division and sources of financing (RM million)

	1973	1980	1990	1995	73-80	80-90	90-95	73-95
1. Treasury housing loans outstanding ¹	251	1,103	11,774	16,495	23.6	26.7	7.0	21.0
2. Outstanding loans due to federal government from all borrowers	2,462	11,132	43,039	45,618	24.1	14.5	1.2	14.2
3. Source of financing ² (RM Million)								
a. Federal government	100	643	5,473	5,473	30.5	23.9	0.0	20.0
b. Cagamas Berhad	-	-	1,173	2,203	-	-	13.4	-
c. Others	151	460	5,128	8,819	17.2	27.3	11.5	20.3
4. Source of financing (%)								
a. 3 (a) + 2	4.1	5.8	12.7	12.0				
b. 3 (a) + Total loans of financial system		2.2	3.9	1.8				
c. 3 (c) + Total loans of financial system		1.6	3.6	2.9				

Sources: Bank Negara Malaysia Annual Reports, various years; and Ministry of Finance, Treasury Economic Reports

Notes:

- These housing loans are given by the Treasury Housing Loan Division to government employees. The housing loans given to employees of statutory bodies are also included in these figures. However, a privatised statutory body such as Syarikat Telekom Malaysia is required to refinance the housing loans its employees have with the government once the entity is privatised. There is a reference to this requirement in Bank Negara's 1988 *Annual Report*, p132. Otherwise, they are required to pay Treasury an interest subsidy based on the difference between the cost of funds and the rate payable by the housing loan borrowers. The employees of government-owned companies registered with the Registrar of Companies are not eligible for subsidised housing loans from Treasury unless these employees are on secondment from the government.
- It is assumed that the figures on 'Housing Loans to Government Officers' given in the Tables in the *Treasury Economic Report* on 'Outstanding Loans Due to Federal Government' represent the housing loans of the Treasury Housing Loan Division, which are funded directly by the federal government. The data on the division's housing loans refinanced with Cagamas Bhd is obtained from Cagamas Bhd. As Cagamas Bhd is part of the financial system, the data on loans extended to housing in Table 1 is taken to include refinancing with Cagamas Bhd. 'Others' as a source of financing is derived as a residual. The institutions providing the financing cannot be readily identified with available data except for 1996: Federal government 40.3 per cent, banks 11 per cent, Cagamas Bhd 27 per cent and Employees Provident Fund 16.2 per cent. (See Bank Negara's 1996 *Annual Report*, p123).

To gauge the relative size of the flow of funds into housing loans originated by the Treasury Housing Loan Division is slightly more difficult. The loans of the Treasury Housing Loan Division which are financed by other entities in the private sector, presumably including the financial system, were equal in 1990 and 1995 to 3.6 per cent and 2.9 per cent – if expressed as a percentage of the total loans of the financial system. These loans, funded by federal government loans, when expressed as a percentage of the financial system's loans, were 2.2 per cent in 1980, 3.9 per cent in 1990 and 1.8 per cent in 1995.

Housing loans originated by the financial system thus absorbed 12.5 per cent of the funds of the financial system flowing into their lending activities in 1990 and 12.3 per cent in 1995. The flow of funds into housing loans which were originated by the Treasury Housing Loan Division may have been as high as 7.5 per cent in 1990 but declined to 4.7 per cent in 1995, expressed as a percentage of the resources of the financial system committed to its lending activities.

Changing dynamics of housing loans

MBSB, which was set up in the early 1950s, has been granting housing loans on a term-loan basis with a fixed schedule of repayment from the outset. The commercial banks provided little or no housing loans on a term loan basis at least until the mid-1960s. They may have provided some loans for the purchase of houses on an overdraft basis in the 1960s, but from data available, it appears that this was not an important activity for the commercial banks then. By the mid-1970s, the commercial banks had emerged as the biggest providers of housing loans. The mismatch in the maturity profile of a housing loan and the deposit liability of a commercial bank combined with interest rate control may have discouraged commercial banks from venturing into this activity in earnest in the 1960s. In any case, during that period the view that each type of financial institution should be a specialist and not a generalist was commonly accepted. Commercial banks tended then to specialise in the provision of trade and working capital finance. These were short-term self-liquidating facilities and matched the funding position of commercial banks.

This describes housing loans granted by private sector financial institutions, which are invariably at market rates. The government instituted a housing loan scheme at a subsidised interest rate of four per cent per annum (except during the austerity period of the mid-1980s when the rate was raised to as high as six per cent per annum)

as part and parcel of its employment conditions from 1970.⁹ The repayment period for these loans, was raised to 25 years in 1980.

In the 1970s, the average duration of the housing loans provided by the private sector was 10 to 15 years. By the mid-1980s, the average duration of the housing loans structured as term loans had increased to 15 to 20 years. In fact, one or two banks such as Citibank were also issuing housing loans partly as overdraft facilities (with the overdraft portion carrying a higher interest rate and with no restrictions on prepayment).¹⁰ In the 1990s, the average duration of term housing loans increased to 20 to 25 years with provision for inter-generational transfer of such loans from parents to children.¹¹

From the mid-1980s housing loans were also structured to permit a progressive increase in monthly payments on a graduated or periodic basis in line with the increasing debt service capacity of borrowers based on the profile of earnings over their life-cycle. During the initial sub-period, instalment payments can be restricted to the interest to be serviced. However, such payments will not be fixed below the interest amounts as the difference cannot be recognised as income by the financial institutions.

These developments in the structuring of loans were aimed at increasing the affordability of houses taking into account the increase in house prices from the 1970s. At that time the average value of a double-storey terrace house in the Klang Valley area would not have exceeded three times the annual salary of a fresh university graduate. The ratio of house prices to annual salaries had more than doubled by the 1990s. The ratio is around 10 for an apartment in Singapore and three for a house in Australasia.¹² Shortage of development land and rapid economic growth may have accounted for the significant differences in this ratio. In Malaysia, attempts by regulators to capture rents from land alienation and conversion may have made for a higher ratio but the extent of this problem has been lessened from the late 1980s as a result of the emergence of Bumiputeras and certain state entities as major developers.

9. Apart from government service, the financial services industry is probably the only other industry offering subsidised housing loans as an integral part of employment contract.

10. The overdraft tranche will enable the owner to draw on the underlying equity to finance his consumption or investment activities as and when required and at his discretion.

11. A possible reason for the lengthening of tenure is due to the availability of funds from Cagamas to reduce the mismatch in the maturity profile of assets and liabilities of financial institutions engaged in the provision of housing loans.

12. The underlying assumption about prices and starting annual salaries are as follows respectively: Malaysia: RM30,000 and RM10,000 (early 1970s); RM150,000 and RM25,000 (1990s); Singapore: S\$300,000 and S\$30,000; and Australasia: A\$75,000 and A\$25,000.

In deciding on the margin and quantum of advance to a prospective borrower, a bank will look at the debt servicing capacity of the individual. Under normal circumstances, the size of the loan will be such as to ensure that the monthly instalment falls between one-quarter and one-third of the individual's monthly earnings.¹³ The bank will be more conservative and hence permit a lower monthly instalment as a percentage of earnings with respect to borrowers who are own-account workers or salesmen as compared to those who are on fixed monthly salaries and whose jobs are more stable.

To avoid foreclosure actions in the event of death, the bank requires a borrower to take a decreasing term assurance policy over the life of the mortgage. In addition, the borrower also has to take an insurance policy on the house in the form of a fire or house-owner's policy against fire and theft so that his debt servicing ability is not undermined by such unforeseen contingencies. Insurance policies to protect household effects will be required only if the bank or its subsidiary has extended additional loan for renovation or the purchase of such household effects.

In the face of keen competition for housing loans, some banks are giving out pre-approved loans with a margin of finance of 80-85 per cent (as compared to 70 per cent or less initially) for first-time house buyers, especially for low and medium-cost houses. These banks are even prepared to make such offers for high-cost houses priced around RM500,000. The competition is so keen that banks are in fact making these offers at launches of new housing schemes, even going to the extent of issuing their offer letters to prospective borrowers on the spot (within half an hour of their housing loan applications). This means that the banks are prepared to market their offer without a credit check on the premise that if a prospective borrower is able to come out with equity of 15-20 per cent of the purchase price, then he should be earning enough to service the monthly loan.

Some banks have just started offering Islamic house financing. This is in fact roughly equivalent to a conventional fixed rate housing loan. The house buyer enters into an agreement with the offering bank to take title to the house and to resell it to him on a future date and at an

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13. In assessing debt servicing ability, some banks are prepared to look at joint incomes of husband and wife or even that of their children (so long as the children can be made a party to the loan agreement either as a borrower or guarantor). Joint borrowing by siblings is also accepted by some banks. For shophouse purchases, joint borrowing by friends is usually accepted by banks. In assessing the debt servicing ability of a borrower, banks are prepared to take into account other sources of income. For instance, in respect of rental income, a bank is prepared to consider 50 per cent of such rentals as income in assessing a borrower's ability to pay interest.

agreed price, in return for making an initial downpayment and a fixed monthly payment over the purchase period. The difference between the purchase and resale price will depend on the down payment and the fixed rate of profit (equivalent to a fixed rate of interest for a conventional housing loan) the bank wants to earn on the transaction. If the bank is funding this transaction by taking floating rate deposits, then the bank is exposed both to liquidity as well as interest rate risks. The risks are higher the longer the period for which the Islamic house financing is marked out. To minimise such risks, Bank Negara Malaysia has ruled that the transacting bank should mobilise long-term funds priced on similar Islamic principles to finance these fixed price home-ownership activities.

Pricing

Almost the only choice open to purchasers of high-cost houses (defined here as houses priced above RM100,000) is to borrow on a floating rate basis. Loans priced on a fixed rate basis for high-cost houses have made their appearance from 1995 but the number of institutions and the volume of funds available for lending on such a basis are strictly limited. The floating rate loans are priced over the base lending rate or BLR. The margin charged over BLR will depend on the creditworthiness of the borrower and usually ranges from one to two per cent.

Life-insurance companies with access to long-term fixed rate funds have been marking out fixed rate loans for some years now. This was on a very limited scale until the American International Assurance Company Ltd (AIA) entered the market in a big way in 1994. AIA has been marking out fixed rate loans for terms of 15 to 25 years depending on the age profile and the credit standing of the borrower. Currently AIA charges a fixed rate of nine per cent per annum and any prepayment over the first six years of the loan is subject to a penalty charge of 0.25 per cent per annum on the unexpired portion of the six-year-period.

A few commercial banks and finance companies are also giving out housing loans with interest rates fixed for up to three to seven years, with a repricing of the loan on a variable rate basis at a pre-agreed margin above the BLR or at a mutually-agreed fixed rate to be determined at the end of the period. Maybank was the first financial institution to mark out such loans and was followed by a few others including Bank of Commerce, EON Bank, Southern Bank and Hong Leong Finance. Maybank's current fixed rate is nine per cent per annum for three years and 9.25 per cent per annum for five years. Hong Leong Finance, a later entrant into the market, has been more aggressive, offering a three-year fixed rate of 8.8 per cent per annum.

The interest rate on loans for houses priced at RM100,000 and below has been subject to an interest rate ceiling since October 1978. The ceiling was initially set at nine per cent but was revised up to 10 per cent in April 1981. In March 1985, in the face of continued high interest rates, the ceiling interest rate on houses priced between RM60,000 to RM100,000 was raised further to 11 per cent. From April 1987, as a result of a substantial change in the interest rate environment, the interest rate on low and medium-cost houses was reduced to 1.75 per cent above the BLR or nine per cent, whichever is lower. It has remained there since.

As a result of monetary tightening in 1992-93 and to ensure availability of ready financing for low and medium-cost housing, the government provided, for the first time, an interest subsidy of one per cent to commercial banks and finance companies for new housing loans approved for such housing from November 2, 1992. This was in force until March 1994. The total interest subsidy claimed by commercial banks and finance companies amounted to RM8.4 million and RM3.5 million respectively (*Bank Negara Malaysia Annual Report 1994*, p142).

It is only from the late 1980s onwards that commercial banks and finance companies began to have access to fixed rate funds through the refinancing of their housing loans by Cagamas. Being regulated to lend at a ceiling rate, these financial institutions had to contend with a lower return and higher interest rate risk. The formula for the pricing of low and medium-cost housing units is such that the financial institutions are not lending at a fixed rate. Rather, the interest rate they can charge is a floating rate subject to a ceiling of nine per cent per annum. Under this pricing formula, they are in fact writing a call and put option at an interest rate of nine per cent in favour of the borrower – forcing them to forgo any benefits from falling interest rates and exposing them to the risk of rising interest rates without collecting any premiums normally due to an option writer. Given the tough stance Bank Negara Malaysia has taken on derivatives, the pricing rule with its embedded options imposed on commercial banks and finance companies is difficult to comprehend. It is hoped that Bank Negara Malaysia will look into this matter in the not too distant future.

Origination

Until the early 1970s the building societies were the biggest originators and providers of housing finance. Commercial banks and finance companies emerged as originators and providers only in the late 1960s. In the mid-1970s the Treasury Housing Loan Division also emerged as a major player in the housing loan market providing end finance to public sector employees at a subsidised rate.

In 1960 and 1970, MBSB (or rather its precursor MBBS)¹⁴ provided 96.8 per cent and 58.1 per cent of end finance respectively but by 1975 its share had declined dramatically to 16.9 per cent and by 1984 it had dipped below the 10 per cent level. By 1996 its share dwindled to 2.8 per cent. Commercial banks whose market share was nil in 1960 and 26.3 per cent in 1970 had emerged as the dominant player by the mid-1970s with a market share of 38.5 per cent in 1975. By the late 1970s their market share had surpassed 40 per cent and touched almost 45 per cent in 1980. From the mid-1980s until the early 1990s, the market share of commercial banks dipped below 40 per cent because the Treasury Housing Loan Division emerged as an important provider of housing finance. In fact, from the mid-1980s (except in 1985-86) the Treasury Housing Loan Division was the biggest originator of housing loans. In the 1990s, the position of the Treasury Housing Loan Division has declined – possibly because of the decline in the size of the public sector, and also because many public sector employees who are eligible for housing loans had taken loans and there have been no further improvements in their loan entitlements.

The commercial banks once again emerged as the major player in the origination market in the 1990s. Its market share had surpassed 40 per cent in 1993 and had climbed to almost 50 per cent by 1996. Since the late 1960s finance companies, which were licensed to operate essentially as providers of consumer finance, increased their market share from 7.8 per cent in 1970 to 12.4 per cent in 1976. Their market share which had oscillated between 11.1 per cent to 12.4 per cent from 1976 to 1989 rose fairly sharply in the 1990s touching a high of 17.8 per cent in 1996.

What factors accounted for the decline of the building societies and the emergence of commercial banks, the Treasury Housing Loan Division and finance companies as the major originators and providers of housing finance? As a commercial bank is a one-stop provider of various financial services, it has a distinct competitive advantage over such specialised financial institutions as a building society and even a finance company. Although a finance company is not significantly better off than a building society in this respect, yet building societies have fared poorly in comparison.¹⁵

14. MBSB was incorporated in Singapore on March 29, 1950 under the name Colonial Building Society Ltd and was renamed Malaya Borneo Building Society Ltd (MBBS) on March 9, 1956. It was re-incorporated in Malaysia as Malaysia Building Society Berhad (MBSB) on March 17, 1970.

15. Commercial banks differ from finance companies in that finance companies cannot operate current accounts, lend on an unsecured basis or engage in foreign exchange business. On the other hand, only finance companies can provide hire purchase finance. A building society can only engage in property and construction finance.

Table 9: Some key data on the origination of housing loans

		Sources of housing credit by origination (RM Million)																			As at end of																
		1960	1965	1970	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996									
Commercial banks		n.a	n.a	88	306	403	501	668	893	1,229	1,649	2,232	2,812	3,498	4,158	5,130	6,306	7,039	7,563	7,712	9,243	11,076	13,035	15,032	17,214	19,873	23,815	28,965									
Finance companies		-	-	26	63	89	140	211	262	349	450	620	833	1,085	1,283	1,543	1,829	2,076	2,265	2,333	3,000	3,787	4,772	5,798	7,056	8,096	9,239	10,685									
THLD		-	-	-	251	256	287	380	500	745	925	1,103	2,093	3,585	4,230	5,046	6,114	6,801	8,396	8,968	10,731	11,774	12,787	14,028	15,245	15,517	16,495	16,366									
MBSB		90	140	194	-	194	220	250	280	350	503	752	971	1,090	1,226	1,343	1,473	1,482	1,400	1,285	1,201	1,196	1,339	1,514	1,772	1,826	1,751	1,676									
BHMFB		-	-	-	-	51	112	137	161	186	211	222	229	306	370	398	433	462	469	466	434	414	410	414	423	450	477	472									
Others		3	4	26	178	40	40	54	28	24	33	69	87	117	140	443	218	226	269	291	318	416	638	988	1,012	1,401	1,752	1,776									
Total		93	114	334	798	1,033	1,300	1,700	2,124	2,883	3,771	4,998	7,025	9,681	11,407	13,903	16,373	18,086	20,362	21,055	24,927	28,663	32,979	37,774	42,722	47,163	53,529	59,960									

		Sources of housing credit (%)																			As at end of																
		1960	1965	1970	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996									
Commercial banks		-	-	26.3	38.3	39.0	38.5	39.3	42.0	42.6	43.7	44.7	40.0	36.1	36.5	36.9	38.5	38.9	37.1	36.6	37.1	38.6	39.5	39.8	40.3	42.1	44.5	48.4									
Finance companies		-	-	7.8	7.9	8.6	10.8	12.4	12.3	12.1	11.9	12.4	11.9	11.2	11.2	11.1	11.2	11.5	11.1	11.1	12.0	13.2	14.5	15.3	16.5	17.2	17.3	17.8									
THLD		-	-	-	31.5	24.8	22.1	22.4	23.5	25.8	24.5	22.1	29.8	37.0	37.1	36.3	37.3	37.6	41.2	42.6	43.0	41.1	38.8	37.1	35.7	32.9	30.8	27.3									
MBSB		9.68	9.72	58.1	-	18.8	16.9	14.7	13.2	12.1	13.3	15.0	13.8	11.3	10.7	9.7	9.0	8.2	6.9	6.1	4.8	4.2	4.1	4.0	4.1	3.9	3.3	2.8									
BHMFB		-	-	-	-	4.9	8.6	8.1	7.6	6.5	5.6	4.4	3.3	3.2	3.2	2.9	2.6	2.6	2.3	2.2	1.7	1.4	1.2	1.1	1.0	1.0	0.9	0.8									
Others		3.2	2.8	7.8	-	3.9	3.1	3.2	1.3	0.8	0.9	1.4	1.2	1.2	1.2	3.2	1.3	1.2	1.3	1.4	1.3	1.5	1.9	2.6	2.4	2.3	2.0	1.8									
Total		100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0									

...continued

Table 9: Some key data on the origination of housing loans ...continued**Sources of housing credit**

	Average growth rate (%)				
	1960 - 70	1970 - 80	1980 - 90	1990 - 096	1970 - 96
Commercial banks	-	38.2	17.4	17.4	25.0
Finance companies	-	37.3	19.8	18.9	26.0
THLD	-	27.6	26.7	5.6	21.2
MBSB	8.0	14.5	4.7	5.8	8.6
BHMFB	-	27.8	6.4	2.2	7.1
Others	24.1	10.3	19.7	27.4	17.6
Total	13.6	31.1	19.1	7.7	22.1

Source : Bank Negara Malaysia *Annual Reports and Money and Banking in Malaysia, 1959-1994*. Kuala Lumpur

The precipitous decline in the market share of building societies (namely MBSB and BHMFB) has also been blamed on the alleged funding constraints they face. This is not really valid. Since their inception, the two building societies have enjoyed the status of a prescribed corporation, which gives them the right to take deposits from the public, whether individual or institutions, without restrictions.

In fact, since these societies are not members of the associations of banks or finance companies and not subject to the supervision of Bank Negara Malaysia, there are no restrictions on their deposit-taking powers. On the other hand, the rules of Bank Negara and the relevant associations regulate the commercial banks and finance companies on the tenure of the deposits they can take and require them to offer the same rates on retail as well as institutional deposits of designated maturities. The societies are also not subject to the regulations of Bank Negara Malaysia, including its regulations with respect to reserve and liquid asset requirements as well as priority sector lending guidelines.¹⁶ As a result, their cost of funds (adjusted for risk), would be lower than

16. Although MBSB is not subject to Bank Negara Malaysia's lending guidelines, it may argue that it has in practice observed the interest rate ceiling on loans for housing costing RM100,000 or less. This is not entirely true as the interest rate MBSB charges has tended to be a little higher than that charged by commercial banks and finance companies (in spite of it not being subject to reserve and liquid asset requirements). Furthermore, there are no quotas imposed on the number of loans it is required to make for housing costing RM100,000 or less. For housing costing RM25,000 or less, MBSB has received earmarked subsidised funds for financing such housing as it had been handpicked by the government to implement its low cost housing finance programme from time to time.

Chart 1: Source of housing credit by origination

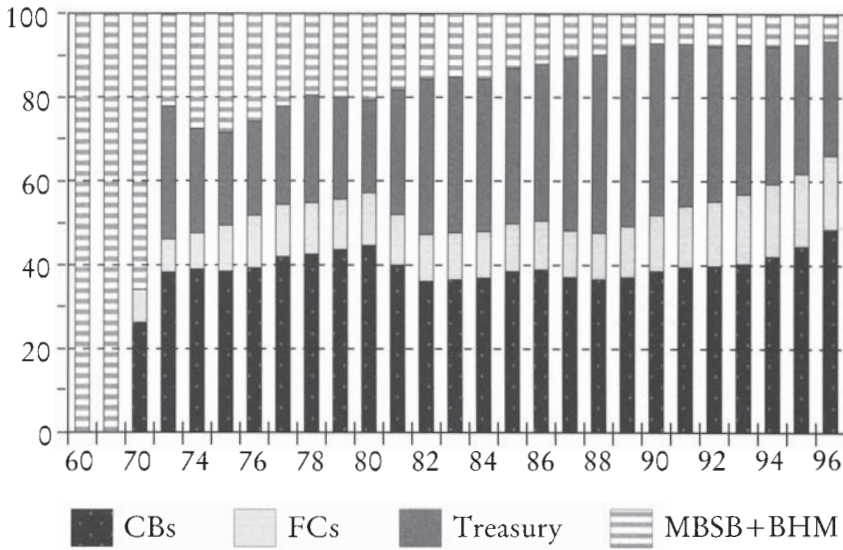
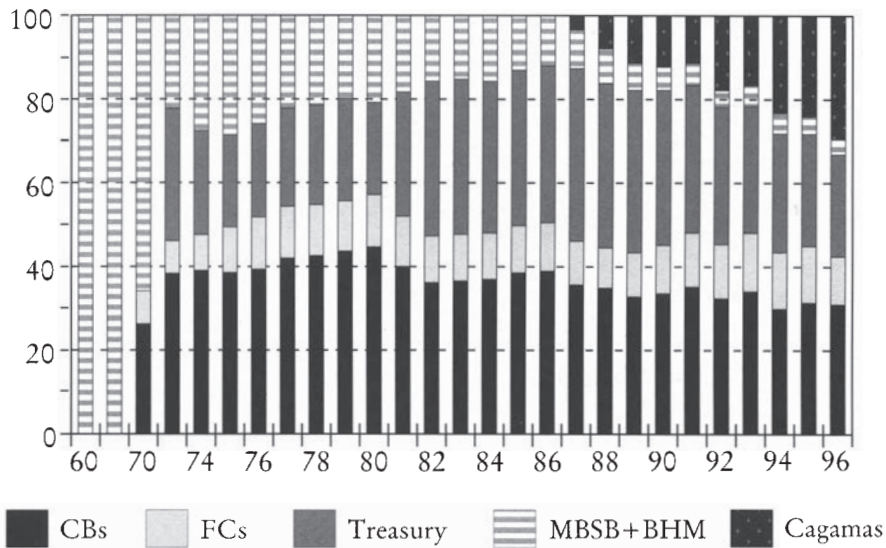


Chart 2: Source of housing credit by financing



that of a commercial bank or a finance company and their returns on shareholders funds would not be constrained by such considerations.

The phenomenal growth of the Treasury Housing Loan Division in the 1970s and 1980s was due to institutional considerations rather than market factors.

Financing and refinancing

There is a difference in the origination and financing of housing loans. Cagamas is not involved in origination but only in refinancing. Cagamas buys housing loans from the originators and finances them through the issue of private debt securities.

Cagamas commenced operations in 1987. It refinanced two per cent of outstanding housing loans that year and increased this to 10 per cent by 1989. After a lacklustre performance in 1990-91, the percentage of housing loans refinanced increased to 14 per cent in 1992 and 1993 and jumped to 21 per cent in 1994. In fact refinancing by Cagamas stood at close to 27 per cent in 1996.

Refinancing of housing loans through their sale to Cagamas grew rapidly for two reasons. Firstly, through such refinancing an originating bank has been able to significantly reduce the mismatch in the maturity profile of its housing loans of 15 years or more and its deposits of one year or less. Secondly, as the private debt securities that Cagamas issues for the refinancing operation qualify as eligible liquid assets, the resulting lower cost of refinancing these loans reduces the financial burden of an originating bank in making mandated lending to housing. This increases the realisable profit margin on its non-mandated lending. The financial advantage from such refinancing will be higher when the reserve and mandated lending requirements as well as general interest rates are higher, and when there is a shortage in the supply of papers qualifying as eligible liquid assets, relative to the demand for such papers.

The mismatch in the maturity profile of a financial institution's housing loan portfolio and its deposit liabilities can expose it to liquidity risk as well as interest rate risk. With respect to its housing loan portfolio, a financial institution in Malaysia is running an interest rate risk only on its mandated housing loan programme for houses costing RM100,000 and less as these loans are subject to an interest rate ceiling.¹⁷ In the high interest rate environment from 1980-86, between two-thirds to three-quarters of a financial institution's housing loan portfolio would have been subject to

17. There is no interest rate control on loans for housing priced above RM100,000. Since loans are priced on variable rate basis in line with the interest rate a financial institution pays on its deposits, it has little or no interest rate exposure on such loans.

Table 10: Some key data on the financing of housing loans

Sources of housing credit by financing (RM Million)		As at end of																											
		1960	1965	1970	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	
Commercial banks	n.a	n.a	88	306	403	501	668	893	1279	1649	2,232	2,812	3,498	4,158	5,130	6,306	7,039	7,259	7,334	8,143	9,589	11,588	12,203	14,508	14,041	16,741	18,539		
Finance companies	-	-	26	63	89	140	211	262	349	450	620	833	1,085	1,283	1,543	1,829	2,076	2,182	2,056	2,671	3,365	4,289	4,963	6,039	6,467	7,322	7,472		
THLD	-	-	-	251	256	287	380	500	745	925	1,103	2,93	3,585	4,230	5,046	6,114	6,801	8,396	8,227	9,669	10,601	11,657	12,347	12,347	12,892	14,292	14,619		
MESB	90	140	194	-	194	220	250	280	350	503	752	971	1,090	1,226	1,343	1,473	1,482	1,400	1,285	1,201	1,196	1,339	1,514	1,772	1,826	1,751	1,616		
BHMF	-	-	-	-	51	112	137	161	186	211	222	229	306	370	398	433	462	469	466	434	414	410	414	423	450	477	472		
Others	3	4	26	178	40	40	54	28	24	33	69	87	117	140	443	218	276	269	291	318	416	538	988	1,012	1,086	1,064	1,090		
Sub Total	93	114	334	798	1,033	1,300	1,700	2,124	2,883	3,771	4,998	7,025	9,681	11,407	13,903	16,373	18,086	19,955	22,436	25,581	29,919	32,429	36,646	37,219	41,647	43,818			
Cagamas	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	407	1,396	2,491	3,082	3,060	5,345	6,076	9,944	11,882	16,142	
Total	93	114	334	798	1,033	1,300	1,700	2,124	2,883	3,771	4,998	7,025	9,681	11,407	13,903	16,373	18,086	20,362	21,055	24,927	28,663	32,979	37,774	42,722	47,163	53,529	59,960		

Sources of housing credit by financing (%)		As at end of																										
		1960	1965	1970	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
Commercial banks	-	-	26.3	38.3	39.0	38.5	39.3	42.0	42.6	43.7	44.7	40.0	36.1	36.5	36.9	38.5	38.9	35.6	34.8	32.7	33.5	35.1	32.3	34.0	29.8	31.3	30.9	
Finance companies	-	-	7.8	7.9	8.6	10.8	12.4	12.3	12.1	11.9	12.4	11.9	11.2	11.2	11.1	11.2	11.5	10.6	9.8	10.7	11.7	13.0	13.1	14.1	13.7	13.7	12.4	
THLD	-	-	-	31.5	24.8	22.1	22.4	23.5	25.8	24.5	22.1	29.8	37.0	37.1	36.3	37.3	37.6	41.2	39.1	36.8	37.0	35.3	32.7	30.2	28.3	26.7	24.4	
MBSB	9.68	97.2	58.1	-	18.8	16.9	14.7	13.2	12.1	13.3	15.0	13.8	11.3	10.7	9.7	9.0	8.2	6.9	6.1	4.8	4.2	4.1	4.0	4.1	3.9	3.3	2.8	
BHMF	-	-	-	-	4.9	8.6	8.1	7.6	6.5	5.6	4.4	3.3	3.2	3.2	2.9	2.6	2.6	2.3	2.2	1.7	1.4	1.2	1.1	1.0	1.0	0.9	0.8	
Others	3.2	2.8	7.8	22.3	3.9	3.1	3.2	1.3	0.8	0.9	1.4	1.2	1.2	1.2	1.2	1.3	1.2	1.3	1.4	1.3	1.5	1.9	2.6	2.4	2.3	2.0	1.8	
Sub Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	98.0	93.4	90.0	89.2	90.7	85.9	85.8	78.9	77.8	73.1
Cagamas	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2.0	6.6	10.0	10.8	9.3	14.1	14.2	21.1	22.2	26.9
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
MBSB + BHMF	100	100.0	65.9	22.3	27.6	28.6	25.9	22.1	19.4	19.8	20.9	18.3	15.6	15.2	15.7	13.0	12.0	10.5	9.7	7.8	7.1	7.2	7.7	7.5	7.1	6.1	5.4	
others																												

...continued

Table 10: Some key data on the financing of housing loans ...continued**Sources of housing credit by financing**

	Average growth rate (%)				
	1960 - 70	1970 - 80	1980 - 90	1990 - 096	1970 - 96
Commercial banks	-	38.2	15.7	11.6	22.8
Finance companies	-	37.3	18.4	14.1	24.3
THLD	-	27.6	25.4	5.5	20.6
MBSB	8.0	14.5	4.7	5.8	8.6
BHMF	-	27.8	6.4	2.2	7.1
Others	24.1	10.3	19.7	17.4	15.5
Sub Total	13.6	31.1	17.7	8.8	20.6
Cagamas	-	-	96.4	31.8	50.5
Total	13.6	31.1	19.1	7.7	22.1

Source : Bank Negara Malaysia *Annual Reports and Money and Banking in Malaysia, 1959-1994*. Kuala Lumpur

interest rate control.¹⁸ Given the bad interest rate experience of the early and mid-1980s, the financial institutions were more than ready to utilise the refinancing opportunities provided by Cagamas from the late 1980s (as borne out by the data quoted earlier) – despite the much lower interest rate prevailing during the period and despite such mandated housing loans becoming more profitable in the changed interest rate environment.¹⁹ The

18. The proportion of loans granted for housing costing RM100,000 and less was 65.9 per cent in 1982 and 64.3 per cent in 1983 (*Bank Negara Malaysia Annual Report, 1993*, p83). The percentages for 1988 and 1992 decreased to 68.7 per cent and 64.3 per cent (Bank Negara Malaysia, *Money and Banking in Malaysia, 1959-1994, 1994*). In 1996, 'of the total number of houses approved for construction, 43.8 per cent were high-cost housing units, 34.6 per cent medium-cost housing and 21.6 per cent low-cost housing units' (*Bank Negara Malaysia Annual Report 1996*, p22). Although this data is readily available to Bank Negara Malaysia, they are seldom released in public documents. One has to pour over many volumes of Bank Negara Malaysia publications for this data. An economic analysis of such data is necessary mainly because loans extended for the purchase of low and medium-cost houses are subject to a lending quota and an interest rate ceiling, thus exposing the lender to interest rate risk as well as possible financial losses.
19. The formula for determining the interest rate on such loans is as follows: 1.75 per cent + BLR or 9 per cent, whichever is lower. Therefore, interest rate control made for a ceiling and not a floor interest rate, and a financial institution was not exposed to an interest risk in a lower interest rate environment.

Chart 3: Loans and advances by origination refinanced by Cagamas

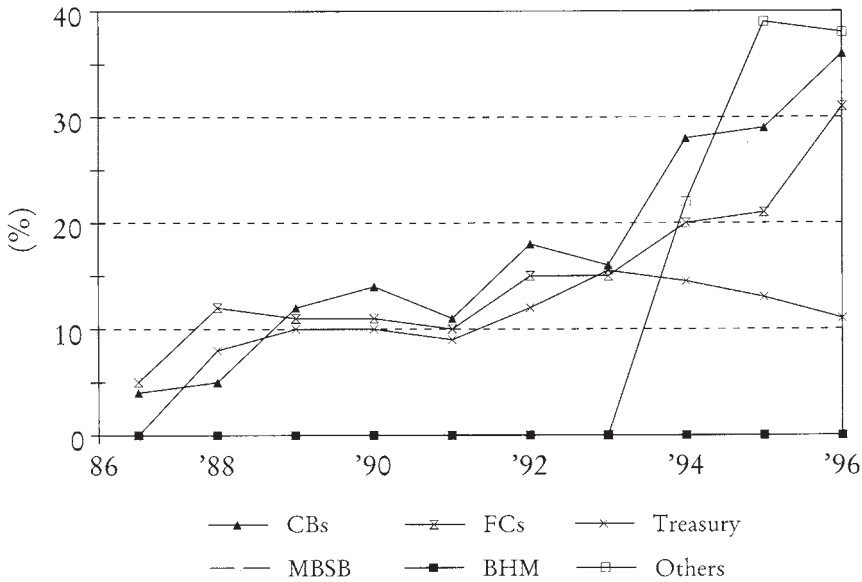
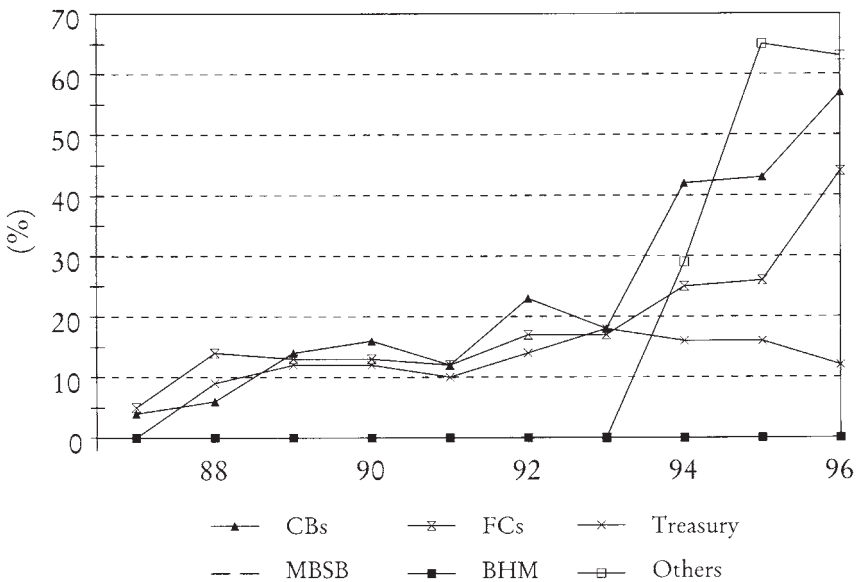


Chart 4: Loans and advances by financing refinanced by Cagamas



big pick-up in refinancing in the mid-1990s was due to a steep fall in the cost of refinancing (on a fixed rate basis) as a result of a shortage of eligible liquid assets (which drove down yields on Cagamas papers) and changed monetary conditions.

The two building societies, in spite of their (self-imposed) funding constraints, were the only financial institutions which did not resort to refinancing with Cagamas.²⁰ The commercial banks were the most aggressive in using such refinancing opportunities, as shown in Table 8.

By 1996 commercial banks had refinanced 36.2 per cent of their housing loan portfolio whereas the corresponding figures for finance companies and the Treasury Housing Loan Division were 30.1 per cent and 11.0 per cent. By resorting to such refinancing, both the commercial banks and finance companies were able to minimise their exposure to liquidity and interest rate risk as well as free their capital for use in other areas of activities including origination of new housing loans (the *raison d'être* for the development of the global market in securitised loans from the 1980s).

The early establishment of Cagamas put Malaysia ahead of the rest of the developing world in the development of securitisation. However, the decision of Bank Negara Malaysia to prohibit the refinancing of housing loans for houses costing RM150,000 and above from the second quarter of 1997 as one of its selective measures to control credit can constrain the growth of the securitisation industry. One can certainly question the efficiency and equity of any programme for the selective control of credit but the only consolation is that it is a short-term and not a permanent measure. Regulatory constraints have also held back the development of the mortgage bond market.

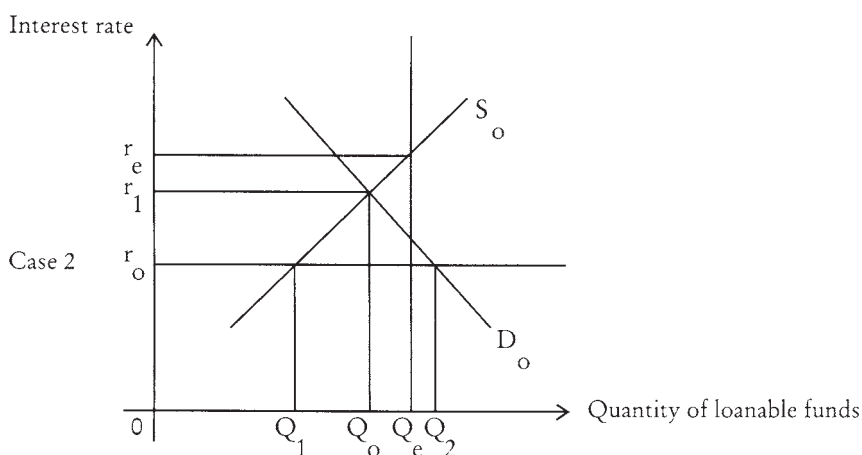
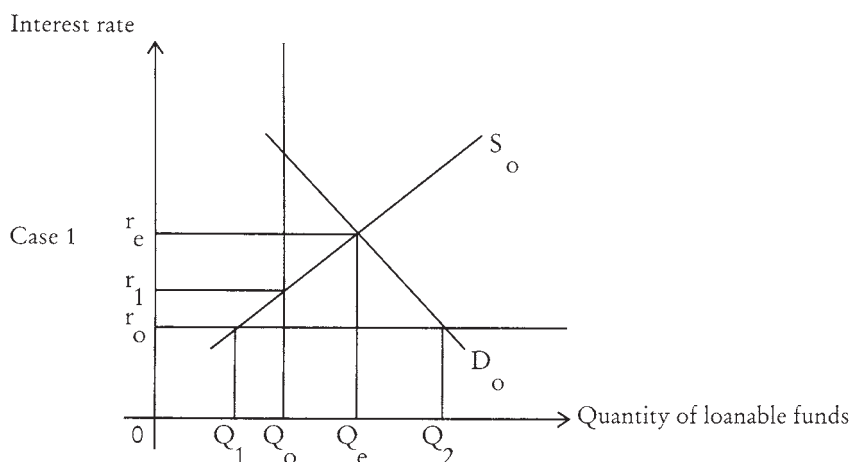
Mandated lending for housing

Mandated lending to priority sectors including housing was introduced in 1976.²¹ This was aimed at increasing the access of these sectors to credit as well as providing them with subsidised access to such credit. Such mandated lending becomes inefficient and inequitable when lending quotas were set above and

20. These two building societies also failed to ease their funding constraints on loan growth arising from their limited deposit base through the issue of unsecured private debt securities.

21. Bank Negara Malaysia set specific targets for the financing of low cost houses only for the period 1986-89. No separate targets have been set for the granting of housing finance for Bumiputeras from 1990.

Chart 5: Diagrammatic analysis of a loan market subject to lending quota and interest rate ceiling



interest rate ceilings set below market clearing levels, and even more so when these controls were imposed simultaneously and are binding (Chart 5).

At the inception of the programme in the mid-1970s the priority sectors were agricultural food production, manufacturing, the Bumiputera community, small-scale enterprises and housing. Interest rate ceilings were imposed on loans for food production, small-scale enterprises, small-scale loans to the Bumiputera community and for houses costing RM100,000 or less. Manufacturing and food production ceased to be priority sectors with effect from 1983

and 1989 respectively. Lending to the Bumiputera community ceased to be subject to interest rate ceiling from 1989. Only loans to certain selected small-scale enterprises are still subject to interest rate ceiling. Lending for houses costing RM100,000 or less continued to be subject to interest rate ceilings.

In 1985, about 25 per cent of the loan portfolio of commercial banks was subject to the interest rate ceiling whereas this had reduced to under 20 per cent in 1989 and to under five per cent in 1995. Furthermore, the interest rate ceiling was less pernicious in the lower interest rate environment of the late 1980s and the 1990s. The lending quotas were also less pernicious than interest rate ceilings, as the quotas set were often below the market clearing levels. (For instance, if the quota is set at a preceding year's level or as a percentage of total loans in a preceding year which is below the actual for that year, then the target set can be deemed to be below that of the market clearing level in the Malaysian environment where loan growth has been generally very rapid).

The banking crisis of the mid-1980s was caused not only by the crisis the Malaysian economy went through in the early and mid-1980s but also by the overly-ambitious and imprudent mandated lending programme with interest rate ceiling that had been imposed on the banking industry. In fact Bank Negara Malaysia's 1985 Annual Report stated that as much as one-quarter of the loan portfolio of the commercial banks then had been subject to interest rate ceiling. Apart from such mandated lending to the so-called priority sectors, the banking industry was also a cheap source of finance for government expenditure as its required holdings of liquid assets (then equal to 20 per cent of a bank's eligible liabilities) had to be held directly or indirectly mainly in the form of government papers. The captive demand for these papers had driven down their yields in relation to a financial institution's funding cost and interest rate risk. These lending and investment requirements drove up interest rates on non-priority sector loans (because of the cross-subsidies involved), curbed the volume of such lending and hence reduced the profitability of banks. The high interest rate environment and poor economic conditions aggravated the problem.

The easing of interest rates and the liberalisation of the mandated lending programme from 1989 assisted the banking industry considerably. In 1989 mandated lending under the interest rate ceiling fell to around 19 per cent. Given the lower interest rate environment as well as the lower reserve and liquid asset requirements, the adverse impact on profitability was correspondingly lower. By 1995 mandated lending under interest rate ceilings constituted less than five per cent of the banking industry's loan portfolio. As interest rates were lower than those prevailing in the first half of the 1980s, the banking industry's balance sheet and profitability was much better (in spite of the higher reserve requirements).

Even if there is merit in the mandated lending programme for housing and in the control of interest rates on housing loans for low-cost houses valued at RM25,000, there is little or no merit in interest rate control on housing loans for medium-cost houses valued between RM25,000 and RM100,000. As noted earlier, there is little or no difference in the applicable rate for loans to the two categories. Available data shows that about two-thirds to three-quarters of housing loans outstanding in the 1980s and early 1990s have been subject to interest rate control (and it is estimated that at least half of such loans outstanding is still subject to interest rate control in the mid-1990s). This would suggest that of the universe of borrowers with housing loans, the proportion enjoying it at controlled interest rates is likely to be three-quarters or more. Most of these borrowers are from the middle income group. Given that there are many poor individuals or households who cannot afford to buy even a low-cost house, one cannot justify on equity grounds, the granting of housing loans at controlled interest rates to those who are better off, especially those purchasing medium-cost houses. The case against this is even stronger when one notes that the resulting interest subsidies will be at the expense of depositors and other borrowers, some of whom will be worse-off than the preferred borrowers. A case in point is the low-income contributors to the EPF, an institution which has been placing sizeable deposits with many financial institutions. To make matters worse, home ownership among many of these low-income contributors to EPF is dismally low. The practice of mandated lending at controlled interest rate is also inefficient to the extent that it curbs overall lending to the mandated activities or groups.

Role of Employees Provident Fund

Under current rules which came into force in 1996, an EPF contributor can withdraw up to 30 per cent of his existing credit balance to buy a house or to refinance his housing loan, as well as to utilise, at five year intervals, 30 per cent of the increment to that balance to improve his house, buy a better house or to reduce the outstanding balance on his housing loan. For a contributor buying a medium or high-cost house, this revised rule was generally more favourable. Previously, the buyer was permitted to withdraw an amount of not more than 20 per cent of the purchase price or 45 per cent of the member's total credit, whichever was less, subject to a maximum of RM40,000. On the other hand, in respect of a contributor who was buying a low-cost house, the revised rule may or may not be more favourable as the old rule permitted a contributor to withdraw an amount

of not more than 40 per cent of the purchase price of the house or the member's total credit, whichever was lower.

The revision to the rule was carried out in response to the contention²² that the incidence of low home ownership among the poorer households was at least partly caused by the inability of such households to utilise their captive savings with the EPF.²³ The argument goes that if employees are permitted to make bigger withdrawals and borrow (say from the EPF) against their future contributions to finance their house acquisition this will promote higher home ownership.²⁴ It will also reduce the inequity in respect of contributors who were able to buy houses on a mortgage from a bank but who faced a higher interest rate of 1.5-3 per cent than what they earned as dividends on their EPF balances (or what EPF earned on its very huge surplus funds which it had placed on deposits with the same bank).

A further liberalisation of the rules to permit a higher initial withdrawal as well as at more frequent intervals is in order to ensure that home ownership, especially among the poorer households, becomes more widespread. For many individuals, especially first-time house buyers, investing in a house as opposed to the alternative of accumulating a cash balance or financial assets (with EPF or a bank) is likely to be the preferred choice – as a hedge against inflation and rising real values of properties as well as to provide shelter in old age. In any case prudence calls for a diversified portfolio of assets.

Using up a contributor's existing balance and future contributions may be questioned on the grounds that he will be left with too small an accumulated fund to support himself in retirement. There is no reason

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22. See my paper on 'Low Home Ownership Among the Poor: A EPF Trap or Opportunity?' dated June 10, 1994 (mimeograph) written for private circulation to key decision-makers in the government and the private sector.
 23. A low-income earner with a monthly income of RM500, for instance, was being forced to lock up RM110 a month then (but RM115 now) with the EPF. What was left may have provided his family with a meagre existence and rented accommodation but little else besides. If he had the RM110 plus the money expended on rental of, say, RM100 he could have used that sum for paying his monthly mortgage on his low-cost house.
 24. The Central Provident Fund in Singapore does not impose a restriction on the amount of the accumulated credit a contributor can withdraw to purchase a house developed by the HDB or on the amount of the future contributions he can commit towards repaying a housing loan from the HDB so long as he can build up a minimum retirement fund (which was at S\$30,000 in the early 1990s) and a minimum medical fund (S\$10,000 then) by the time he retires from the workforce.

why this should be so. A low-income earner who can be expected to enter the labour force at or before 20-years-old and enjoy a working life of 35 years (even if he works only until 55-years-old) will have about 20 years to accumulate for his old age upkeep – even assuming that during the 15 years when he is making the mortgage payment he does not have any additional savings to build up his retirement fund (which appears very conservative since his earnings can be expected to grow over his entire working life). Furthermore, with improving life expectancy (presently placed at 70 years) and a tightening labour market, retirement age will increase. This would in turn increase the number of years he can work to accumulate his retirement fund.²⁵

The growth in a contributor's accumulated fund is set out in Table 11. The calculations are for a contributor buying a low-cost house priced at RM25,000. He is assumed to have made a down payment of RM5,000 from his accumulated fund and taken a housing loan of RM20,000 carrying a fixed rate of interest of nine per cent per annum. His annual loan repayment is RM2,481 of which RM1,500 (RM125 per month) is financed from EPF withdrawals and the balance (RM82 per month) from his savings on rental payments. Despite the heavy withdrawals during the 15-year period, the build-up in the accumulated fund is still very substantial. Based on very conservative growth dynamics, his accumulated fund on retirement at age 55 is RM246,558. The extension of his retirement age from 55 to 60 years has a dramatic impact on the size of his accumulated fund, nearly doubling it to RM396,272.

The above calculations are based on the current rate of EPF contributions of 23 per cent and on realistic assumptions regarding the annual growth rate in labour productivity of two per cent, real returns on investment of three per cent, an inflation rate of three per cent²⁶ and an inflation risk premium of one per cent.²⁷ These are conservative estimates based on the track record of industrial coun-

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25. In the climate of self-reliance being promoted in Malaysia, families are encouraged to care for elderly relatives during old age. In the worst case scenario, where he cannot rely on the family, he has to continue to work and can only retire if the retirement fund (including assets) accumulated is sufficient to support him during the period he expects to spend as a retiree. The percentage of income one has to save and the length of time one has to stay in the labour force are related questions.
 26. The average annual rate of inflation in Malaysia from 1960 to 1990 was four per cent.
 27. This is the premium which investors require to cushion themselves against high or uneven inflation rates which are unanticipated. The usual premium can be higher than assumed in the text.²⁸ This can represent a family of one to two earners depending on the skill level of the earner.

Table 11: Contributor's EPF retirement fund with investment in low-cost housing – The lifetime profile*Assumptions:*

Age of entry into workforce	20	Age of retirement	55/60
Initial annual wage	RM6,000	Housing loan	RM20,000
Annual increase in wage rate	5%	Interest rate on loan	9%
Annual rate of return	7%	Initial down payment	RM5,000
EPF contribution rate	23%	Annual Instalment	RM2,481
		Duration of the loan (years)	15

Age	Year	Wage	EPF contribution	Housing withdrawal	Accumulated fund
20	1	6,000	1,380		1,380
21	2	6,300	1,449		2,926
22	3	6,615	1,521		4,652
23	4	6,946	1,598		6,575
24	5	7,293	1,677		8,713
25	6	7,658	1,761	(5,000)	6,084
26	7	8,041	1,849	(1,500)	6,859
27	8	8,443	1,942	(1,500)	7,781
28	9	8,865	2,039	(1,500)	8,864
29	10	9,308	2,141	(1,500)	10,126
30	11	9,773	2,248	(1,500)	11,583
31	12	10,262	2,360	(1,500)	13,254
32	13	10,775	2,478	(1,500)	15,160
33	14	11,314	2,602	(1,500)	17,323
34	15	11,880	2,732	(1,500)	19,768
35	16	12,474	2,869	(1,500)	22,521
36	17	13,097	3,012	(1,500)	25,609
37	18	13,752	3,163	(1,500)	29,065
38	19	14,440	3,321	(1,500)	32,921
39	20	15,162	3,487	(1,500)	37,212
40	21	15,920	3,662	(1,500)	41,979
41	22	16,716	3,845		48,762
42	23	17,552	4,037		56,212
43	24	18,429	4,239		64,386
44	25	19,351	4,451		73,343
45	26	20,318	4,673		83,150
46	27	21,334	4,907		93,878
47	28	22,401	5,152		105,601
48	29	23,521	5,410		118,403
49	30	24,697	5,680		132,372
50	31	25,932	5,964		147,602
51	32	27,228	6,262		164,197
52	33	28,590	6,576		182,266
53	34	30,019	6,904		201,929
54	35	31,520	7,250		223,314
55	36	33,096	7,612		246,558
56	37	34,751	7,993		271,810
57	38	36,488	8,392		299,229
58	39	38,313	8,812		328,986
59	40	40,229	9,253		361,268
60	41	42,240	9,715		396,272
				(27,500)	

tries. If the estimates are based on the experience of the dynamic newly-industrialised countries which are more comparable to Malaysia, the growth rate in labour productivity and real returns will be higher. Based on the assumed inflation rate, the annual growth rate in money wages is five per cent and the nominal returns on investment is seven per cent. The underlying economic relationships presumed in the text between real and monetary variables and the inflation rate are well established propositions in economics.

In recent months the government has acknowledged that a price tag of RM25,000 for a low-cost house is too low, especially in places such as the Klang Valley, Johor Bahru, Penang and East Malaysia. We have accordingly worked out alternative scenarios for home ownership and the size of the retirement fund for a low income family with a monthly income of RM500 to RM1,000²⁸ for the two cases where the price tag on the low-cost house is increased to RM30,000 and RM35,000. No changes in assumptions are made with respect to all other variables, including the size of the initial downpayment.

As is to be expected, the size of the retirement fund will be higher, the higher the monthly income and the longer one serves in the labour force. However, if the house price is RM35,000 and if the proportion of the funds that can be withdrawn initially is restricted to a maximum of 30 per cent of the accumulated balance, then a family with a monthly income of RM500 has to wait for 7.5 years before it can hope to purchase the house whereas another family with the same skill level but with two earners and therefore with a initial monthly income of RM1,000, has to wait for only 4.5 years to purchase the house. Given the expected changes in the level of the pricing over time as a result of inflation and the supply-demand dynamics, the family with the lower monthly income will be made worse off by the longer period it has to wait to make the purchase.

This unfair disadvantage can be negated if a family is permitted to withdraw up to 100 per cent of its accumulated balance and if it is permitted to commit up to 100 per cent of its future contributions to the retirement of the housing loan until such time as the loan has been repaid. This flexibility is justifiable so long as the returns on an investment in housing exceeds that produced by EPF. For the case under consideration, but where the annual withdrawal for the servicing of the loan is restricted to RM1,850, the proportion of the accumulated balance that is required as at the end of year six will be 45.1 per cent for the family with a monthly income of RM500 and only 22.6 per cent for the family with a monthly income of RM1,000.

28. This can represent a family of one to two earners depending on the skill level of the earner.

Table 12: Size of retirement fund for case where house price is RM30,000, housing loan is RM25,000, annual loan instalment is RM 2,739 and monthly instalment is RM228 (RM)

Initial income (RM) \ Retirement age	500	600	700	800	900	1,000
55	226,363	304,086	381,810	459,553	537,256	614,980
60	367,948	487,051	606,155	725,258	844,362	963,465

Table 13: Size of retirement fund for case where house price is RM35,000, housing loan is RM30,000, annual loan instalment is RM3,054 and monthly instalment is RM255 (RM)

Initial income (RM) \ Retirement age	500	600	700	800	900	1,000
55	186,422	259,732	337,455	415,179	492,902	570,625
60	311,956	424,842	543,946	663,049	782,152	901,256

Given the success of the Housing Development Board and the Central Provident Fund in promoting housing development and home ownership in Singapore, there have been calls on EPF,²⁹ from time to time, to create a Malaysian housing development board either directly or through MBSB. Such calls have gone unheeded by both the government and EPF. By not promoting or setting up such an organisation, EPF has been better able to carry out its original objective since it is able to deal with a more competitive industry in housing development³⁰. EPF is in a better position to maximise

29. EPF took over controlling interest in the MBSB from the federal government in the 1970s.

30. If EPF had promoted a Housing Development Board-type of organisation through its investing and lending policy, it might have been forced to lend to the few with a demand for the houses it developed. It will then be taking not only a lending risk but also a business risk. The alternative is a competitive situation where EPF can lend to the many who are free to buy from any developer or in any location. This will expose EPF only to the lending risk.³¹ The fixed rate market in housing finance was developed only in the mid-1990s. EPF as the biggest supplier of fixed rate funds has allocated little or no funds to this market. It can still play a key role in housing finance if it provides a fixed rate alternative either directly or through banks or through the MBSB

returns and minimise risk under these circumstances since the funds it has allocated to housing can be put to more uses such as:

- lending to house buyers who are at liberty to buy houses from any developer;
- channelling through a variety of financial institutions by buying loans originated by these institutions without regard to who the developer is (as is being done by Cagamas); and
- investing in Cagamas bonds³¹

instead of having to engage in property development directly or lending only to houses it has developed.

It has to be acknowledged that EPF can play a meaningful role in the provision of housing finance. However, the government and EPF have been wise in not letting EPF assume a major role in housing development. As a pension or provident fund it is right that EPF has remained a portfolio investor and not become a direct investor in businesses or in property development activities. In this case it is taking on portfolio risk, and not business risk, and the skills and resources at its disposal are better at managing portfolios (either directly or indirectly through fund managers) than at managing a diverse range of businesses.³²

Conclusion

The private sector has played the dominant role in the financing of housing development as well as home ownership. Financing has been readily available for house ownership as it has been for housing development. However, in the absence of quantifiable data, we are unable to estimate the extent of this. The breakdown for the financing of housing development can only be guessed at as published data is highly aggregated. This has been complicated further in recent years by the inclusion of certain categories of infrastructure financing (for example, that of highways) within the data. The lack of such data has restricted informed discussion. This is unfortunate, given the recent decision by the authori-

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31. The fixed rate market in housing finance was developed only in the mid-1990s. EPF as the biggest supplier of fixed rate funds has allocated little or no funds to this market. It can still play a key role in housing finance if it provides a fixed rate alternative either directly or through banks or through the MBSB
 32. For a fund of the size of the EPF, how many employees are there to go around to sit on boards and on how many boards can one employee sit on? As there is a finite limit, this is one reason why a fund manager should be a portfolio investor and not a business investor. Reliance on outsiders can cause problems with respect to co-ordination and incentives.

ties to impose a ceiling on many categories of property loans on the grounds that these loans are unproductive. In any case, it is important to note that the selective control of credit in the face of rapid monetary expansion can only provide a temporary relief as there are many obvious ways of circumventing such controls in the long run. There is in fact no alternative to monetary tightening.

Bridge finance which is retired through a drawdown of end finance is the main form of financing housing development. However, the banking industry has been fairly prudent in its lending practices to the broad property sector in spite of its observed or apparent tendency to over-lend to this sector.

Housing loans may have absorbed 12.5 per cent of the funds of the financial system flowing into lending activities in 1990 and 20.6 per cent in 1995. The flow of funds into housing loans which are not financed by the financial system may have been as high as 7.5 per cent in 1990 and 7.8 per cent in 1995 when expressed as a percentage of the resources the financial system committed to its lending activities.

The changing dynamics of housing loans structured as term loan-cum-overdraft, featuring an increase in tenure to 25 years, with provision for a periodic increase in monthly payments and for inter-generational transfer of the loan has been highlighted.³³ Reference has also been made to the recent introduction of the Islamic housing loan which is analogous to a fixed rate loan.

Until recently, borrowers for high-cost housing units (defined as houses priced above RM100,000) could raise housing loans only on a floating rate basis. Now they have a choice of fixed rate loans although the supply is limited and the fixed rate term is normally confined to a period of three to five years. The interest rate on loans for low and medium-cost housing is a floating rate subject to a ceiling of nine per cent per annum. Under this pricing formula, a lender is in fact required

33. Complete data has not been published by Bank Negara Malaysia on the number of housing units financed from 1989. Even if such data were available, it is not possible to identify how much of the housing finance growth has been due to the increase in house prices (made up partly of an inflationary and partly of a non-inflationary component) and how much is due to an increase in the number of housing units financed, unless the margin of advance had remained unchanged. An analysis of the price and quantity effects may still have been possible if separate data had been available on the number of houses which were loan financed and on their market values, but such data is not readily available. This is such an analysis has not been attempted.

to write an interest rate option in favour of the borrower, thereby forcing it to forgo any benefits from and exposing it to the risk of rising or falling interest rates and without collecting any premium normally due to an option writer.

Currently, the commercial banks are the biggest originators of housing loans, followed by the Treasury Housing Loan Division and finance companies. The building societies which were the biggest originators until the early 1970s accounted for only a negligible share in the mid-1990s. On the other hand, commercial banks and finance companies have emerged as originators only in the late 1960s. The Treasury Housing Loan Division emerged as an originator only in the early 1970s and it was the biggest originator in the mid-1980s.

There is a difference in the origination and financing of housing loans. Cagamas is not involved in origination but only in refinancing. Cagamas commenced operations in 1987. It has played a critical role in reducing the liquidity and interest rate risk of an end-financier arising from its asset-liability mismatch as well as in reducing its cost of funds as the designation of Cagamas papers as eligible liquid assets has led to the lower cost of funds. The building societies, in spite of their (self-imposed) funding constraints, were the only financial institutions which did not resort to refinancing with Cagamas. The commercial banks were the most aggressive in using such refinancing opportunities. The early establishment of Cagamas put Malaysia ahead of the rest of the developing world in the development of securitisation. However, the recent Bank Negara Malaysia decision to prohibit the refinancing of housing loans for houses costing above RM150,000 can constrain the growth of securitisation in the country.

Mandated lending has been introduced into Malaysia from 1976 to increase the access of priority sectors to credit and on subsidised terms. Mandated lending is inefficient and inequitable when lending quotas are set above and interest rate ceilings are set below market clearing levels – even more so when these controls are imposed simultaneously. The only redeeming feature of mandated lending in Malaysia is that the lending quota has been set usually below the market clearing levels. Although the interest rate ceiling has been set below the market clearing level, from 1989 it applies only to certain classes of loans to small-scale enterprises and for houses costing below RM100,000. This is generally in line with the increasing sophistication of the Malaysian economy. However, even if there is merit in the mandated lending programme for housing and the interest rate ceiling on low-cost housing units, there is no justification for imposing a ceiling on medium-cost housing units.

Revisions to regulations on withdrawal of EPF contributions for housing were carried out in response to the contention that the incidence of low home ownership amongst the poorer households was at least partly caused by the inability of such households to utilise their captive savings with the EPF. If employees were permitted to make bigger withdrawals and borrow against future contributions to finance house acquisition, this will promote higher home ownership. It will also reduce the inequity in respect of contributors who were able to buy houses on a mortgage from a bank but who faced a higher interest rate of 1.5-3 per cent than what they earned as dividends on their EPF balances. A further liberalisation of such regulation is in order to ensure more widespread home ownership.

In spite of the calls on EPF to go into property development as a key area of activity, either directly or indirectly, both the government and EPF have resisted the move. Rightly so, since EPF, as a pension or provident fund, should remain primarily as a portfolio investor and not as a direct investor in businesses or in property development activities.

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CHAPTER 4

The Secondary Mortgage Market

Cagamas Berhad

The secondary mortgage market in Malaysia originated with the commencement of operations of Cagamas Berhad in 1987. With the setting up of the market, the originators of housing loans were, for the first time, able to sell their housing loans to increase their liquidity and, to an extent, hedge their interest rate risk.

The concept of the secondary mortgage market originated in the United States where mortgages were securitised and sold in the secondary market after being originated by the primary lenders. Many variations of the secondary mortgage market are currently practised around the world with the appropriateness of each system dependent on the characteristics of, and circumstances prevailing in, the housing market of the respective countries.

In its simpler form, as currently practised in Malaysia, a secondary mortgage market refers to pools of housing loans originated by the primary lenders, such as the commercial banks and finance companies, being sold (on a full recourse basis) to a mortgage corporation which in turn issues private debt securities to finance the purchases. For purchases on a full recourse basis, the beneficial ownership of the housing loans is passed only to the mortgage corporation. The bond holders do not directly own the housing loans sold to the mortgage corporation nor do they bear any credit

risk, which remains effectively with the primary lenders. In contrast, in its more sophisticated form, the secondary mortgage market in the United States involves the outright transfer of ownership and credit risk as well as the rights to the cash flow of the housing mortgages, from the primary lenders to the investors in the mortgage bonds.

Establishment of secondary mortgage market

The feasibility of establishing a secondary mortgage market in Malaysia was first mooted by a committee established by Bank Negara Malaysia (the Central Bank) in 1979. The committee included representatives of the commercial banks, finance companies and merchant banks. Although the committee had proposed the establishment of a secondary mortgage market, its recommendations were not implemented then, principally because the interest rates situation at that time was not conducive for the introduction of such a market. In February 1986, a new Technical Committee on the Development of a Secondary Mortgage Market, comprising representatives from the Central Bank and the banking industry was set up. In its report which was completed in November 1986, the committee expressed the view that it was feasible and timely to establish a secondary mortgage market and that a national mortgage corporation should be established to perform the function of an intermediary between the primary lenders and the investors of long term funds, and to play the role of a credible issuer of secondary mortgage securities.

The Technical Committee recommendations were adopted. In December 1986, a national mortgage corporation was incorporated under the Companies Act, 1965, in the name of Cagamas Berhad with an authorised capital of RM200 million and an initial paid-up capital of RM50 million. The incorporation of Cagamas opens up a window of opportunity for the primary lenders to securitise their holdings of mortgage loans and, thereby, eliminate both their liquidity and interest rate risks.

The banks and finance companies 'borrow short' and 'lend long'. The gap between their deposits – the bulk of which have maturity periods of up to one year only – and their housing loans was wide. In addition to the liquidity risk arising from this mismatch of maturity periods, the financial institutions also faced the risk of loss if their sources of funds become more expensive than the rate of return on their housing loans, especially in view of the fact that the interest rates on the smaller loans were fixed at controlled levels. At that time, the interest rate for housing loans was set by Bank Negara Malaysia at a ceiling of 10 per cent per annum for houses costing less than RM60,000 each, and 11 per cent per annum for houses costing between RM60,000 to RM100,000 each.

Since the primary lenders vary in size and financial reputation, the setting up of a secondary mortgage market institution to act as an intermediary between the primary lenders and the long term investors (particularly those interested in fixed income securities) would facilitate the funding of housing loans. This would also encourage the primary lenders to lengthen the repayment period of the housing loans, thus making the loans more accessible and affordable to potential buyers. In addition, by selling their housing loans at the secondary market level, the primary lenders would be able to obtain funds to grant more housing loans. The secondary mortgage market was thus set up to encourage the primary lenders to provide more end-financing to house buyers and to help achieve the key social objective of widening home ownership.

Besides these objectives, the policy makers also conceived of the establishment of a secondary mortgage market as a step to develop the capital market in Malaysia. In the 1970s and early 1980s, Malaysian Government Securities were synonymous with the debt securities market. During those years, virtually no private debt securities were available. Hence, the government decided to take various measures to develop the private debt securities market so as to enable the private sector to tap alternative sources of financing other than conventional bank borrowings. One such measure was the establishment of Cagamas. It was envisaged that the issuance of a large volume of mortgage-backed securities by Cagamas would act as a catalyst for the development of a private debt securities market.

Cagamas Berhad

Cagamas is a convenient and euphonic abbreviation for *Perbadanan Cagaran Malaysia* or the National Mortgage Corporation. Its single largest shareholder is Bank Negara Malaysia with a 20 per cent shareholding. The other shareholders are the commercial banks with a combined shareholding of 45 per cent, the finance companies with 25 per cent shareholding and the merchant banks which own the remaining 10 per cent of the company's share capital. The Chairman of Cagamas is the Governor of Bank Negara Malaysia and the remaining members of the Board consist of prominent members of the banking system nominated by the Association of Banks in Malaysia, the Association of Finance Companies of Malaysia and the Association of Merchant Banks in Malaysia. The involvement of Bank Negara Malaysia was aimed at ensuring compliance with national policy and to provide Cagamas with the high credit standing needed to minimise the cost of its borrowing and, ultimately, the cost of housing loans which it helps to refinance.

Cagamas began operations in October 1987 with the purchase of the first pool of housing loans from three commercial banks and the issuance of the first mortgage-backed bonds to finance the purchase. With the securitisation of these housing loans, the secondary mortgage market was launched in Malaysia.

Securitisation process

The securitisation process in Malaysia is simple. The major primary lenders such as the commercial banks, the finance companies and the Treasury's Housing Loans Division grant housing loans to house purchasers. These primary lenders subsequently sell their housing loans to Cagamas. Cagamas would then raise funds from the market to finance these purchases by issuing debt securities in the form of the longer term Cagamas bonds and the shorter term Cagamas notes. The investors in the Cagamas debt securities include the financial institutions, insurance companies, pension funds, non-resident companies and others who are interested in investing in short and medium term papers to obtain a fixed or adjustable rate income.

Cagamas, therefore, effectively converts a long term illiquid asset in the form of housing loans into debt securities which can be traded in the market. This process enables the investors to earn an income from Cagamas debt securities which is basically derived from the mortgage interest paid by the house buyers on their housing loans.

Facilities available in secondary mortgage market

Cagamas currently offers four types of mortgage purchase facilities to the primary lenders.

Fixed rate mortgage purchase facility

Under this facility, the primary lenders sell their housing loans at a fixed rate of interest for review periods of three, five or seven years. At the end of the review period, the selling institutions have the option to rollover the sale for further periods of three, five or seven years based on the interest rates quoted by Cagamas at the rollover date. The selling institutions have the option to repurchase their housing loans should they find the market rates quoted by Cagamas on the review date to be unacceptable.

Floating rate mortgage purchase facility

The floating rate facility allows the primary lenders to sell their mortgages to Cagamas on an adjustable rate which is pegged to either the three or six month Kuala Lumpur Interbank Offer Rate (KLIBOR). The floating rate for mortgages sold under this facility is reset every three or six months. The originators can sell their housing loans under this facility for review periods of three to seven years.

Convertible rate mortgage purchase facility

Under this facility, the primary lenders can sell their mortgages for a period of three years, with one or two options to convert the mode of the interest rate from a fixed to a floating rate or vice versa at a prescribed future date during the period of the transaction. At the conversion option date, the transaction will be repriced at the interest rate then quoted by Cagamas, regardless of whether the option to convert the mode of the interest rate is exercised.

Islamic house financing debt purchase facility

Interest-free Islamic house financing debts, which are originated on the principle of Bai Bithaman Ajil, can be sold to Cagamas based on the Islamic principle of Bai-al-Dayn (debt trading). Like the conventional mortgage purchase facilities, these debts can be sold for review periods of three, five or seven years.

Industrial property loan purchase facility

Financial institutions are also offered a facility to sell loans granted for the purchase of industrial properties to Cagamas for review periods of three, five or seven years at a fixed or floating rate.

Conditions for purchase of housing loans

Before an institution can sell its housing loans to Cagamas, it has to execute a master sale and purchase agreement with Cagamas, setting out the general terms and conditions for the transactions. Cagamas purchases conventional housing loans with recourse to the originators, that is, the selling institution undertakes to repurchase from the company any housing loan subsequently found to be not of the quality specified by Cagamas. The originators sell their housing loans to Cagamas at a value equal to the outstanding principal balance of the respective loans. The primary lenders' role would be to service the loan and act as trustee and custodian for

Cagamas upon selling their loans. The security documents remain in the custody of the selling institutions which continue to be the legal chargees of the loans sold to Cagamas. However, the sellers undertake to transfer the security documents in favour of Cagamas, whenever Cagamas requires them to do so. Thus, in its present mode of operations, Cagamas is only the beneficial owner of the loans it purchases. Detailed terms and conditions for purchase of housing loans are provided in Appendix 1.

Eligibility criteria for housing loans

Housing loans are eligible to be sold to Cagamas only if they meet the criteria prescribed by the Company. Among others, these loans must:

- be for financing or refinancing the purchase, construction or renovation of residential properties which do not cost more than RM150,000;
- be fully disbursed;
- not be more than three months in arrears at the time of sale;
- have a remaining life which expires on or after the review date;
- be secured by a first charge or assignment of rights over the mortgaged property; and
- comply with other criteria as may be specified.

Appendix 2 sets out the detailed criteria for housing loans to be eligible for sale to Cagamas. The criteria are important to ensure that loans sold are of an acceptable quality.

Purchase of Islamic house financing debts

The arrangements for the purchase of Islamic house financing debts (IHFDs) are generally the same as for the purchase of conventional housing loans. As in the case of conventional housing loans, prior to the sale of IHFDs, the financial institution is required to execute a master sale and purchase agreement and a master servicing agreement governing the general terms and conditions of the transactions with Cagamas.

After the sale of the Islamic house financing debts to Cagamas, the security documents and legal charge on the IHFDs continue to remain in the custody of the seller which would be servicing the debts. The seller would transmit to Cagamas each month the instalments received from the borrowers less the monthly service fee payable to the seller for the servicing function. The amount of the service fee is predetermined by the seller and Cagamas at the point of sale of such debts and is subject to review after a period of three, five or seven years as agreed in the purchase contract. The size of the service fee, in effect, determines the cost of funding to the seller.

At the end of the review period, the selling institution may repurchase the debts from Cagamas if it is not agreeable to the new service fee offered by the company. The detailed eligibility criteria for Islamic house financing debts to qualify for sale to Cagamas are provided in Appendix 3.

Benefits of selling housing loans to Cagamas

The financial institutions derive the following benefits by selling their housing loans to Cagamas:

Exemption from statutory requirements

Funds obtained by the commercial banks, finance companies and merchant banks from the sale of housing loans to Cagamas are exempted from statutory reserve and liquidity ratio requirements. Unlike fixed, savings and other deposits, the funds obtained by the financial institutions from Cagamas from the sale of housing loans can be used entirely by the selling institutions, and this reduces the effective cost of the Cagamas funds relative to the cost of deposits.

Liquidity and profitability

By selling their loans, the financial institutions are able to convert their otherwise illiquid housing loans into liquid funds which could be used to grant additional housing loans. This in turn will enable the financial institutions to increase their profits. Since Cagamas is ready to purchase housing loans at the quoted rate, the primary lenders can raise funds at very short notice in the secondary mortgage market should they experience any temporary liquidity shortage.

Reduction of mismatch in loan tenure

By securitising their housing loans, primary lenders have access to medium and long term funds which match the tenure of their long term housing loan assets more closely than their traditional source of funds which is primarily deposits of less than one year tenure.

Cost advantage

Due to Cagamas' high credit standing as well as the concession granted by Bank Negara Malaysia to allow its securities to be regarded as liquid assets, the company is able to borrow a large amount of funds in the capital market at a reasonably low cost. This cost advantage is passed on to the primary lenders.

Interest rate risks

The availability of the Cagamas purchase facilities provides the primary lenders with additional flexibility and instruments to manage their interest rate risks. For example, by selling their housing loans in the secondary mortgage market under the fixed rate purchase facility, the selling institutions could hedge the interest rate risk in respect of any fixed rate loans they may have granted.

Diversification of funding base

Funds obtained from the sale of housing loans are for fixed periods of three years or more. These relatively long term funds act as a bedrock in the funding base of the financial institutions whose other funds, such as deposits, are mainly of a much shorter term and can be unstable being subject to withdrawal without notice or at short notice by depositors.

Funding of housing loan purchases

Cagamas funds its purchase of housing loans mainly by issuing private debt securities and, to a lesser extent, by borrowing from the money market. Cagamas issues three types of conventional debt securities to fund its purchase of interest-based housing loans – fixed rate bonds, floating rate bonds and discount notes (known as Cagamas notes) – as well as Mudharabah bonds to finance its acquisition of Islamic house financing debts.

The fixed rate bonds issued by Cagamas are straight bonds with a non-adjustable interest rate payable semi-annually. They are redeemable at par upon maturity. Their tenure ranges from two to seven years.

The floating rate bonds issued by Cagamas are, like the fixed rate bonds, of the ‘plain vanilla’ variety. Their coupon rate is pegged to the three or six month KLIBOR and is, accordingly, reset quarterly or semi-annually accordingly. They have original maturity periods ranging from two to seven years.

The discount notes with maturity periods of less than a year are issued at a discount from their nominal value. They are redeemable at face value upon maturity. They have the same characteristics as the Malaysian Treasury bills.

Mudharabah bonds are interest-free securities issued under the Islamic profit-sharing principle whereby the bond investors and Cagamas will share the profit generated from the specified pools of mortgages based on a predetermined ratio. Dividends are payable at a variable rate at half yearly intervals on these papers. They have tenures ranging from three to seven years and are redeemable at face value upon maturity. However, the bond holders have to bear the risk of diminution, if any, in the principal amount invested in the bonds.

Characteristics of Cagamas debt securities

Cagamas securities, including the Islamic bonds, are all unsecured obligations of the company and are issued scripless. They are tradable electronically in book-entry form through an electronic clearing house known as the Scripless Securities Trading System, operated by Bank Negara Malaysia. Cagamas debt securities are issued, at primary level, through a secret tender open to a panel of financial institutions (known as principal dealers) specially selected by Bank Negara Malaysia. The bidding is done electronically through the Fully Automated System for Tendering (FAST) operated by Bank Negara. After the issuance, the debt securities can be purchased by investors in the secondary market.

The bonds issued by Cagamas to finance purchases of housing loans are known collectively as 'Tier 1 bonds' while those issued to finance the purchase of industrial property loans are known as 'Tier 2 bonds'. Tier 1 bonds together with the shorter term Cagamas discount notes and the Mudharabah bonds are recognised as liquid assets by Bank Negara Malaysia for the purpose of compliance by the financial institutions with the liquidity requirements. They are popular with the financial institutions and are thus priced lower than the Tier 2 bonds. Tier 2 bonds do not qualify as liquid assets and the pricing would, therefore, be more market oriented and attractive to those investors which do not have to comply with the liquidity ratio. The debt securities issued by Cagamas are given a low risk weight of 10 per cent for the purpose of compliance with the capital adequacy requirement by the commercial banks and finance companies and 30 per cent in the case of the discount houses, as against the 50 per cent risk weight assigned to housing loans.

Due to the good track record and stature of Cagamas, all long and short term debt securities issued by the company have been given the highest rating of AAA and P1 by Rating Agency Malaysia Berhad, and AAA and MARC-1 by Malaysian Rating Corporation Berhad.

Profile of secondary mortgage market

Although the secondary mortgage market in Malaysia was established only about 10 years ago, it has grown rapidly and is now an important factor in the housing finance market as well as the capital market. The success of the secondary mortgage market in Malaysia is reflected in the growth of the volume of housing mortgages securitised by Cagamas.

In less than a decade, the volume of housing loans securitised by Cagamas has grown by more than 10 times from RM1,396 million outstanding at the end of 1988 (which was the first full year of operations of the secondary mortgage market) to RM16,142 million at the end of 1996. A breakdown of the housing loans securitised by Cagamas since it began operations is given in Table 1. The rate of growth in the securitisation of housing loans is even more significant in view of the fact that the total volume of housing loans in Malaysia (including loans sold to Cagamas) increased by only 157 per cent from RM23 billion to RM59 billion over the same period, as shown in Table 2.

Table 1: Volume of housing loans securitised in the secondary mortgage market

Volume securitised per year (RM million)

	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
Government	-	750	350	150	0	600	1,360	200	255	0
Commercial banks	306	134	864	607	211	1,719	309	3,931	2,852	4,258
Finance companies	103	197	117	172	143	472	374	873	798	1,776
Corporations	-	-	-	-	-	-	-	290	400	0
Interest-free banking institutions	-	-	-	-	-	-	-	30	0	30
Total	409	1,081	1,331	929	354	2,791	2,043	5,324	4,305	6,064

Outstanding volume securitised (RM million)

	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
Government	-	741	1,062	1,173	1,130	1,681	2,353	2,168	2,203	1,737
Commercial banks	304	378	1,100	1,487	1,447	2,829	2,706	5,832	7,074	10,456
Finance companies	103	277	329	422	483	835	1,017	1,629	1,917	3,263
Corporations	-	-	-	-	-	-	-	286	660	630
Interest-free banking institutions	-	-	-	-	-	-	-	29	28	56
Total	407	1,396	2,491	3,082	3,060	5,345	6,076	9,944	11,882	16,142

Table 2: Outstanding housing loans in the industry (including loans sold to Cagamas)

	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
Commercial										
banks	7,846.7	8,449.5	9,243.4	11,076.0	13,035.0	15,032.0	17,214.0	19,873.0	23,816.0	28,994.8
Finance										
companies	2,367.9	2,883.1	2,999.6	3,787.4	4,771.7	5,798.1	7,057.4	8,096.0	9,239.0	10,684.9
Government	7,715.0	9,676.0	10,732.0	11,773.6	12,786.9	14,028.0	15,250.5	15,518.0	15,827.0	16,356.4
Others	2,128.0	2,045.0	1,957.0	1,950.0	2,377.0	2,808.0	3,269.0	3,448.7	3,293.2	3,237.6
Total	20,057.6	23,053.6	24,932.0	28,587.0	32,970.6	37,666.1	42,790.9	46,935.7	52,175.2	59,273.7

Sources : Bank Negara Malaysia Annual Reports, various years

The commercial banks comprise, by far, the largest group of primary lenders to have sold housing loans to Cagamas, accounting for RM10,456 million or 65 per cent of the total volume of housing loans in Cagamas' portfolio at the end of December 1996. The finance companies accounted for another 20 per cent or RM3,263 million of the total loans securitised while the employee housing loans sold by the government to Cagamas accounted for a further 11 per cent (or RM1,737 million) of the total. Selected large corporations and an Islamic institution accounted for the remaining RM686 million or four per cent of the total volume of securitised housing loans.

At the end of 1996, fixed rate purchases comprised the majority of the housing loans acquired by Cagamas, accounting for 73 per cent or RM11,787 million of the total outstanding purchases of RM16,142 million. Floating rate purchases accounted for another RM3,548 million or 22 per cent of the total while convertible rate purchases and Islamic house financing debts purchases accounted for the remaining five per cent.

The large amount of housing loans purchased by Cagamas is reflected in the issuance of debt securities by the company as shown in Table 3. As at December 31, 1996, the Cagamas papers outstanding in the market amounted to a total nominal value of RM15,737 million, achieving a growth of 11 times, compared with the amount of RM1,300 million outstanding as at end 1988, as shown in Table 4. Since its inception in 1987, Cagamas has been the largest single issuer of private debt securities in the market, ranking second only to the government in the total amount of debt securities issued.

Table 3: Outstanding net purchases of housing loans and outstanding debt securities

	Securities issued (RM million)	Mortgages purchased (RM million)	Ratio of debt securities to mortgages (%)
1987	100	407	24.6
1988	1,300	1,396	93.1
1989	2,500	2,491	100.4
1990	2,900	3,082	94.1
1991	2,900	3,060	94.8
1992	5,137	5,345	96.1
1993	5,940	6,076	97.8
1994	9,485	9,944	95.4
1995	11,322	11,882	95.3
1996	15,737	16,142	97.5

The debt securities issued by Cagamas were held mainly by the banking institutions comprising the commercial banks, finance companies, merchant banks and discount houses which collectively accounted for 87 per cent of the total Cagamas debt securities outstanding as at end December 1996. The commercial banks were the largest single group of Cagamas debt securities holders accounting for more than half (53 per cent or RM8,417 million) of the total amount outstanding at end 1996. The finance companies, merchant banks and discount houses accounted for another 18 per cent (RM2,830 million), 12 per cent (RM1,838 million) and four per cent (RM659 million) respectively. The balance of RM1,993 million or 13 per cent of the total was held by a variety of investors including the provident and pension funds, property trusts, insurance companies, non-financial corporations and non-resident companies.

Fixed rate bonds, totalling RM11,207 million, comprised the majority (71 per cent) of the Cagamas securities outstanding at end 1996. Floating rate bonds and short term discount notes, amounting to RM1,960 million and RM2,510 million respectively, accounted for another 12 per cent and 16 per cent. The remaining RM60 million consisted of two issues of Cagamas Mudharabah bonds (see Table 5 for more details).

Table 4: Cagamas debt securities holders (RM million)

	End of	Total		CBs		FCs		MBs		DHs		Others	
1988	June	900.0	100%	393.0	44%	167.0	19%	258.0	29%	10.0	1%	72.0	8%
	December	1,300.0	100%	442.0	34%	291.0	22%	480.0	37%	20.0	2%	67.0	5%
1989	June	2,200.0	100%	594.0	27%	314.0	14%	558.0	25%	397.0	18%	337.0	15%
	December	2,500.0	100%	761.0	30%	343.0	14%	418.0	17%	693.0	28%	285.0	11%
1990	June	2,900.0	100%	787.0	27%	454.0	16%	580.0	20%	787.0	27%	292.0	10%
	December	2,900.0	100%	808.0	28%	442.0	15%	517.0	18%	521.0	18%	612.0	21%
1991	June	2,900.0	100%	1,055.2	36%	450.5	16%	470.7	16%	237.5	8%	686.1	24%
	December	2,900.0	100%	1,118.9	39%	495.5	17%	483.1	17%	347.3	12%	455.2	16%
1992	June	3,665.0	100%	1,720.5	47%	613.1	17%	480.8	13%	286.7	8%	563.9	15%
	December	5,137.0	100%	2,444.8	48%	1,005.7	20%	565.2	11%	857.5	17%	263.8	5%
1993	June	5,295.0	100%	2,322.2	44%	787.3	15%	481.1	9%	841.3	16%	863.1	16%
	December	5,940.0	100%	2,727.2	46%	961.6	16%	492.1	8%	632.3	11%	1,126.8	19%
1994	June	7,115.0	100%	2,981.2	42%	1,196.5	17%	543.7	8%	446.1	6%	1,947.5	27%
	December	9,485.0	100%	3,899.0	41%	1,379.2	15%	1,021.2	11%	642.2	7%	2,543.4	27%
1995	June	10,135.0	100%	4,274.0	42%	2,230.9	22%	1,170.0	12%	471.3	5%	1,988.8	20%
	December	11,322.0	100%	4,789.8	42%	2,648.9	23%	1,134.0	10%	489.0	4%	2,260.3	20%
1996	June	12,927.0	100%	5,890.7	46%	2,619.8	20%	1,509.4	12%	413.1	3%	2,494.0	19%
	December	15,737.0	100%	8,417.1	53%	2,830.1	18%	1,838.0	12%	658.7	4%	1,993.1	13%

Notes: CBs: Commercial banks

FCs: Finance companies

MBs: Merchant banks

DHs: Discount houses

Others: Financial institutions other than those specified earlier, non-financial corporations, government agencies, provident and pension funds.

While the volume of Cagamas debt securities has been growing rapidly since the inception of the secondary mortgage market, trading of these securities on the secondary market, just as in the case of the Malaysian government securities and Treasury bills, has been rather slow and inconsistent. The total secondary market turnover in Cagamas debt securities, for example, increased substantially from RM66 million in 1991 to RM16,151 million in 1995 but declined sharply to RM3,311 million in 1996. On a

Table 5: Outstanding Cagamas debts securities (RM million)

	Mudharabah bonds	Fixed-rate bonds	Cagamas notes	Floating rate bonds	Total
1987	-	100	-	-	100
1988	-	1,300	-	-	1,300
1989	-	2,500	-	-	2,500
1990	-	2,900	-	-	2,900
1991	-	2,900	-	-	2,900
1992	-	2,900	872	1,365	5,137
1993	-	2,980	925	2,035	5,940
1994	30	6,860	560	2,035	9,485
1995	30	8,432	2,010	850	11,322
1996	60	11,207	2,510	1,960	15,737

quarterly basis, the volume of secondary market transactions was also inconsistent, with the volume of activity fluctuating from quarter to quarter (see Table 6 for more details).

The low and inconsistent volume of activity in Cagamas securities in the secondary market was due mainly to the shortage in the supply of such papers. As the bulk of the Cagamas bonds and notes qualify as liquid assets, the financial institutions tend to acquire and hold these securities rather than trade them in the market.

Overall, therefore, the establishment of the securitisation market has been successful but the development of the capital market, particularly in the trading of Cagamas mortgage-backed securities, has been rather weak. Nevertheless, Cagamas' success in securitising housing mortgage has encouraged and accelerated home ownership in Malaysia by making housing loans more affordable and accessible.

Key success factors

The ability of Cagamas to securitise a huge volume of housing loans is attributed to several factors.

- Besides Bank Negara Malaysia, its largest single shareholder, the other shareholders of Cagamas are the commercial banks, the finance companies and the merchant banks – which are all institutions regulated by the Central Bank. Cagamas' Board of Directors consists of prominent members of the

Table 6: Secondary market trading in Cagamas debt securities

Period	Volume in nominal value (RM million)	Share of total market turnover* (%)
1989	11,082	28
1st quarter	2,669	29
2nd quarter	1,119	19
3rd quarter	4,069	31
4th quarter	3,225	30
1990	12,458	23
1st quarter	6,477	32
2nd quarter	5,899	37
3rd quarter	79	1
4th quarter	3	0
1991	66	0
1st quarter	3	0
2nd quarter	0	0
3rd quarter	0	0
4th quarter	63	1
1992	1,636	3
1st quarter	458	4
2nd quarter	160	1
3rd quarter	681	5
4th quarter	337	3
1993	3,859	5
1st quarter	313	2
2nd quarter	574	3
3rd quarter	1,253	6
4th quarter	1,719	7
1994	8,643	8
1st quarter	1,500	6
2nd quarter	3,105	13
3rd quarter	3,628	12
4th quarter	410	2
1995	16,159	12
1st quarter	3,927	12
2nd quarter	8,361	20
3rd quarter	3,658	18
4th quarter	213	1
1996	3,311	2
1st quarter	1,623	49
2nd quarter	330	10
3rd quarter	580	18
4th quarter	778	23

Sources: Bank Negara Malaysia Annual Reports, various years

Notes: * Refers to the turnover in major debt instruments comprising negotiable certificates of deposit, bankers acceptances, Malaysian Government Securities, Treasury Bills and Bank Negara Bills

banking community with the Governor of Bank Negara Malaysia as the Chairman. The stature of this organisational set-up has helped to ensure the ready acceptance of Cagamas debt securities in the market, thus enabling the company to raise funds at a relatively low yield. This has, in turn, enabled Cagamas to purchase housing loans at a competitive price.

- Bank Negara Malaysia recognises Tier-1 Cagamas bonds as liquid assets for the purpose of compliance with statutory liquidity requirements by the financial institutions under its supervision. This helps to generate a higher demand for Cagamas debt securities, compared with other private debt securities which are non-liquid assets, and thus reduces the cost of funds for Cagamas.
- The proceeds of the sale of housing loans obtained by the financial institutions from Cagamas are permitted by Bank Negara Malaysia to be free from the statutory reserve and liquidity ratio requirements. This has the effect of lowering the cost of funds for the financial institutions, compared to, say, fixed deposits for which the above statutory requirements are applicable.
- The Ministry of Finance has also contributed to Cagamas' success by exempting the company from stamp duties under the Stamp Act, 1949 for its housing loan transactions and its dealings in debt securities – thus lowering transaction costs.
- The Securities Commission has exempted Cagamas from having to obtain its prior approval to issue debt pursuant to Section 32A(1)(a) and Paragraph 4 of the Schedule to the Securities Commission Act 1993. In addition, Cagamas, as a prescribed corporation under Section 38(7)(b) of the Companies Act 1965, is also exempted by the Registrar of Companies from the requirement to issue any prospectus in respect of its issuance of debt securities. Besides expediting the bond issuing process, these exemptions help to reduce the administrative cost of raising funds.

Success of secondary mortgage market

The main objective in setting up the secondary mortgage market in Malaysia was to provide, through the securitisation process, liquidity to the financial institutions which grant long term housing loans which are illiquid long term assets. With the establishment of the market, home financing has become more accessible and affordable, particularly for the lower income group, and impetus was given for the further development of the capital market, especially the private debt securities market.

Securitisation of the housing loans has benefited the originators of housing loans. Prior to the establishment of the secondary mortgage

market, the financial institutions were less than eager to extend housing loans, particularly for houses costing RM100,000 or less due to the ceiling imposed on the interest rate that could be charged by the primary lenders. With the facilities offered by Cagamas, the financial institutions are now competing strongly to grant even more housing loans (including those under the controlled interest rate regime) and Islamic house financing debts, since they can easily securitise the debts to obtain funds at a cost sufficiently competitive to enable them to cover their administrative costs as well as to lock in a profit margin. As a result, accessibility to housing loans and Islamic financing at an affordable cost is not a problem in Malaysia.

For the housing loan borrowers, the securitisation facilities provided by Cagamas have also enabled the tenure of housing loans to be extended from 15 years to 25 or even 30 years. This is important in encouraging the demand for houses since longer repayment periods, resulting in lower monthly loan servicing payments, effectively make the housing loans more affordable. Before the establishment of the secondary mortgage market, the financial institutions were reluctant to extend the repayment periods because it would have aggravated the then existing problem of mismatch in funding arising from the fact that the bulk of their funds were of less than one year maturity. With the liquidity provided by Cagamas, the financial institutions have become more ready to provide housing loans with longer tenures.

Cagamas has also been instrumental in encouraging the financial institutions to provide an additional housing loan product. Traditionally, housing loans granted by the financial institutions were based on an adjustable rate pegged to their base lending rate (BLR). However, some financial institutions have recently begun, for the first time, to lend fixed rate housing loans pegged against the fixed rate funds available from Cagamas. This development has provided house purchasers with an additional alternative for financing their housing acquisitions.

The development of the capital market in Malaysia has benefited from the securitisation process. The large volume of long term and short term debt papers issued by Cagamas has provided investors with additional instruments for investing their surplus funds. While trading of these Cagamas securities in the secondary market has not been of a sufficiently large and consistent volume to create benchmarks, it has nevertheless provided for the first time in Malaysian financial history, the opportunity for bond dealers to undertake secondary mortgage market transactions in private debt securities on a large scale.

Additionally, the success of Cagamas in issuing bonds has also paved the way for other corporations to raise funds in the domestic market by issuing private debt securities as an alternative to borrowing from the

financial institutions. At the time when Cagamas began operations, private debt securities were non-existent in the market. Since the first issuance of RM100 million of bonds by Cagamas in 1987, the total amount of corporate bonds (including Cagamas bonds) floated in the market has risen rapidly to RM45.6 billion by the end of 1996.

Development of secondary mortgage market: Issues and problems

Although the secondary mortgage market is now well established and a large volume of mortgages is securitised regularly, there is still scope for improvement and development. Further progress would depend on finding solutions to various issues highlighted here.

There is, for example, the need to improve the secondary market for mortgage-backed securities. Secondary market trading in Cagamas bonds is still inconsistent and, as a result, no benchmark issues are available. While a few financial institutions do provide quotations on bond prices, due to the limited number of secondary market transactions there is uncertainty as to whether these quotations truly reflect actual market prices.

In the context of the securitisation operations, the lack of benchmark issues also makes it difficult for Cagamas to quote accurate prices to potential sellers of housing loans. Since the loans are purchased by Cagamas before the issuance of debt securities to fund such purchases, it is vital that reliable information on the prices of Cagamas bonds should be available at all times to enable competitive quotations to be provided and to enhance secondary market trading of mortgage-backed securities.

Various factors account for the under-developed level of the secondary market in mortgage-backed securities.

- The lack of information on bond trading creates uncertainty and, therefore, reluctance on the part of investors to participate in the market. However, Bank Negara Malaysia has taken action to address this by setting up an electronic bond information and dissemination system whereby information on bond prices, volume of secondary market transactions, etc, would be reported by the dealers and made available almost instantaneously to market participants from a centralised electronic source.
- The insufficient supply of bonds, including mortgage-backed securities, is also a factor deterring secondary market trading. Although the supply of such securities has grown steadily in recent years, the amount is still insufficient to generate a sustained volume of trade. This issue is complicated by the fact that the bulk of the debt papers issued by Cagamas are

recognised as liquid assets by Bank Negara Malaysia for the purpose of compliance with statutory liquidity requirements by the financial institutions. This has led to a reluctance on the part of the financial institutions which have to maintain the liquidity ratio, to sell their holdings of Cagamas securities. This 'buy and hold' problem is being addressed as Cagamas has launched a scheme to purchase industrial property loans to be financed through the issuance of debt securities which do not qualify as liquid assets and will, therefore, carry a more market oriented yield.

- The narrow investor base is another factor. At present, the financial institutions hold the bulk of the debt securities issued by Cagamas. There is a need for other institutions such as pension funds, mutual funds, insurance companies, cash rich corporations as well as high net worth individuals to realise the benefits of investing and trading in bonds, including mortgage-backed papers, rather than just leaving their surplus funds in fixed deposits or shares. Allied to this issue is the need to change the present bond issuance and trading process, currently geared for wholesale transactions, to a structure which would make the bond market more liquid and more easily accessible to retail investors. An increase in the number of market participants would hopefully stimulate a larger supply of bonds and enable a high and sustained volume of trading on the secondary market.

Another area for improvement concerns the availability of housing loans for securitisation. Financial institutions in Malaysia grant housing loans based primarily on adjustable mortgage rates that move in tandem with market rates. These primary lenders are therefore not exposed to interest rate risks and have no urgency to sell their loans to Cagamas since they can pass on any increase in their cost of funds to the borrowers. In this situation, there is a limit to the securitisation of housing loans. Ideally the primary lenders, rather than the borrowers, should bear the interest rate risk. This would occur only if the housing loans are based on fixed interest rates. In this scenario, fixed rate housing loans would, as a matter of course, be securitised by the primary lenders to minimise their interest rate risks. The originators should consider their role to be in the servicing of the loans, earning a fee income for the service while the long term bond investors should provide the financing and undertake the interest rate and credit risks. Cagamas has, therefore, embarked on a campaign to encourage the financial institutions to grant fixed rate housing loans to give house buyers an additional option for the end financing of their homes, and as a way to enhance the securitisation of housing loans. Several institutions have started to offer such fixed rate financing facilities and there are early indications of positive response to such loans from potential borrowers.

Another issue involving the development of the secondary mortgage market is the need to lengthen the tenure of the mortgage-backed bonds in the market. Currently, Cagamas issues bonds with maturity periods of up to seven years to match the price review periods of the housing loans it purchases. The average life of the outstanding mortgage-backed bonds in the market as at end 1996, was, in fact, considerably shorter than seven years, with the bulk of the bonds of three year tenures. As has been noted, housing loans are sold to Cagamas based on an agreed price review period of three, five or seven years. At the end of the review period, the prices of the transactions are reviewed and the selling institution is given the option to repurchase its housing loans if it feels that the price offered by the company to rollover the transaction is not sufficiently attractive. Since the bulk of the housing loans purchased by Cagamas have a price review period of three years, the bonds issued by Cagamas consequently reflect this tenure.

The fact that the housing loans purchased by Cagamas up to December 31, 1996 were concentrated on the three year review period indicates that the financial institutions do not like to take a long term view of their interest rate position and prefer to keep their options open by selling on a short tenure to Cagamas. As long as this attitude is maintained by the financial institutions, it would be difficult for a market for bonds with long maturity periods of, say, 10 years or more, to develop. It would be even more difficult to implement a scheme to issue pass-through mortgage-backed securities as this would require the outright sale of housing loans without any price review period. Nevertheless, Cagamas is actively exploring the feasibility of implementing a scheme to issue pass-through securities.

The administrative practices and laws pertaining to landed properties in Malaysia is another issue for consideration. For the secondary mortgage market to move beyond its present stage of development, the security documents of the housing loans must be capable of being readily transferred from the primary lender to a third party such as Cagamas or to the trustees for the bond holders in the case of pass-through securities.

Currently, in cases where a house title contains a restriction on the right to charge, deal or dispose of the property, the prior written approval of the relevant land authority must be obtained by each borrower to charge the property to a primary lender. If an existing charge with such a restriction is to be transferred from a primary lender to a secondary mortgage market institution like Cagamas, the approval of the relevant land authority is required. The securitisation of housing loans secured by titles with such restrictions would be difficult to process because of the time required to obtain the approval of the authority for the transfer of the charges. There is also uncertainty whether the relevant authorities will ultimately approve the transfer.

In view of this, housing loans with a restriction on the transfer of charges are currently not eligible for securitisation by Cagamas. Recent land alienation practices indicate that an increasing proportion of residential property titles would contain this restriction and, to that extent, there will be a limit on the pool of housing loans eligible for sale to Cagamas. For the further expansion of the secondary mortgage market, it is essential that the restriction on the transfer of charges be removed at least for securitisation purposes.

A further issue is the restrictions imposed by the various enactments on the transfer of charges in respect of Malay reserve land and customary land. Cagamas has been gazetted by most authorities in the relevant schedules of the respective land enactments as an institution that can accept charges over such land. However, these enactments do not specifically refer to the transfer of charge. In the absence of such reference, it is not clear whether Cagamas, having been permitted to accept charges on Malay reserve land, would also be permitted to receive the transfer of existing charges on such land from other chargees. In Selangor, for example, the authorities have interpreted the enactment restrictively to mean that a party authorised to take a charge on Malay reserve land cannot accept a transfer of an existing charge on the property.

There is thus a need for the authorities concerned to clear this ambiguity so that an institution authorised to take a charge over Malay reserve land should automatically also be permitted to accept a transfer of charge over such land. If this issue is not resolved, it would deter the securitisation of housing loans granted for the purchase of properties on Malay reserve land.

The time taken to auction properties as well as to receive the auction proceeds also hampers the development of the secondary mortgage market. Under the current practice, the procedures to auction a piece of property following default on a housing loan could take a year or longer from the date of commencement of foreclosure proceedings. Thereafter, it may take another year, or even longer in some instances, for the auction proceeds to be released by the High Court. The long time lag in the realisation of a charge is a cost that has to be factored into the securitisation of housing loans – particularly when should the housing loans are sold to Cagamas without recourse. This would hinder the development of a market for pass-through securities. Ideally, the land laws should be amended specifically to accommodate securitisation transactions.

Conclusion

Although the establishment of the secondary mortgage market has progressed well in Malaysia, there is still room for improvement. The ultimate objective of the current development effort should be to create a market

where housing loans are automatically securitised by the originators upon being fully disbursed. The loans should also be sold outright without being subject to a price review period, repurchase option, or recourse to the seller. The originators of the housing loans should, after securitising their loans, take on the role of servicing the loans instead of being lenders, and leave the financing of the loans to the long term bond investors. Housing loans, being long term assets, should be financed by long term bond investors rather than by the financial institutions whose sources of funds are almost entirely short term. This would enable mortgage-backed bonds with long maturity dates to be issued in large volumes and thus make possible the establishment of long term benchmark issues.

To achieve this objective there is a need, on one hand, to take bold steps to remove the various obstacles highlighted which hinder the development of the secondary mortgage market and, on the other hand, to convince the loan originators to change the perception of their role from financier to that of servicing loans. The achievement of this objective will benefit all parties as the financial institutions would earn a fixed service fee from the housing loans they originate, without having to bear any interest rate or credit risk, and the long term investors would have an avenue to invest their long term funds. This disintermediation of the end financing for houses would make housing loans more affordable and accessible, to the benefit of house buyers.

In the remaining years of the millennium, with rapidly rising income levels and increased urbanisation, demand for housing will continue to increase and there is every opportunity for the secondary mortgage market to develop to the extent experienced in industrialised countries provided the various obstacles to such development are overcome.

Appendix 1: Principles of purchase and repurchase of mortgage loans by Cagamas

(a) Revised Master Sale and Purchase Agreement

- The financial institution shall execute a Revised Master Sale and Purchase Agreement with Cagamas before it may offer mortgage loans for sale to Cagamas. The Revised Master Sale and Purchase Agreement sets out the general terms and conditions governing the sale of mortgage loans to Cagamas, and incorporates a declaration by the financial institution that it holds the mortgage loans sold to Cagamas, the mortgage instruments and all monies received but not paid to Cagamas in trust for Cagamas. The charges over the property used to secure the mortgage loans continue to be registered in the name of the financial institution or the assignee of the rights to the property is the financial institution. In the event the charges are registered in the name of the financial institution, the financial institution shall undertake to effect the transfer of the charge to Cagamas or to a third party that is designated by Cagamas on written demand by Cagamas. In the event the assignee is the financial institution, the financial institution undertakes to assign the rights under the assignment to Cagamas or to a third party that is designated by Cagamas on written demand by Cagamas.

(b) Purchase Contract

- For each sale of a group of mortgage loans to Cagamas pursuant to the Revised Master Sale and Purchase Agreement, the financial institution executes a Purchase Contract by which the financial institution sells and assigns the mortgage loans to Cagamas. By virtue of such sale and assignment, the financial institution conveys, assigns and transfers the mortgage loans to Cagamas.

(c) Purchase Value

- Cagamas will purchase a mortgage loan from the financial institution at the purchase value, namely, the book balance of a mortgage loan sold under a Purchase Contract after deduction of unearned interest, if any, included in such balance.

(d) Cagamas Rate

- The Cagamas Rate is Cagamas' required rate of return on the mortgage loans purchased from the financial institution and shall form the basis of the calculation of the Cagamas Instalment. Cagamas may purchase the mortgage loans from the financial institution on the basis of a fixed rate or a floating rate with a conversion option.

- For mortgage loans purchased on the basis of a fixed rate, the fixed Cagamas Rate will be quoted by Cagamas for periods of three years, five years and seven years or for any other periods as may be agreed to between the parties from time to time (ie, review period). When the financial institution offers to sell its mortgage loans to Cagamas, Cagamas shall agreed to purchase the mortgage loans from the financial institution at the quoted fixed Cagamas Rate prevailing for the review period agreed to by the parties. The financial institution and Cagamas shall prior to each review date, agree on the next review period and Cagamas shall inform the financial institution of the revised fixed Cagamas Rates that will be effective on the review date. If the parties are unable to agree on the duration of the next review period, the period shall be as prescribed by Cagamas. This process shall continue until such time the mortgage loan is redeemed or repurchased by the financial institution.
- For mortgage loans purchased on the basis of a floating rate, the financial institution and Cagamas shall agree on the benchmark on which the floating Cagamas Rate is to be indexed (eg, three to six months Klibor); the source of information of the benchmark (eg, Telerate/Reuters); the margin; the basis for determining the floating Cagamas Rate (eg, arithmetic mean of the benchmark five days prior to reset date plus the margin); the reset frequency (eg, every three to six months); the first reset date; and the review period. The floating Cagamas Rate determined at the preliminary purchase contract date shall be effective from the purchase date to the first reset date and at each subsequent reset date, the floating Cagamas Rate shall be reset.

Prior to each review date, the financial institution and Cagamas shall review and agree upon the terms on which the floating Cagamas Rate is to be determined for the next review period. If the parties are unable to agree on the duration of the next review period, the period shall be as prescribed by Cagamas. This process shall continue until such time the mortgage loan is redeemed or repurchased by the financial institution.

- If the revised fixed Cagamas Rate and/or the basis for determination of the floating Cagamas Rate is not acceptable to the financial institution, then the financial institution shall have the right to repurchase the group of mortgages relating thereto by notice in writing to Cagamas within three business days of receipt of the revised rates or revised terms, as the case may be.
- For mortgage loans purchased with a conversion option, the Cagamas Rate is determined in the same manner as for the fixed and floating rates as at the point of purchase with the exception that on each conversion option date, the financial institution has the right to top to convert the Cagamas Rate applicable to such mortgage loans from a fixed rate to a floating rate or a floating rate to a fixed rate, as the case may be.

(e) Fees Payable by Cagamas to the Financial Institution

- Cagamas will pay the financial institution a fee for the servicing function and recourse function performed/to be performed by the financial institution pursuant to the Revised Master Sale and Purchase Agreement.
- The rate for determining the fee payable shall be determined by Cagamas at the date of the Preliminary Purchase Contract and shall be reviewed prior to the review date on which date, if the rate is revised, the revised fee rate shall become effective and shall be specified in the revised summary of mortgage loans offered.

(f) Review Date

- The review date is the day prior to which Cagamas shall have reviewed the Cagamas Rate, the recourse fee rate and/or the service fee rate and on which date the revised rates (if any) will take effect; each subsequent review date shall be determined by Cagamas and the financial institution at the preceding review date.
- The financial institution has the option to convert a fixed rate purchase to a floating rate purchase and vice versa and be entitled to elect the option of compulsory replacement at any review date subject always to Cagamas' approval.

(g) Right of First Refusal

- As the owner of the mortgage loans, Cagamas has the right to sell at any time the mortgage loans it had purchased either to the financial institution from which it had purchased the loans, or to a third party.

Provided that prior to any sale to a third party, Cagamas will first offer the mortgage loans for sale to the financial institution from which it had purchased the loans.

(h) Compulsory Repurchase

- Upon occurrence of any of the events of default by the financial institution or if the loan becomes defective or is redeemed by the borrower, the financial institution is required to repurchase these mortgage loans previously sold to Cagamas.

(i) Compulsory Replacement

- The financial institution shall be entitled to elect, at or prior to the purchase contract date or any review date, not to replace the mortgage loans required to be repurchased with other loans. However, if the financial institution elects for compulsory replacement, the financial institution is required to offer for sale to Cagamas eligible mortgage loans, of any equivalent value as those so repurchased, to replace such mortgage loans repurchased, except in the event the financial institution does not have any eligible mortgage loans for such compulsory replacement.
- The financial institution is required to notify Cagamas in writing in the event it does not have any or sufficient eligible mortgage loans for compulsory replacement.

(j) Service Function, Recourse Function and Trustee Function

- The financial institution is required to:
 - (i) Continue to administer and service the mortgage loans purchased by Cagamas until and unless otherwise notified by Cagamas;
 - (ii) Maintain accurate mortgage servicing and accounting records; and
 - (iii) Collect and promptly remit any and all amounts due to Cagamas.

(k) Payment of Cagamas Instalment

- For mortgage loans sold to Cagamas, the financial institution is required to collect the monthly mortgage instalments from the borrowers pursuant to terms of the Revised Master Sale and Purchase Agreement and remit at monthly intervals (or at such longer intervals as the parties hereto may agree upon from time to time) to Cagamas out of such amounts collected the respective Cagamas Instalments corresponding thereto after deducting the applicable service fee and recourse fee. Where the mortgage instalment (net of the specified service and recourse fees) is greater than the Cagamas Instalment, the financial institution shall retain the excess as an additional recourse fee. However, where the mortgage instalment less the service and recourse fees is less than the Cagamas Instalment, the financial institution is required to make up for the shortfall in the mortgage instalments.

The payment of the shortfall should continue until the loans are repurchased by the financial institution, even if Cagamas were to resell them to a third party.

(l) Partial Prepayment and Advance Mortgage Instalment

- The financial institution is required to remit to Cagamas all partial prepayments made by the borrowers on a Cagamas Instalment date following a quarterly review date falling immediately after such prepayment has been made.
- If the partial prepayments so remitted causes the remaining life of the mortgage loan to expire prior to the review date, the financial institution is required to repurchase the mortgage loans and if the financial institution elected the option for compulsory replacement, the financial institution is required to offer for replacement eligible mortgage loans of an equivalent value to the mortgage loans being repurchased.
- In the case of advance mortgage instalments, the financial institution is required to hold the equivalent Cagamas Instalment in trust for Cagamas until it is remitted to Cagamas on the due date of the Cagamas Instalment.

(m) Accounting Records

- The financial institution shall establish and maintain accounting records in accordance with any applicable instructions issued by Cagamas/Bank Negara Malaysia with respect to loans sold to Cagamas.

(n) Reports

- The financial institution shall prepare and furnish to Cagamas with quarterly reports on arrears, defective loans and partial prepayments and/or advance mortgage instalments. It will also furnish Cagamas, once in every year, a yearly listing of mortgage loans sold to and held for Cagamas.

(o) Repurchases based on Quarterly Reports

- Based on the quarterly reports submitted, Cagamas will examine with the financial institution the status of all the mortgage loans sold to Cagamas at regular dates (eg, Quarterly Review Dates) determined by Cagamas.
Such examinations will determine the loans which the financial institution is required to repurchase from Cagamas.

(p) Audit

- Cagamas shall have the right to request the financial institution to appoint authorised agent/s to examine and audit all records pertaining to the mortgage loans sold by the financial institution to Cagamas.

Appendix 2: Criteria for eligibility of mortgage loans for sale to Cagamas

In order to be eligible for sale to Cagamas, mortgage loans must satisfy all of the following criteria:

1. The mortgage loan is for the financing or refinancing of the *purchase or construction or renovation of a residential unit* provided that a loan for renovation will only be eligible if it is a second loan granted by the financial institution to the borrower and is amalgamated with the first loan which is eligible for sale and is being sold to Cagamas. (A loan granted for the purchase of a shophouse, industrial or commercial property is not eligible for sale to Cagamas).
2. The Tier-1 mortgage loan is defined in accordance with Bank Negara Malaysia's Guidelines on Lending to the Priority Sectors or such other definition as determined by Bank Negara Malaysia from time to time.
3. The mortgage loan is *fully disbursed*.
4. The mortgage loan should not be *more than three months in arrears* at the time of sale of the mortgage loan to Cagamas whether in respect of principal and/or interest.
5. The mortgage loan sold to Cagamas should at the time of sale thereof, have a *remaining life which expires on or after the review date*.
6. The mortgaged property is *insured against fire up to its full insurable value with a loss-payable endorsement designating the financial institution as payee*.
7. The mortgage loan must be secured by a *first Charge or Assignment over the mortgaged property*.
8. If the financial institution is the first and second Chargee and the renovation and original loans are amalgamated into a single loan account, the *amalgamated loan incorporating the renovation loan* secured by a second charge or supplemental loan agreement is *eligible for sale to Cagamas*.
9. If the financial institution is the first and second Chargee and the *renovation loan secured by a second charge* or supplemental loan agreement is treated as a separate loan from the original loan, *only the original loan is eligible for sale to Cagamas* provided the original loan is for the financing or refinancing of the purchase or construction of a residential unit. However, the financial institution is required to *repurchase the original loan* sold to Cagamas, if the financial institution *declares an event of default under the second charge*. The *renovation loan granted on the basis of a second charge or supplemental loan agreement is not eligible for sale to Cagamas*.

10. The mortgaged property has an *individual or strata title* or there is a *valid legal assignment of the right to the property and to the title as and when the title is to be issued*.
11. The security documents should be *perfected*, ie the charges in favour of the financial institution should be *registered* at the Land Registry or Land Office and the charge documents and the title deeds should be in the *custody* of the financial institution or, in the case of an assignment, the assignment should be duly stamped and be in the custody of the financial institution.
12. The borrower is a *natural* person.
13. To the best of the knowledge of the financial institution, the borrower is *not an undischarged bankrupt or that no bankruptcy proceedings have been commenced against the borrower*.
14. To the best of the knowledge of the financial institution, the borrower is *not deceased*.
15. In respect of replaced housing loans, each housing loan should, at the time of sale thereof to Cagamas, have a *remaining life* which *expires on* or after the review *date* of the housing loan it is intended to replace.
16. There should be adequate provision in the mortgage instruments enabling the mortgagee thereof to *transfer the Charge or assign* all its rights, interests and obligations under the mortgage instruments to any person as the mortgagee thereof may deem fit.
17. There should be adequate provisions in the mortgage instruments to enable the mortgagee to *vary the mortgage rate*, from time to time, at the absolute discretion of the mortgagee.
18. The mortgaged property is *free from all encumbrances and caveats* other than the existing charge(s) and caveats in favour of the financial institution.
19. In the case of a property with *no separate/subdivided strata title* and the mortgage loan is secured by a loan agreement cum assignment, the following undertakings should be obtained from the developer:
 - (a) to forward the *issue document of title* to the property free from all encumbrances and the *duly executed Memorandum of Transfer* relating thereto in favour of the borrower to *the financial institution or its Solicitors* upon issuance of the said title;
 - (b) *procure the issuance of the title* to the property;
 - (c) not to *encumber or further encumber* the property; and
 - (d) obtain the *Certificate of Fitness* to the property.

In addition thereto and where the *main title is encumbered*, the following undertakings should also be obtained from the Chargee thereof:

- (a) to *release and relinquish* all rights, claims and interests to the mortgaged property and to *exclude the said property from any foreclosure or other proceedings* so that any sale/disposal of or dealing with the property would be subject to the rights of the borrower; and
 - (b) to *forward the duly executed and registrable Discharge of Charge*, the relevant *duplicate Charge* together with the *separate issue document of title* upon issuance thereof to the financial institution.
 - 20. Loans secured by properties located in *Native Area land, Native Customary land and Interior Area land in Sarawak*. are not eligible for sale to Cagamas.
 - 21. Mortgage loans secured by properties located on land which is subject to an order for *compulsory acquisition* or where *notice* of intended acquisition has been issued under the Land Acquisition Act are ineligible for sale to Cagamas.
 - 22. A mortgage loan secured by mortgaged property the title to which:
 - (a) contains a *restriction* against the *sale, leasing and/or transfer* only of the property shall be eligible for sale to Cagamas.
 - (b) subject to (i) above, contains any subsisting *restriction* against and/or limiting the *charging and/or disposal and/or dealing* with the property shall *not be eligible* for sale to Cagamas.
- Note:** The financial institution is not required to determine conclusively that the mortgage loans sold to Cagamas satisfy eligibility criteria 18 to 22 at the point of sale. However, immediately upon discovery or upon being made aware of the abovesaid events by Cagamas, the financial institution shall repurchase such mortgage loans and offer to Cagamas sufficient eligible replacement mortgages to replace the loans so repurchased.

Appendix 3: Criteria for eligibility of Islamic house financing debts for sale to Cagamas

In order to be eligible for sale to Cagamas, the Islamic House Financing Debts must satisfy all of the following criteria:

1. The Islamic House Financing Debt is for the financing or refinancing of the *purchase or construction or renovation of a residential unit* provided that an Islamic House Financing Debt for renovation will only be eligible for sale to Cagamas if it is a second Islamic House Financing Debt secured by a second charge or supplemental house financing debt agreement cum assignment/house financing debt agreement and assignment granted by the Bank to the Customer and is amalgamated with the first Islamic House Financing Debt into a single Islamic House Financing Debt account. (An Islamic House Financing Debt granted for the purchase of a shophouse, industrial or commercial property is not eligible for sale to Cagamas).
2. If the Bank is the first and second Chargee and the *renovation financing secured by a second charge* or supplemental house financing debt agreement cum assignment/house financing debt agreement and assignment is treated as a separate house financing debt from the original house financing debt, *only the original house financing debt is eligible for sale* to Cagamas provided the original house financing debt is for the financing or refinancing of the purchase or construction of a residential unit. However, the Bank is required to *repurchase the original house financing debt* sold to Cagamas, if the Bank *declares an event of default under the second charge*. The *renovation financing* granted on the basis of a *second charge* or *supplemental house financing debt agreement cum assignment/house financing debt agreement and assignment* is not eligible for sale to Cagamas.
3. The Islamic House Financing Debt is *fully disbursed*.
4. The arrears in mortgage instalments should not amount in value to a sum equivalent to *more than three mortgage instalments* at the time of sale of the Islamic House Financing Debt to Cagamas.
5. The Islamic House Financing Debt sold to Cagamas should, at the time of sale thereof, have a *remaining life* which *expires* on or after the *review date* immediately following such purchase date and the profit rate of Islamic House Financing Debts sold should always be greater than the Cagamas Rate ie Cagamas' required rate of return.
6. The mortgaged property used to secure the Islamic House Financing Debt should be insured against fire up to its full *insurable value with a loss-payable endorsement designating the Bank as payee*.

7. The Islamic House Financing Debt must be secured by *a first Charge or Assignment of rights over the mortgaged property.*
8. The mortgaged property has an *individual or strata title* or there is a *valid legal assignment of the right to the mortgaged property and under the Sale and Purchase Agreement relating thereto* or in the case of property purchased directly from a developer an original and valid sale and purchase agreement is executed.
9. The security documents should be *perfected*, ie the charges in favour of the Bank should be *registered* at the Land Registry or Land Office and the charge documents and the title deeds should be *in the custody* of the Bank or, in the case of an assignment, the assignment, sale and purchase agreement and other relevant documents should be duly stamped and be in the custody of the Bank.
10. The Customer is a *natural* person.
11. To the best of the knowledge of the Bank, the Customer is *not an undischarged Bankrupt and no Bankruptcy proceedings have been commenced against the Customer.*
12. To the best of the knowledge of the Bank, the Customer is *not deceased.*
13. In respect of replaced Islamic House Financing Debts, each Islamic House Financing Debt should, at the time of sale thereof to Cagamas, have a *remaining life which expires on or after the review date* immediately following such replacement date of the Islamic House Financing Debt it is intended to replace and the profit rate of the replacing Islamic House Financing Debt should always be greater than the prevailing Cagamas Rate pursuant to a purchase contract.
14. There should be adequate provision in the mortgage instruments enabling the Bank thereof to *transfer the Charge or assign* all its rights, interests and obligations under the mortgage instruments to any person as the Bank may deem fit.
15. The mortgaged property is *free from all encumbrances and caveats* other than the existing charge(s) and caveats in favour of the Bank in respect of the Islamic House Financing Debt sold to Cagamas.
16. In the case of a mortgaged property with *no separate/subdivided/strata title* and the Islamic House Financing Debt is secured by a house financing debt agreement cum assignment, the following undertakings should have been obtained from the developer:
 - (a) to forward the *issue document of title* to the mortgaged property free from all encumbrances and the *duly executed Memorandum of Transfer* relating thereto in favour of the Customer to the *Bank or its Solicitors* upon issuance of the said title;

- (b) *procure the issuance of the title* to the mortgaged property;
- (c) *not to encumber or further encumber* the mortgaged property;
- (d) obtain the *Certificate of Fitness* to the mortgaged property.

In addition thereto and where the main title is encumbered, the following undertakings should also have been obtained from the Chargee thereof:

- (a) *to release and relinquish* all rights, claims and interests to the mortgaged property and to *exclude the said mortgaged property from any foreclosure or other proceedings* so that any sale/disposal of or dealing with the mortgaged property would be subject to the rights of the Customer; and
- (b) *to forward the duly executed and registrable Discharge of Charge*, the relevant *duplicate Charge* together with the *separate issue document of title* upon issuance thereof to the Bank.

17. Islamic House Financing Debts secured by properties located in *Native Area land, Native Customary land* and *Interior Area land in Sarawak* are not eligible for sale to Cagamas.
18. Islamic House Financing Debts secured by properties located on land which is subject to an order for *compulsory acquisition* or where notice of intended acquisition has been issued under the Land Acquisition Act 1960 (Revised 1992) are ineligible for sale to Cagamas.
19. An Islamic House Financing Debt secured by mortgaged property the title to which or the main title to which:
 - (a) contains a *restriction* against the *sale, leasing and/or transfer* only of the mortgaged property shall be *eligible* for sale to Cagamas.
 - (b) subject to (i) above, contains any subsisting restriction against and/or limiting the *charging and/or disposal and/or dealing* with the mortgaged property shall not be eligible for sale to Cagamas.

Note: The Bank is not required to determine conclusively that the Islamic House Financing Debts sold to Cagamas satisfy eligibility criteria 15 to 19 at the point of sale. However, immediately upon discovery or upon being made aware of the abovesaid events by Cagamas, the Bank shall repurchase such Islamic House Financing Debts and offer to Cagamas sufficient eligible replacement IHFDs to replace the Islamic House Financing Debts so repurchased.

CHAPTER 5

Government Housing Policies and Incentives: The Industry Viewpoint

Lawrence Chan

In Malaysia one of the major objectives of the New Economic Policy and the Second Outline Perspective Plan (OPP2) is to restructure the employment pattern to reflect the racial composition of the country. These structural changes in the economy, coupled with the emergence of manufacturing, construction and services as the major growth sectors, resulted in a large number of the rural population, especially rural Malays, migrating to the urban centres. Due to this rapid urbanisation and fuelled by the robust Malaysian economy, the demand for housing in the urban areas, especially for low and low medium-cost categories, outstripped supply. The lack of adequate affordable housing in the urban areas has led to overcrowding in existing buildings and the proliferation of illegal squatter settlements. Since the 1970s, there has been an urgent need for housing in the urban areas.

Government housing policies

The setting, by the federal government, of housing targets to be achieved by both the public and the private sectors within the respective national development plans is a laudable step. However, by and large, the performances of both sectors have been below target – with the private developers achieving

80-99 per cent of the targets compared to the public sector achievement of 30-43 per cent. Besides setting targets to meet the demand for housing in the urban areas, the federal government has enacted laws to protect consumers and to regulate the standards and practices of the housing industry.

Private housing developers are governed by the Housing Developers (Control and Licensing) Act 1966, the Housing Developers (Control and Licensing) (Amendment) Act 1988 and the Housing Developers (Control and Licensing) Regulations 1989 which requires them to obtain licences and advertising and sales permits from the Ministry of Housing and Local Government before they can start any housing project. Such regulations have helped the housing industry by according legitimate housing developers credibility and helping to instil the confidence of the public in the industry.

In the quest to build greater numbers of low and low medium-cost housing units the federal government has approved several guidelines and incentive proposals. Among these are proposals to encourage the participation of private developers by:

- Upgrading the housing delivery system and providing easy access to financial resources;
- Reviewing guidelines, by-laws and infrastructure standards in an effort to increase density;
- Encouraging research and development in an effort to produce cheaper materials and better techniques in construction; and
- Identifying and privatising suitable housing projects.

Since all matters related to land are the prerogative of the respective state governments, according to the Malaysian Constitution, the federal government's active participation in the actual implementation of housing projects is limited.

With regards to low-cost housing by the private sector, the federal government has approved policies and guidelines which require:

- Firstly, a 30 per cent low-cost quota with a ceiling price of RM25,000 to be imposed for any housing scheme reaching a certain threshold size of development. The threshold or minimum size of the development which must provide the low-cost component varies from state to state. The housing industry considers this low-cost quota to be an onerous burden for the developers to bear alone. It is proposed that other players who benefit from the spin-offs in the housing industry, such as the banking sector, building material manufacturers, industrialists and the professionals, should also contribute to assist the government in its social role of providing housing for the poor by reducing their costs for such housing units.
- Secondly, a minimum quota of at least 30 per cent of the units has to be withheld by the developer for sales to Bumiputeras at a discount of at least 5 per cent off the selling price. The housing industry has

proposed that the government should set a time-frame for the automatic release of the unsold housing units allocated for Bumiputeras in order to ease the cash flow of housing developers. Alternatively, the government could establish a fund for the sole purpose of buying up housing units that are not taken up by Bumiputeras.

Generally the players in the housing industry agree that the production of low-cost housing would increase, and the housing targets set out in the national development plans could be fully achieved with government assistance in the following areas.

Imposition of low-cost requirement

The government should be flexible in the imposition of the low-cost requirement. The present imposition of the low-cost housing requirement is too rigid and does not give consideration to pertinent factors such as the project size, which would invariably affect the viability and saleability of the houses. The authorities should be more flexible and permit higher densities on more expensive land to provide economies of scale and to permit the element for cross-subsidisation by increasing medium and high-cost units. In cases where it is uneconomical and physically not possible for the developer to meet the low-cost quota, flexibility should be allowed for the payment of a levy sum as an indirect social contribution in lieu of building the low-cost units.

Procedures for approval of plans

The government should strive to be more efficient and transparent in the procedures for approval of plans. It is estimated that the gestation period from the day of purchase of a piece of land until the approval of all the development plans by the authorities can take up to five years. This results in high holding costs to the developer, not to mention the exposure to the risk of market changes. Therefore there is a need for the government to reduce unnecessary steps and to simplify procedures in order to expedite approvals and lower development costs.

Provision of state land for low-cost housing

The government should identify and provide suitable state land on the fringes of urban centres to be privatised for low-cost housing. The state governments should also repossess state-alienated idle land from owners and convert them for housing and privatise the development.

Exemption from government levies

To encourage low-cost housing, the government can assist by giving waivers from payment of government levies such as conversion fees, plan fees, development charges and capital contribution payable to the government agencies.

Responsibility for collection of maintenance fees

Another area where government assistance can come in is to make the local authorities responsible for the collection of all maintenance fees and the management of all completed low-cost flats. The developers are currently responsible for the management and maintenance of the flats until the issuance of strata titles.

Conclusion

The housing industry shares the concern and commitment of the government to contribute socially by developing and delivering the much needed low and low medium-cost housing to low income groups. It is possible to fully achieve the housing targets set by the government under the national development plans provided the state governments and the local authorities assist the private sector by formulating policies, guidelines and incentives to help reduce the cost of production of this category of housing.

Government Housing Policies and Incentives: The Government Viewpoint

Ahmad Zakki Yahya

Introduction

The housing sector contributed 4.5 per cent to gross domestic product (GDP) in 1996 with a residential construction output of about 21.14 per cent. If the flow of housing services was taken into account the figure would be higher. Household expenditure on housing increased from 15.68 per cent in 1973 to 25.39 per cent in 1994. Further inflation in house prices would contribute significantly to the overall consumer price inflation rate. The amount of housing loans disbursed by banks was RM15,176.2 million in 1995, which is considered significant to the overall soundness of financial sector. The linkages between housing and the economy are strong whether in terms of its efficiency or its implications to environmental quality and the living conditions of its population. The proportion of residential land use in urban areas is larger than for other uses and this affects the spread and distribution of economic activities. Together with slums and squatter settlements, this has overall influence on water and air pollution, and the general environment.

This chapter reviews the housing activities as well as the programmes and incentives relating to housing in Malaysia. Emphasis is placed on the

delivery of low and low medium-cost housing as they form the bulk of housing required under the Seventh Malaysia Plan.

National housing policy

The main objective of the housing policy as stated in the Seventh Malaysia Plan period (1996-2000) is to provide adequate, decent, affordable and accessible housing that is fully facilitated with basic amenities. As in the previous national development plans, the current plan also emphasises the provision of housing for the poor and low income groups. Towards this end, the government has formulated strategies and programmes to deliver a sufficient number of housing units affordable by all sectors of society.

Creating the appropriate legislation and sound public institutions and machinery is a prerequisite for the housing sector to operate in the areas of planning, finance, building, construction activities and landed property management. To provide the basic network of services, a well-established institutional and legislative framework is in operation in the Malaysian housing scenario.

Constitutionally, housing is a matter handled concurrently by both federal and state governments. The state government and local authorities play a primary role in the physical planning and housing investment in conjunction with industrial, urban and infrastructure developments. Under local authority requirements, all housing developments need to have planning approvals as well as approvals for the supply of utilities. The federal entities formulate housing policies and strategies, set housing targets and goals, define licensing and enforcement requirements, and guide finance institutions on bridging and end financing facilities.

The Ministry of Housing and Local Government plays a vital advisory role in the provision of housing. Through the Town and Country Planning Act 1976, the Ministry incorporates policies and frameworks primarily pertaining to urban planning by considering land allocation, population density, layout plans and overall physical development.

The Ministry of Housing and Local Government has instituted the Housing Developers (Control and Licensing) Act 1966, the Housing Developers (Control and Licensing) (Amendment) Act 1988 and the Housing Developers (Control and Licensing) Regulations 1989 to regulate private housing development. Before construction can begin, private developers are required to obtain sales and advertising permits from the Controller of Housing for projects with more than four housing units. Irrespective of size, all housing projects developed within municipality boundaries require approvals from the respective local authorities. Housing projects under the direct control and supervision of government departments and single units on

agricultural land are exempted from such permits and licences. Housing developments on estates, plantations and mining companies do not come under the purview of the Housing Developers Act but such developments are subject to labour laws and regulations. The Housing Developers Act and Regulations are not applicable in the states of Sabah and Sarawak which have their own laws, regulations and procedures.

In August 1990, the government also introduced the Housing Development Account Regulation, which governs the collection of payments from buyers and the manner in which the payments collected are used for project development. The Regulation is aimed at preventing the misuse of funds collected from house buyers and protecting buyers from the malpractices of developers. The Ministry of Housing and Local Government also monitors and co-ordinates the revival of abandoned housing projects. In 1990 the federal government established the Abandoned Housing Projects Fund under the administration and supervision of Bank Negara Malaysia to revive and complete the abandoned projects.

The Ministry of Housing and Local Government hosts a number of councils such as the National Consultative Council on Housing, the National Housing Council and the National Council of Local Governments. The National Consultative Council on Housing is aimed at bringing about closer co-operation between the public and private sectors in the housing industry. It provides a forum to address issues and problems affecting the housing industry. The National Housing Council was formed to foster closer co-ordination among the public sector in the provision of public low-cost housing. The National Council of Local Governments provides a platform for the adoption of policies, procedures and programmes pertaining to housing besides other local government matters.

In collaboration with the central planning agencies, the Ministry of Housing and Local Government plays an active role in setting the housing direction for the national development plans. The Ministry provides inputs and sets directions for deliberations on housing issues, needs and target numbers, programmes, strategies and implementation plans. In the preparation of housing targets, the government assesses and forecasts housing needs and demands over the plan period. Housing needs basically depend upon population growth, formation of household size and occupancy status. However, social and economic factors also influence the effective demand pattern apart from demography. Accordingly, the actual housing targets for the national development plans are prepared by considering construction capacity and the programmes required, both in public and private sectors. Other factors considered include the ability and willingness to pay for housing, housing standards and options, financial arrangements,

housing resources, social and cultural preferences, tenure pattern, housing investment, potential growth centres, communications and services.

Besides government agencies, a wide range of other players are involved in the provision of housing such as associations, professional bodies, co-operative establishments, individuals, community groups, tenants and non-governmental organisations. Some of the prominent non-governmental organisations actively involved in housing are the Housing Developers Association Malaysia, the Master Builders Association, the Malaysian Architects Association, the Association of Consulting Engineers Malaysia, the Institution of Surveyors Malaysia, the Malaysian Construction Materials Distributors Association and the consumers associations. In line with the Malaysia Incorporated concept, these organisations are involved in providing support and consultation on the production and distribution of houses, products and services needed by the housing sector. In particular, support is sought in the production and supply of building materials, developing efficient building technology, providing manpower development, carrying out research and development activities, and rendering technical expertise. Support is also sought to complement the government's efforts in the provision of low and low medium-cost housing.

Housing development and ownership

In Malaysia the public and private sectors, co-operative establishments, private groups and individuals are involved in building houses. However, they differ in objectives, statutory requirements, implementing agencies, mode of financing, target groups and types of houses developed.

Public sector low-cost housing programme

The state and federal governments have jointly carried out numerous low-cost housing projects, particularly through the Public Low-Cost Housing Programme. In this undertaking, the state governments, assisted by the National Housing Department, identify and allocate suitable lands, implement tender procedures and supervise the physical progress of projects. The state governments also identify eligible buyers and make the necessary arrangements to extend end-financing facilities provided by the federal government to the successful buyers. At the federal level the National Housing Department prepares the budget requirements under each five-year development plan and provides technical assistance and advisory services to the state governments. The technical and advisory services include project feasibility studies, land surveying, soil tests, preparing building and structure plans, tender procedures

and documentation. The department also monitors the overall progress of the project and prepares regular evaluation reports.

The target groups for the Public Low-Cost Housing Programme are households with monthly incomes of between RM500 and RM750. The federal government, through the state governments, extend loan facilities to buyers at an interest rate of 5.5 per cent per annum and the loan is repayable over a maximum period of 25 years. The types of houses delivered under the programme are detached and semi-detached wooden houses in rural areas, single or double-storey terrace houses in the urban fringes and five-storey walk-up flats or multi-level units in major towns. The minimum standard for a low-cost house in this programme is 45-56 sq m of built-up area with three bedrooms, a living cum dining room, a kitchen and a modern toilet/bathroom.

The state and federal governments also jointly build houses under the site and services scheme for the poor. Priority is given to households which are unable to own a house under the Public Low-Cost Housing Programme. The operation of the site and services scheme is similar to the low-cost housing programme except that loans under the site and services scheme are interest-free. Participants in this programme have two housing options. The first option provides a serviced plot built with a core house having a minimum land size of 242 sq m. The house is priced at RM10,000 per unit in Peninsular Malaysia or RM13,000 in Sabah and Sarawak. In the second option, the participants are provided a vacant plot of 242 sq m including basic infrastructure services. These lots are provided at a unit price of RM5,000 in Peninsular Malaysia and RM7,500 in Sabah and Sarawak.

In collaboration with state governments, the federal government also provides housing for land settlers in land schemes and regional development activities. The federal government provides the requisite funding for the land development activities and assists settlers with loan facilities to buy land and houses allotted to them. Loans are provided at an interest rate of 5.5 per cent per annum repayable over a convenient period. The settlers begin to service the loan when income is generated from the allotted land. The type of house built for settlers is a timber core-house.

State economic development agencies including the Urban Development Authority (UDA) are actively involved in the provision of housing besides carrying out commercial, infrastructure and industrial activities. The Urban Development Authority carries out development activities mostly in major towns, while state commercial arms undertake activities in both urban and semi-urban areas. UDA undertakes urban redevelopment and the development of new townships.

A number of government departments and public agencies provide accommodation for their employees on a rental basis. Through its annual

budget, the federal government allocates the requisite funding for building staff quarters. The type of houses built are detached, semi-detached, terrace houses and flats of varying price categories, suiting the needs of a wide category of government employees. The government also operates a loan scheme to help government employees to buy their own houses at a low interest rate of 4 per cent per annum amortised over a maximum of 25 years.

Licensed private developers

Private developers constitute the largest number of house producers in the country. Private sector housing is encouraged by the government as these developers have the technology, expertise and finance to undertake housing projects on a large scale. Banks and finance companies provide the requisite development funds or bridging finance for private housing projects. From these institutions, buyers also gain access to end-financing facilities on market terms. The housing development activities of private developers are regulated by the various housing legislation. Private housing developments take into account socio-economic and demographic factors such as demand, affordability, suitability of locations, potential of growth centres, new development areas and social preferences. To cater for a wider range of buyers, and as a marketing strategy, private housing normally has a mixture of detached and semi-detached bungalows, terrace or link houses, low-cost flats, medium-cost apartments, high-cost condominiums, shophouses and townhouses. More flatted units are built in larger towns or growth centres where there is limited and expensive land supply. The major concentration of private developers is in the medium and high-cost housing categories with higher profit margins. However, private developers are also required to build low-cost units through mixed development and cross-subsidy to provide housing to the lower income population.

Under private sector participation, the government also encourages co-operative societies to build and sell houses to their members as well as to the public. The Housing Developers Act exempts co-operative societies engaged in housing development from having to obtain a developer's licence and sales and advertising permits. However, their housing projects are subject to approval by local authorities and the Co-operative Departments at the state level. Various categories of buildings – detached, semi-detached, terrace houses, flats and shophouses – are built under this programme. Most of the units fall under the low, low medium and medium-cost categories according to demand from their members.

Housing for groups

As part of their obligation, estates and plantation and mining companies, especially the larger entities, have to provide housing for their workers under the provision of the labour laws. Such housing units must conform to the building and technical standards prescribed under the Workers Minimum Standard of Housing Act 1966. Most of the larger rubber and oil palm estates choose to provide housing for rubber-tappers or oil-palm harvesters to ensure stability of labour supply. The provision of housing in the vicinity of their work places also facilitates faster mobilisation of work tasks in allotted areas within the plantation. Most of the houses are semi-detached or terrace units of four in a row. These institutionalised private quarters are rental free throughout the worker's employment with the companies. Most of the wooden houses built during the colonial days, which are in dilapidated conditions, are being replaced with contemporary houses with brick walls and concrete tiles, having at least two bedrooms, a bath, a kitchen and a living hall.

According to United Nations housing standards, the housing for groups in Malaysia is of high quality, incorporating basic amenities of life such as safe drinking water, electricity and telecommunication supplies, schools, worship centres, playgrounds and dispensaries. Under the Seventh Malaysia Plan, the government encourages estates and mining companies to launch house ownership schemes to retain their work force and to reduce the high mobility to the industrial sector where more and better-paid job opportunities can be found.

Housing for individuals

Besides the organised sectors, individuals also build or finance their own houses. These include single units and small housing schemes constituting less than four units. To develop these units, individuals are required to apply for building approval from the relevant local authorities but are exempted from obtaining licences and permits from the Ministry of Housing and Local Government. Marginal housing units such as squatters, labour camps, makeshifts and movable units which are mostly temporary in nature are also classified under this category.

Factors affecting housing development

The construction sector recorded a 15.2 per cent increase in 1995. The impressive growth reflected the robust construction activities in the residential, non-residential, civil engineering and industrial sub-sectors. In line

with the privatisation policy, private sector participation is increasing in all the sub-sectors of the construction industry.

Building materials

The construction industry has not been without its share of problems. These include shortages of construction materials, heavy imports of plant and heavy equipment utilised in construction activities and a tight labour situation resulting in higher labour costs. The government has intervened to stabilise labour costs by allowing the import of both skilled and semi-skilled labour from neighbouring countries. Local institutions are in the process of increasing the supply of skilled and semi-skilled labour. Such efforts include the co-ordination and streamlining of activities in the construction industry through the setting up of the Construction Industry Development Board (CIDB) in 1994. CIDB is envisaged to foster a healthy growth in the construction sector and to steer the industry towards tapping opportunities in the international markets. To achieve that, CIDB is entrusted to promote and upgrade the quality, technology and safety standards in the industry. Other ancillary functions of CIDB include undertaking research, providing consultancy and advisory services, conducting training, developing information systems, issuing accreditation and registering contractors, and developing skilled and semi-skilled workers for the construction industry. CIDB is also assigned to formulate programmes, activities and strategies, including setting standards to promote higher quality housing.

The demand for building materials is rising as a result of heightened construction activities and a buoyant economy. Consequently, shortages of building materials occur from time to time resulting in higher construction costs and selling prices. The government monitors the price movements of important building materials and plays a key role in regulating the prices of building materials according to market conditions, ensuring healthy growth in the construction sector. The house price index, by types and localities, is another important monitoring mechanism.

Availability of land

To facilitate development activities, including housing, there is a need for the timely release of adequate land. The adoption of structure and local plans by local authorities is one of the means of identifying suitable areas

for housing and industries as well as for other uses. Although much has been said about the shortcomings of structure and local plans, in the absence of any other guide and direction of physical development of an area, they serve as an indicator of the nature, scope and pace of development taking place in localities. A more desirable planning mechanism is one that can identify the units of houses required, their categories and the prices within the intended development setting.

Allocation of housing

The issue of allocating low-cost houses to the target groups is central in the housing delivery system. In the government housing programmes, public agencies allocate houses to the target groups after a thorough scrutiny process. In the Seventh Malaysia Plan the state governments are required to adopt an open registration system to register eligible buyers in the low and low medium categories. By employing computerised systems, the allocation of low-cost houses in both public and private developments is expected to be more transparent and accountable.

Efficient construction activity

To promote the healthy, efficient and effective construction of low-cost houses, developers and contractors are encouraged to apply new methods, technology and materials to achieve faster rates of production and higher volumes. In 1995 the government launched a competition to encourage the production of low-cost houses that are within the stipulated ceiling price with improved construction quality and amenities. The government also launched another high-rise design competition to promote the provision of better high-rise units emphasising, among other aspects, the provision of adequate space for laundry which is presentable in outlook.

Professional ethics

Besides the administrative and legal framework on housing, a certain degree of responsibility and accountability lies on the developers, architects, town planners and engineers in ensuring that houses built conform to standards and meet the quality and satisfaction expected by purchasers. The acts, by-laws, regulations and codes governing the various professions in the housing industry ensure that professionals possess the requisite qualifications, capabilities and experience to undertake housing activities.

Housing finance and affordability

The sources of funding for housing finance are from the capital market, public sector allocations through the budget process, and household savings both formal and informal. Since 1976, Bank Negara Malaysia has streamlined policies and guidelines pertaining to private housing finance. Commercial banks and finance companies are required to channel a certain portion of their loans and advances as housing loans to individuals buying low-cost houses. Individuals are encouraged to save towards the down payment for buying a property. Apart from private sources, the government also provides direct housing loans to eligible government employees and participants in public housing programmes. The Employees Provident Fund (EPF) also allows the withdrawal of contributions for the purpose of house purchase or to reduce mortgages.

Housing affordability measures the cost of a house against the amount buyers can afford to spend on housing. This also applies to upgrading or new housing for owner occupation or rental. The amount available for housing investment or for rental depends on many factors. They include household expenditure pattern, recurrent housing costs, housing options and standards, sources and types of financing and household savings. Accordingly, the government has implicitly or explicitly formulated policies, programmes and activities as well as strategies to create a viable housing system which will enable individual households to own or to rent a house from the open market.

Increasing national and household income levels

In the early 1990s, the country's GDP grew at an average rate of 8 per cent per annum. Average household income has increased from RM1,167 in 1990 to RM2,007 in 1995, indicating an average annual growth rate of 9.5 per cent. Household expenditure tends to change with increasing disposable incomes. In particular, there is a strong tendency among households to save and invest a substantial portion of disposable income in housing for capital appreciation, returns from rental and as a hedge against inflation. The preferences and choices in housing are changing with more variety in the types of houses offered in the market such as exclusive condominiums and homestead houses. Lower income households also continually aspire to improve their housing conditions through the acquisition of medium, low medium and low-cost houses. The government's policies are geared towards increasing the average income of households by improving the national income and wealth distribution systems to enable larger numbers of families to be eligible and to have access to more affordable and decent housing in the future.

Public-private sector collaboration in affordable housing

To ensure that low income earners have access to decent and affordable housing, the public sector is involved directly in housing provision complementing the efforts of the private sector. Public sector participation increases the scope and coverage in the supply of affordable housing units for low and low medium income groups especially in areas lacking private sector involvement. This includes providing subsidised interest rates, alienation of state lands at nominal terms, supply of building materials and loan facilities in its programmes.

Creating wider choice in housing finance system

Housing affordability is directly dependent on the nature of the housing finance system prevailing in a country. In particular, the existence of various sources of housing finance, a conducive environment and easy access for both developers and buyers is central in obtaining housing finance facilities at reasonable terms. Housing, being a long-term investment which is transferable to future generations, requires the appropriate amortisation and finance. Bank Negara Malaysia has formulated financial procedures on the provision of housing grants, credits and subsidies as well as incentives that directly or indirectly promote the affordability of house buyers.

Household savings

Private household savings constitute a substantial portion of housing investment. Household savings are used as down payment (10 per cent of house price) upon initial signing of the sale and purchase agreement. Private savings also cover the incidental costs of house purchase such as legal fees, stamp duties and agreement fees. Statistics are not available to show the impact of household savings on housing investment. However, the average housing production rate of 120,000-130,000 units per year is indicative of the magnitude of such capital flows into the housing sector. The government encourages households to save in schemes that bring better monetary returns and benefits especially in government-regulated saving schemes and institutions.

Major sources of housing loans

The country has many sources of housing credit and loan facilities, provided mainly through commercial banks and finance companies. At the end of 1995, preliminary estimates showed the total credit available for housing through these sources was RM40,981 million,

growing at an annual rate of not less than five per cent. Among these institutions, the commercial banks and the Treasury Housing Loans Division provided the largest amount of housing credit at RM16,741.3 million and RM13,624.2 million respectively. Loan disbursements totalled RM15,176.2 million in 1995, and again these two institutions were the major sources of loans accounting for RM11,021.5 million and RM1,104.0 million respectively.

Employees Provident Fund

Supplementary housing finance is also provided through the Employees Provident Fund. Under the Housing Withdrawal Package, EPF contributors are allowed to withdraw 30 per cent of their saving on a lump sum basis to facilitate the purchase of a house. The withdrawal is allowed for the purchase of any type of house but the amount withdrawn cannot exceed the price of the house. Another condition is that the applicants have not obtained 100 per cent end-financing from other sources. EPF members who have obtained 100 per cent loan financing from other sources are entitled to withdraw only 10 per cent of the purchase price of the house or 30 per cent of their savings whichever is lower. The EPF withdrawal is to facilitate house buyers to meet the incidental costs such as legal fees, insurance premiums and stamp duties. The EPF also allows subsequent withdrawals of up to 30 per cent of the contribution on a five-year interval basis (before 50 years of age) for the purpose of reducing or settling housing mortgages.

Sustaining housing prices for affordability

The government has introduced a number of mechanisms to enable the existing housing delivery system to provide affordable houses to the low and low medium income groups. Some of these measures include the launching of specific low-cost housing activities, provision of infrastructure grants, lower interest rates, direct and indirect subsidies, and appropriate amortisation terms in public programmes. In the private sector, the house price is sustained through mixed development and economies of scale.

Housing finance and development: Policies and measures

A total of 800,000 housing have been planned for construction under the Seventh Malaysia Plan. By the end of the plan period, the population is expected to reach 32.5 million, at an average growth rate of 2.3 per cent. The

household size is projected to drop from 4.91 persons in 1991 to 4.65 persons by the end of this century, resulting in 740,000 new housing needs. The decline in household size is attributed to demographic factors and socio-cultural transformation in the wake of rapid economic expansion, resulting in a high rate of industrialisation and urbanisation processes. This has led to a moderate fertility rate, a substantial decline of mortality rate, a higher literacy rate, net migration towards urban and industrial growth centres, a higher participation of women in the labour force, emancipation of woman and the formation of nuclear and smaller families.

Another 60,000 units constitute replacement needs, arising from deteriorating and dilapidated conditions of existing housing units. Replacement needs are generally confined to rural and urban squatter areas and diminish over the years. The development of quality housing has continued to improve with all housing projects provided with basic amenities such as piped water, electricity supply, modern sewerage system, access roads and telecommunication facilities. Housing schemes have incorporated the human settlement concept through the provision of schools, clinics, transport services, sports and recreational facilities, playgrounds, worship centres and community halls for carrying out social activities and the creation of economic opportunities.

Housing needs to cater to the homeless and pavement dwellers are not significant. Moreover, the country has well-supported social and welfare institutions and homes providing shelter for the neglected. The number of housing units that need to be replaced due to natural calamities, demolition for new developments and reclassification of density of an area due to rapid economic restructuring is also small in number. Natural calamities include fire, landslides, earthquakes, storms, etc, which are not common occurrences in Malaysia.

Of the total number of units planned during the next five years, the public sector is to deliver a total of 230,000 housing units (29 per cent) and the private sector 570,000 units (71 per cent). As in the previous development plans, the private sector is expected to play a significant role in providing housing to all levels of society with the public sector concentrating on the delivery of housing units to the lower income groups. The public sector will focus more on playing an 'enabling' role in providing incentives and facilities for housing development.

Housing for the hard core poor and low medium-cost housing are two new programmes incorporated in the current plan besides the low, medium and high-cost categories. Under the hard core poor housing either free housing or interest-free housing loans are provided to target groups having an average household income of less than RM500 per month. The public sector will be solely responsible for providing about 35,000 housing units

to cater for the hard core poor with the federal and state governments targeted to develop 15,000 units through the site and services scheme while the Ministry of Rural Development will deliver the remainder.

During the same period the government has proposed that 200,000 units of low-cost houses costing below RM25,000 per unit be delivered. The target groups are households with an average income of between RM500 to RM750 per month. Of this total, the public sector programmes are expected to deliver 60,000 units and the private sector the balance of 140,000 units. The public low-cost housing programme has a target of 29,000 units constituting continuation projects either under construction or at various stages of planning and are expected to be completed by the middle of the current plan period.

A small number of housing units, about 9,300 units, has been planned under the land and regional development agencies programme. The reduction in the housing target under this programme compared to previous plans is due to the slowdown in land development activities. In spite of the diminishing role, the land and regional development agencies are expected to build 8,000 units to house land settlers.

As in previous plans, the economic development agencies, including the Urban Development Authority, will continue to be major contributors of houses from the public sector. A total of 54,000 units are targeted under this programme with the commercial agencies contributing about 23,000 units of low-cost houses as well as 16,000 units in the low medium-cost category catering for the needs of households earning below RM1,500 per month.

Public agencies will develop a total of 102,700 units for government employees under the Institutional Quarters and Other Staff Accommodation programme. This number is much higher than the previous plan targets. In particular, the Ministry of Education has proposed to deliver a total of 80,000 units, mostly in high-rise complexes to provide group rental housing for teachers in selected localities. The programme also incorporates the housing needs in Putrajaya, the future administrative centre of the federal government. The provision of staff quarters for uniformed personnel will be continued to improve housing conditions of essential services personnel.

In the private sector, licensed housing developers will continue to be the leading players in housing development activities. They are expected to deliver a total of 555,000 units at a rate of at least 110,000 units per year. The government has also emphasised the role of the private sector in the production of low medium-cost houses, ranging from RM26,000 to RM60,00 per unit. The low medium income group has the highest concentration of households requiring 240,000 units. The private sector is also to continue with the delivery of 140,000 units in the low-cost category. In the provision of low-cost housing, state governments are encouraged to continue to provide incentives and

facilities similar to those rendered under the Special Low-Cost Housing Programme and to allow private developers to adopt mixed development and cross-subsidisation. On a smaller scale, the participation of co-operative movements is anticipated to deliver 5,000 units of houses, a higher target compared to the last plan. The government is optimistic that the private sector has the requisite expertise, technology and financial capacity to achieve the housing targets planned with the necessary government institutional support.

Following the mid-term review of the Sixth Malaysia Plan, the government initiated a number of financial measures to expedite the development of low and low medium-cost housing. These initiatives are continued in the current plan period.

Housing for the urban hard core poor

The federal government, Bank Negara Malaysia and the large corporations contributed to set up a revolving fund amounting to a total of RM600 million. The fund is to be used for the construction of high-rise low-cost units in urban areas facing acute housing shortage and squatter problems. These units are for rental, at monthly rates of between RM100 and RM120, to low income households having monthly incomes not exceeding RM500. Since the implementation of this programme in 1994, a total of 28 projects constituting 14,877 units have been approved for construction and six have been completed.

Low-cost housing revolving development fund

Since 1994, Bank Negara Malaysia has set aside a total of RM3.6 billion as a revolving fund to undertake mixed development housing activities including low and low medium-cost houses. Tabung Projek Perumahan Terbengkalai Sdn Bhd (TPPT), a subsidiary company under the direct supervision of Bank Negara, has been given the task of carrying out housing projects nationwide under this financing scheme. Since its implementation, a total of 32 housing projects have been planned comprising 45,729 low-cost units, 10,251 low medium-cost units, 25,450 medium-cost units and 10,560 high-cost units. The projects also consist of 5,056 commercial units.

Employees Provident Fund housing scheme

The Employees Provident Fund has also embarked on housing with its subsidiary company, Malaysia Building Society Berhad (MBSB), undertaking a number of housing projects nationwide. Most of the EPF housing projects are concentrated in major towns with housing shortages for the lower income groups. Viability dictates that the EPF adopts a mixed development housing

approach with low and low medium-cost units constituting a substantial portion. Currently, EPF is developing a total of 12,518 houses with 6,164 low-cost units in Kuala Lumpur, Selangor and Penang.

Accelerating construction of low-cost housing

The federal government has also allocated a revolving fund amounting to RM500 million to assist developers in accelerating the production of low-cost units. Eligible developers are granted a bridging loan facility at a nominal rate of two per cent per annum. The loan is payable over a period of two years or upon completion of the project, whichever is earlier. Syarikat Perumahan Pegawai Kerajaan Sdn Bhd (SPPK) identifies eligible developers to participate in this programme. Since launch, a total of 37 projects comprising 15,242 units have been approved under this scheme.

Subsidised end-financing facilities

To assist low income buyers, the government continues to provide end-financing facilities as loans, grants, interest subsidies and saving schemes. Examples include the following:

- The Ministry of Housing and Local Government grants an interest-free loan of a maximum of RM7,500 to low income groups to supplement other sources of funding to build a house on their land. An eligible borrower can build a detached house costing not more than RM20,000 for owner occupation. The target groups include workers living near to industrial areas, new villages, estates and mining areas. Squatters displaced as a result of implementation of development projects and who require financing to build a house in newly-allocated land are also considered under this scheme.
- The Ministry of Rural Development undertakes the provision of free housing for the very poor. The government provides subsidies in the form of free building materials and the construction is carried out through self-help labour or local-community participation without incurring any labour cost.
- Eligible families earning between RM200 to RM500 per month enjoy the benefit of interest-free housing loan under the site and services scheme. The federal government provides end financing to participants selected by the state governments.
- An eligible buyer under the Public Low-Cost Housing Programme can obtain a housing loan of RM25,000 subject to a nominal interest rate of 5.5 per annum.

- Under the guidelines of Bank Negara Malaysia, private financial institutions extend loans for houses costing below RM100,000 subject to a maximum interest rate of 9 per cent per annum. Bank Negara Malaysia also sets loan disbursement quotas by house price category to ensure that financial institutions allocate enough funds for low-cost housing. The loan-to-value ratio ranges from 70-100 per cent for medium-cost and as high as 100 per cent for low-cost houses.

Price regulation

Housing is a non-regular commodity and a long-term asset. Rising housing needs and the preference of locals to invest in housing has resulted in supplies falling behind demand leading to increase in prices. This poses problems for the lower-income groups buying houses from the open market where prices are competitive. The government regulates the price of low-cost houses by setting a ceiling price of RM25,000 per unit leaving the price of houses in the upper categories to free market forces. Private developers optimise housing resources to obtain high returns from their development efforts. The tendency among private developers is to ignore housing for low income groups.

In the previous development plans the government monitors the provision of housing under three categories of price, namely low, medium and high-cost. In the Seventh Malaysia Plan it is envisaged that there is a limited supply of houses in the open market to meet the needs of the population earning an average monthly income of between RM750 to RM1,500. Households in this category will be compelled to compete with the targeted groups for low-cost housing, as both lack the affordability for medium or high-cost houses. On the other hand, banks and financial institutions prefer to extend end-financing facilities to higher income groups with less risk of defaulting. To resolve this issue, the Seventh Malaysia Plan proposed five categories of houses instead of three. The new categories are housing for those earning below RM500 a month and low medium-cost housing ranging from RM25,001 to RM60,000 catering for households in the RM751 to RM1,500 income bracket. Accordingly, the government is able to streamline, evaluate, monitor and ensure that both the public and private sectors build sufficient numbers of houses in each category.

State governments incorporate quotas on the provision of low and low medium-cost housing in the process of approving housing projects. However, the proportion of low and low medium-cost housing depends on the viability of projects in the respective localities. The government takes into

consideration the feasibility of low and low medium-cost housing especially in prime areas where land costs are high and where relevant state governments may require private developers to undertake low and low medium-cost housing units in alternative sites within the state.

Levies and policies on foreign buying and its impact

The overall house prices spiralled by 83.2 per cent in the Klang Valley, 63 per cent in Penang and 110 per cent in Johor Bahru during the Sixth Malaysia Plan period. Nation-wide, the average price of a house increased by 112.8 per cent. According to house type, the detached units experienced the highest increase at 96.2 per cent, followed by terrace houses at 74.5 per cent, semi-detached at 54.2 per cent and high-rise by 15.7 per cent. The price increase is lower for high-rise units. A substantial increase in price is observed in the high-cost category where demand has been increasing corresponding to higher disposal incomes and further accentuated by external demand from foreign buyers.

Foreign buyers concentrated on high-rise condominiums located in major towns like Kuala Lumpur, Johor Bahru and Penang. According to Bank Negara Malaysia, the number of condominium projects in Kuala Lumpur dropped from 52 projects constituting 14,018 units in 1995 to 44 projects constituting 11,827 units in 1996. The decline in the number of projects follows the imposition of new regulations on property acquisitions by foreigners.

To discourage speculative activities in the real property sector the government has imposed the following regulatory measures:

- The setting of a 60 per cent limit on the percentage of loans advanced for the purchase of residential houses including high-rise apartments costing more than RM150,000 per unit;
- Similarly, a 60 per cent loan limit has been extended to shophouses and shoplots in complexes costing more than RM300,000 provided they are non-owner occupied;
- A levy of RM100,000 on purchases of real estate by foreigners;
- The imposition of a real property gains tax at a flat rate of 30 per cent irrespective of holding period for foreigners; and
- Increasing the real property gain tax from 20-30 per cent for the disposal of property within two years after acquisition, 15-20 per cent within the third year and 10-15 per cent within the fourth year for Malaysian citizens.

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CHAPTER 6

Low-Cost Housing: The Industry Viewpoint

Lawrence Chan

Introduction

The issue of low-cost housing has been the focus of much attention from politicians and the media in Malaysia, with developers often becoming the unfortunate targets of public criticism for not doing enough for the poor in the country. Yet, what is often not highlighted is the fact that Malaysia has one of the most successful programmes of housing for the poor that is the envy of developing and even some developed nations in the world. This often unsung success story was highlighted as a best practice model in Malaysia's submission at the United Nations Habitat II conference in Istanbul in 1996.

Although many issues and problems related to low-cost housing still challenge both policy makers and the private sector, a point that must be made is that there is probably no other case in the world where so much attention and efforts are committed towards ensuring that the poor have as much opportunity and access to owning their own homes as everyone else. Key to this unique example of a highly successful programme of low-cost housing is the substantial and active direct participation of private sector developers in the entire low-cost housing programme.

This paper discusses the most significant current issues and problems related to low-cost housing and highlights areas where urgent remedial actions are required for the low-cost programme to remain sustainable and viable.

Definition and guidelines for low-cost housing

A low-cost house in Malaysia is defined as one where the selling price is RM25,000 or below, and may include flats, terrace or detached houses, with minimum design specifications of a built-up area of 550-600 sq ft, two bedrooms, a living room, a kitchen and a bathroom. Only households with monthly incomes not exceeding RM750 qualify to apply for low-cost housing.

Current issues and problems

Increasing costs of development

The most critical issue confronting private sector developers in their ability to successfully implement low-cost housing targets is the cost of development. With the escalation in the prices of land, particularly in the urban areas, building materials and labour, developers have to bear an increasing burden of subsidising the costs of low-cost houses. In times of high economic growth and prosperity, private developers could afford to absorb the higher subsidy rates because they were still able to build and sell higher cost houses and use their profits to help cross-subsidise low-cost housing. However, should the property market slow down, this vital element of cross subsidy will be badly affected. In turn, this may lead to targets for low-cost housing not being fully met.

One alternative to alleviate rising costs of development is for state governments, since they have direct jurisdiction over land matters, to allocate or open up more state land on the fringes of urban centres for low-cost housing. Private sector developers may then participate on a joint-venture basis or act as the turnkey contractor to produce low-cost housing for the government, as is being practised by the Pahang state government.

Another aspect that needs to be urgently considered in view of the reality of rising costs of urban land and other inputs of housing production is the ceiling price for low-cost houses. Prices of almost every consumer item, including cars, have increased commensurate with inflation. The only item that has not seen a price hike in the last 20 years is low-cost housing despite the fact that per capita income and average household income has been rising over the same period.

However, credit must be given to the government for recent announcements acknowledging that, in view of escalating land costs in certain urban areas, a review of the ceiling price of low-cost houses in these areas may be in order. The private sector hopes that this move will receive the full governmental support to make it viable for private sector developers to continue to produce low-cost housing to meet national targets.

More stringent standards for low-cost houses

Moves are being made to establish uniform and higher standards for low-cost houses. While private developers agree and accept that certain minimum standards, particularly those related to safety for low-cost housing must be set, the concern is that policy makers may become over-zealous in their efforts to prove their social concern and 'over specify'.

It must be reiterated here that, by definition, the quality of materials and specifications for low-cost houses are limited by pricing levels. While every effort should be given to optimising quality at the given price levels, the standards set should also realistically reflect the price level. Otherwise, apart from rising land costs, developers would end up having to bear additional costs resulting from the imposition of higher standards and the rising expectations of the authorities and low-cost purchasers alike.

Weak distribution and delivery controls

One of the most problematic areas in the whole issue of low-cost housing is distribution. Developers are often chided by the government for not building enough low-cost units in their housing schemes and for not helping to meet the insatiable demand for low-cost houses. While there may be some developers who have failed to fulfil the quotas for low-cost housing, it is nevertheless valid to say that given the present system of distribution and sale of low-cost houses where there are hardly any controls binding low-cost housing purchasers, the system is open to abuse. For example, a purchaser of a low-cost house does not have to abide by any regulation requiring him to occupy the unit. There are also no restrictions on the resale price that the purchaser may demand from the next buyer, making the system vulnerable to speculative activities by undeserving purchasers. In fact, in certain locations such as Penang, the Klang Valley and Johor Baru, the resale price of low-cost houses commonly increases up to two-fold the original price of RM25,000.

One proposal that has been repeatedly made by the private sector is to establish stricter controls over the resale of low-cost houses. If these controls are absent, then the quantity of low-cost houses would never be enough to meet the needs of those who want them. It is therefore the responsibility of the government to help maintain the stock of low-cost houses for new entrants to the low-cost housing market by imposing stricter regulations on the resale of such units. An example would be to require those who are upgrading to higher cost units to sell the low-cost units back to a central government agency that can then redistribute them to new purchasers.

Delays in obtaining approvals

The problems brought on by delays in the approval processes and the resultant escalation in costs apply to low-cost housing as well. The implications of these delays are discussed in greater detail in other chapters. If developers are to be able to meet the low-cost housing targets set, they must have the full co-operation of the various authorities in granting speedier approvals.

It is interesting to note that in a survey for a study on 'Private Low-cost Housing in Malaysia' undertaken by Prof Ghani Salleh and Dr Lee Lik Meng of Universiti Sains Malaysia, the respondents from the approving authorities reported that faster plan approvals were given for low-cost housing projects. However, the majority of private developers surveyed reported that they still faced delays in obtaining approvals.

Are developers doing enough?

Having looked at some of the current issues and problems still encountered by developers, it is perhaps pertinent to review the performance of the private and public sectors in the area of low-cost housing under the various five year plans. The performance of the two sectors is shown in Tables 1 and 2.

The statistics show a dramatic turnaround in the performance of the private sector in the Sixth Malaysia Plan, after the lacklustre performance in the Fourth and Fifth Malaysia Plans, which can be explained by several reasons.

One reason is the government-imposed mandatory requirement of allocating 30 per cent of a housing development beyond a certain size as low-cost housing. More importantly, during the Sixth Malaysia Plan period, the country was experiencing a booming economy. With the high demand for housing resulting from the general prosperity, the cross subsidy element made possible by the higher cost housing

made the building of low-cost houses viable. It is common business sense that in order for developers to be able to play a direct contributory role in meeting the low-cost housing targets, the cross subsidy element must be available.

Thus, we can see that developers do contribute their fair share towards the social goals of the nation when they are in an economically sound position to do so. However, in times of recession, developers themselves might need help to bail themselves out. It is therefore imperative that long term economic growth and stability must be sustained in order for developers to contribute towards making the low-cost housing programme a success.

Table 1: Performance of low-cost housing by private sector

	Second Malaysia Plan (1971-75)	Third Malaysia Plan (1976-80)	Fourth Malaysia Plan (1981-85)	Fifth Malaysia Plan (1986-90)	Sixth Malaysia Plan (1991-95)
Target units	81,132	232,690	90,000	374,100	217,000
Completed units	64,862	199,490	19,170	90,064	217,000
% performance	80.0	85.7	21.3	24.1	100.0

Source: Ministry of Housing and Local Government, 1995 and *Second to Sixth Malaysia Plans*.

Table 2: Performance of low-cost housing by public sector

	Second Malaysia Plan (1971-75)	Third Malaysia Plan (1976-80)	Fourth Malaysia Plan (1981-85)	Fifth Malaysia Plan (1986-90)	Sixth Malaysia Plan (1991-95)
Target units	44,000	73,500	176,500	120,900	24,430
Completed units	13,244	26,250	71,310	74,332	10,669*
% performance	30.0	36.0	40.4	61.5	43.7

Source: Ministry of Housing and Local Government 1995 and *Second to Sixth Malaysia Plans*.

Note: * estimates

Conclusion

Under the Seventh Malaysia Plan (1996-2000), the private sector is expected to deliver 100 per cent of the low-cost housing target of 140,000 units. In addition, it is also expected to build 240,000 more low medium-cost houses defined as housing priced at between RM25,001 to RM60,000 to cater to the needs of that segment of population who do not qualify for low-cost housing but who are unable to afford houses beyond this level. Are these targets really achievable? What would the private sector need to help it provide more widespread home ownership among the poor?

We believe that these targets can only be achieved provided every player in the whole housing chain plays their respective parts as well – including the various approving authorities, the building material suppliers, the consultants, the contractors and the financial institutions.

Low-Cost Housing: Issues and Problems

Ghani Salleh and Choong Lai Chai

Introduction

The provision of decent and affordable shelter for the masses has become one of the main issues in many developing countries, including Malaysia. It has become the government policy to ensure that every Malaysian, particularly from the low-income groups, has access to adequate and decent housing. This chapter attempts to identify and highlight the main issues and problems relating to low-cost housing, such as low-cost housing supply and need, affordability and economics of low-cost housing development. The roles of the public and private sectors in providing low-cost housing and the system of allocation of the low-cost housing units to the low income groups are also described.

Definition of low-cost housing

According to government guidelines, low-cost housing is defined to be housing units which are priced at RM25,000 per unit or less. The units can only be sold to households having a monthly income of not more than RM750. The type of housing units may be in the form of flats, terrace or detached houses

with minimum design standard of a built-up area of 550-650 sq ft, two bedrooms, a living room, a kitchen and a bathroom.

Since low-cost housing comes under the state government's jurisdiction, some of the above guidelines may vary from state to state. Additional guidelines and policies are normally introduced from time to time by the state and local authorities.

Generally, for housing schemes above certain sizes, the government imposes the condition that no planning permission and building plan for construction of any building structure for residential purposes can be approved unless at least 30 per cent of the proposed development units are low-cost houses to be sold at RM25,000 each.

Issues and problems

As stated in the various five-year Malaysia Plans and the Second Outline Perspective Plan (1991-2000), the objective of the housing policy in Malaysia is to ensure that all Malaysians, particularly the low-income group, have greater access to adequate and affordable shelter and related facilities. To achieve the objective, several main issues and problems have to be addressed, with the main ones being:

- Affordability;
- Mismatch between housing supply and needs;
- Building maintenance and management of high-rise units;
- Minimum design and planning standards for low-cost houses; and
- Delays in obtaining approvals.

Affordability

From our calculations, households with a monthly income of not exceeding RM750, the cut-off point for their eligibility to purchase low-cost units, should not face any difficulty in their monthly repayment to banks or other financial institutions. The main consideration for the financial institutions to finance the low-cost buyers is their ability to service their monthly instalments. Can they really afford to service their loans? For this reason, financial institutions impose stricter requirements in processing low-cost housing loans. This naturally creates more problems for the purchasers since most of the poor do not earn a stable income. We must not forget that within this income bracket of less than RM750 per month, there are the very poor who cannot afford even a low-cost unit. A separate strategy is needed for this category of people for them to have a decent shelter. For instance, rental housing would be an appropriate alternative to house ownership policy for them.

Mismatch between housing supply and needs

Housing supply normally reacts to housing demand. Since housing development involves quite a long process of planning and construction, it is usually difficult for the supply to meet the demand. The housing units that are completed for occupation this year were in fact based on the demand of two or three years ago. The demand condition may have changed by the time the units are available in the market. So, what we have would be either oversupply or under supply of housing units. A similar situation applies for the low-cost housing market. However, the main consideration in the supply of low-cost housing is the housing need of the low-income segment of the population. Housing need is as elusive as housing demand; it is hard to determine and it keeps on changing. Whatever criteria we use to determine the supply of low-cost housing, we would not be able to achieve a condition where low-cost housing supply meets its need. The blanket application of the 30 per cent requirement of low-cost housing in any residential development is not based on the actual housing need in a particular state or area. This explains the existence of a large number of applications registered with the state housing authorities which cannot be met by the number of low-cost housing units being constructed.

Building maintenance and management of high-rise units

In an attempt to reduce development cost, developers will opt for the maximum density, particularly for the low-cost units, in their development schemes. This will inevitably result in high-rise buildings for the low-cost units. For this reason, low-cost housing is usually associated with high-rise flats in major towns in our country. One of the main problems with high-rise flats is their maintenance and management. Without proper building maintenance and management, the housing area will easily be turned into slums. Who should bear the responsibility to ensure that the buildings are properly maintained and managed – local authorities or management corporations formed by the residents? How effective are they? The common problem faced by the management companies of high rise low-cost units is the difficulty of collecting the monthly fee for maintenance and management services of common space and utilities. This may be partly reduced if the monthly fee payment can be regulated by law as for assessment rate payment.

Minimum design and planning standards for low-cost houses

Government guidelines for low-cost houses specify that each unit must have a minimum built-up area of 550 sq ft comprising two bedrooms, a

living room, a kitchen and a bathroom. The low-cost houses may be of any type, including detached, semi-detached, terrace houses and flats. The types of low-cost houses to be built by the private sector developers would depend on the location of the development, price of land and the preference of the low-income buyers.

Generally, multi-storey types of low-cost units built in the small towns and villages have few takers. The potential purchasers prefer landed houses instead. One reason cited is that the low-income households in the rural areas usually need to supplement their income by cultivating crops and rearing poultry in their house compounds.

Most developers of low-cost houses would prefer high-density development in the form of flats and cluster houses to achieve economies of scale and to minimise the land to be set aside for low-cost houses. However, the developers have to strike a balance between the high density preferred against the steep escalation in unit cost for any building higher than five-storeys due to the additional requirements of lifts and fire-fighting equipment and systems.

It is a paradox that most low-income households have large families and need larger units which they cannot afford. Indeed, this poses a great problem to the government planners of low-cost housing programmes.

In an effort to improve the quality and range of low-cost houses, various states have initiated guidelines for low-cost housing to provide three-bedroom units as well as more community facilities in the low-cost housing schemes. In return, the private developers are promised incentives which include faster development approvals (through one-stop agencies), concessions and waivers in development charges, reduction in planning infrastructure standards and faster licensing procedures.

Delays in obtaining approvals

Although fast approvals for housing development have been generally acknowledged as one of the most effective ways to reduce the cost of developing low-cost housing schemes, yet a survey carried out by Ghani and Lee (1997) showed that the majority of the private developers reported that they still faced delays in obtaining approvals. The survey also shows that only 29 per cent and 43 per cent of the respondents as shown in Table 1 received planning approvals and building approvals respectively in less than a year. This is despite the state governments' policy to provide faster plan approvals for low-cost and low medium-cost housing projects.

Table 1: Length of time to obtain approvals for planning, building and construction

	Planning		Building		Construction	
	Frequency	%	Frequency	%	Frequency	%
Less than 12 months	6	28.6	9	42.9	0	0.0
From 12 to 24 months	3	14.3	4	19.0	4	19.0
From 24 to 36 months	0	0.0	0	0.0	1	4.8
From 36 to 48 months	1	4.8	1	4.8	3	14.3
More than 48 months	4	19.0	0	0.0	7	33.3
No information	7	33.3	7	33.3	6	28.6
TOTAL	21	100.0	21	100.0	21	100.0

Source: Adapted from Ghani and Lee (1997: 67)

Low-cost housing targets

The responsibility of providing low-cost housing in Malaysia is shared between the private and public sectors. The targets for the total units to be built by each sector are determined prior to the implementation of the national development plans. Their performance in meeting the targets can be judged from the number of units they are able to build within the plan period.

The performance of the private and public sectors in low-cost housing provision during the Second to the Sixth Malaysia Plan periods is shown in Table 2.

It is evident from the data that both sectors have difficulties in meeting the targets throughout the duration, with the exception of the private sector which met its target for the Sixth Malaysia Plan period. The overall performance of the private sector seems to be better than the public sector in that it achieved 80-86 per cent of the target in the Second to the Third Malaysia Plan periods, compared to only 30-36 per cent by the public sector. The dismal performance by both sectors during the Fourth to the Fifth Malaysia Plan periods was mainly due to the economic slowdown and weak property market condition which affected the private sector the most. That explains the relatively better performance of the public sector with 40-62 per cent of the targets achieved compared to only 20-24 per cent achieved by the private sector. Nevertheless, its success did not continue to the subsequent period. On the other hand, the

Table 2: Performance of low-cost housing by public and private sectors

Programme	Second Malaysia Plan	Third Malaysia Plan	Fourth Malaysia Plan	Fifth Malaysia Plan	Sixth Malaysia Plan
Private sector					
Target units	81,132	232,690	90,000	374,100	217,000
Completed units	64,862	199,490	19,170	90,064	217,100
Performance (%)	80.0	85.7	21.3	24.1	100.0
Public sector					
Target units	44,000	73,500	176,500	120,900	24,430
Completed units	13,244	26,250	71,310	74,332	10,669
Performance (%)	30.0	36.0	40.4	61.5	43.7

Source: Adapted from Ghani and Lee (1997: 41-42)

private sector again outperformed the public sector by meeting 100 per cent of its targets compared to only 44 per cent by the public sector during the Sixth Malaysia Plan.

With growing confidence in the private sector's role and contribution in the provision of low-cost housing, the government has given the private sector a larger responsibility in meeting the housing targets in the Seventh Malaysia Plan period. The sector was given 70 per cent of the total of 200,000 low-cost units to be constructed in the plan period. As seen earlier, the performance of the private sector in meeting its low-cost housing targets largely depends on the general economic condition of the country – the better the economy the more likely it will meet its targets.

Economics of low-cost housing

The most critical issue faced by private sector housing developers in their quest to achieve the low-cost housing targets is the cost of development which includes:

- Land cost;
- Construction cost;
- Professional fees; and
- Fees and contributions to government agencies.

Upward trend in costs of development

The study carried out by Ghani and Lee (1997) shows that the development cost per unit by completion year (see Table 3 and Figure 1) indicates an upward trend.

Figure 2 again shows that the construction and land costs also experienced the same upward trend during the same period from 1987 to 1995. With the escalating costs in the prices of land (especially in urban areas), building materials and labour, the housing developers have to bear an increasing burden of subsidising the development cost of low-cost houses. In times of prosperity and high economic growth, the private developers are able to construct and sell their higher-cost houses and derive the profits to subsidise the losses experienced in building the low-cost houses. However, if the property market slows down, this element of cross-subsidy would be very badly affected and may affect the low-cost housing target set by the government.

The principle of providing cross-subsidy with profits from non low-cost housing development may appear to be a justifiable approach to achieve a social need. However, in real terms, such a principle is unfair to the non low-cost house buyers as it increases their financial burden.

One viable way to alleviate the rising costs of development is for the state governments which have direct jurisdiction over land matters, to 'open up' and allocate more state land on the fringes of urban centres for low-cost housing development. The private sector developers would be able to participate to build low-cost houses either on a joint-venture basis or act as turnkey contractors.

In view of the reality of rising costs of urban land and other factors of housing production, and the fact that Malaysians are receiving high per capita income and higher household income, the government may need to consider a review of the ceiling price for low-cost houses.

Viability of developing low-cost units

A question which is frequently asked in low-cost housing is feasibility – whether a low-cost unit can be built at the cost of less than RM25,000. A study was carried out by Ghani and Lee (1997) to attempt to answer this question. It was found that the development cost per unit of low-cost house in the northern states of Peninsular Malaysia was between RM15,000 and RM40,000. The cost variations were influenced by location and size and composition of the development schemes. Those located in state capitals like Georgetown and Alor Setar showed higher development cost per unit than those in smaller towns.

The development cost in the central region varied from RM24,000 to RM60,000 per unit of low-cost unit depending on similar factors. Lower development cost was evident in the low-cost schemes outside the Kuala Lumpur conurbation. Similarly in the southern and eastern regions, the range was from RM16,000 to RM50,000.

It can be concluded that the development cost varies with locations, with the highest in the major urban centres and the lowest in the smaller towns. To compound the problem further, the need and demand for low-cost housing are highest in these major centres. Although the cost ranges between RM15,000 to RM60,000 per low-cost unit, the average is within RM25,000 to RM35,000.

The viability of a low-cost house priced at RM25,000 depends on many factors which affect the development cost. They are land cost, construction cost, professional fees, fees or financial contribution to the government, and government incentives. We have seen from the above discussion that the realistic figure for the cost of a low-cost unit in major towns is between RM25,000 and RM35,000. A realistic price of a low-cost housing unit would thus be somewhere between 0-10 per cent above the development cost cited above. However, the government and developers can play their role in reducing the development cost by undertaking joint efforts in research to reduce the development cost.¹

Table 3: Development cost per unit by completion year

Type of houses	1987 Terrace	Nov 1991 Flats	Dec 1991 Terrace/Flats	Apr 1993 Terrace	Dec 1993 Terrace	Aug 1994 Terrace	Sept 1995 Terrace
Land cost	2,304	3,661	3,030	533	12,193	3,066	10,215
Construction cost	17,872	17,506	19,444	24,165	12,000	21,913	18,797
Professional fees	909	918	1,817	668	443	1,518	1,949
Fees to government agencies	2,061	1,542	470	677	473	372	738
Cost per unit	23,146	23,627	24,774	26,043	25,109	26,869	31,699

Source: Adapted from Ghani and Lee (1997: 57)

1. Ghani Salleh and Lee Lik Meng (1997), *Low-Cost Housing in Malaysia*, Utusan Publications and Distributors, Kuala Lumpur.

Figure 1: Cost per unit of low-cost house completed between 1987-95

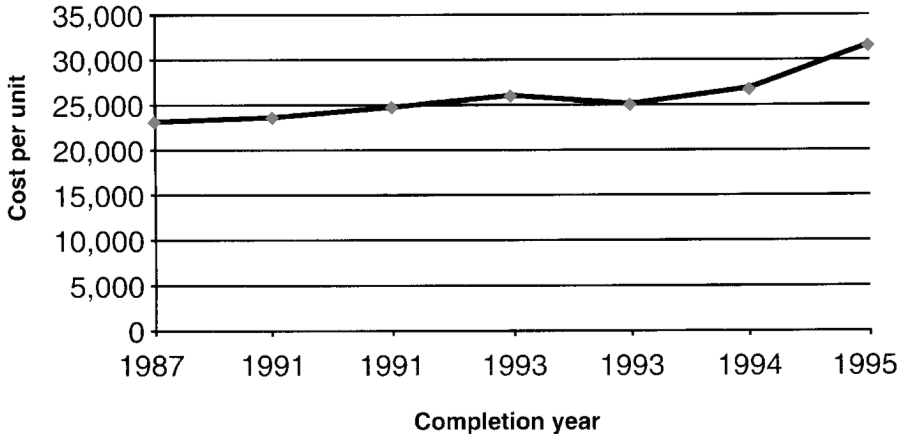
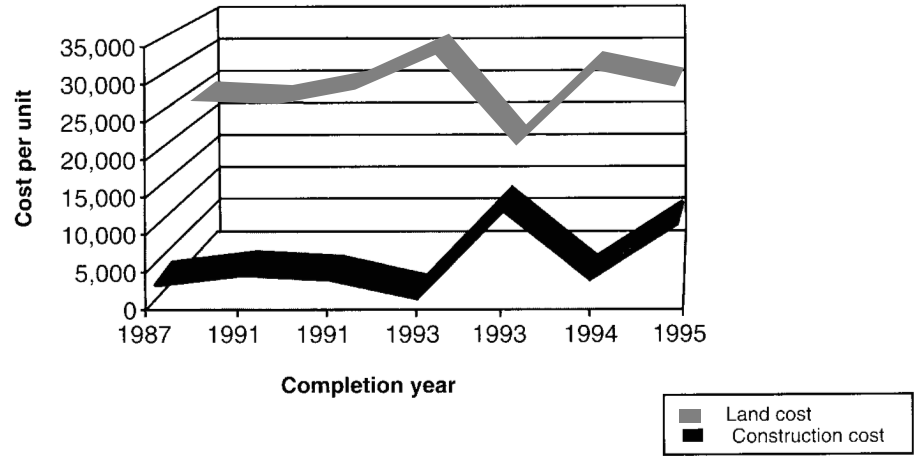


Figure 2: Construction and land cost for low-cost housing, 1987-95



Housing developers and low-cost home ownership

In Malaysia the task of building low-cost housing units rests with both the public sector and the private sector. The public sector agencies involved with building low-cost houses include:

- State economic development corporations (SEDCs);
 - Urban Development Authority (UDA); and
 - Regional Development Authorities (RDA).
- Their public sector housing programmes include:
- Public low-cost housing, and site and services schemes;
 - Houses for settlers in land and regional development authority areas; and
 - Government and institutional quarters.

The private sector housing developers have often lamented that the issue of low-cost houses had attracted much attention from politicians and the media. And the private developers are becoming targets of public criticism for not doing enough for the poor in Malaysia. The fact that Malaysia has one of the most successful programmes of housing for the poor and was cited as a best practice model at the United Nations Habitat II conference held in Istanbul in 1996 speaks much for itself.

To encourage the private sector to participate in building low-cost houses, the federal government has proposed the following:

- Improving the housing delivery system;
- Reviewing guidelines, by-laws, planning and infrastructure standards and requirements to increase the density of development and to reduce development costs;
- Encouraging research and development to produce cheaper housing materials and better construction techniques; and
- Privatising government land for low-cost housing schemes.

The government had ensured the adequate supply of low-cost houses by setting targets to be achieved by both the public and private sectors in each of the national development plans.

Other policies adopted by the federal government to encourage low-cost home ownership, to ensure adequate supply and to regulate the sale of low-cost houses only to the low-income households are through:

- Low-cost component;
- RM25,000 selling price ceiling;
- Minimum design standards; and
- RM750 household income.

30 per cent low-cost component

This policy requires the private housing developers who build above a certain number of residential housing units to construct at least 30 per cent low-cost units. This threshold or minimum size of the development that requires the provision of low-cost houses varies from state to state. For example, Penang which has adopted the threshold size at 150 units is proposing to reduce it to 60, which means that smaller projects will have to provide 30 per cent for low-cost component. Johor has set a higher low-cost component at 40 per cent instead of 30 per cent.

RM25,000 selling price ceiling

The government does not allow low-cost houses to be sold above RM25,000 each to make them affordable to the low-income households. The government is aware that the actual cost of construction of the low-cost units exceeds the ceiling price even though concessions and waivers to building by-laws, planning standards and other statutory requirements are given to the private developers. Thus for every low-cost house sold there is an element of built-in cross-subsidy from other non low-cost buyers.

Minimum design standards

Low-cost houses may be in any form such as flats, terrace, semi-detached, cluster houses or even detached bungalows. The government policy specifies that irrespective of the house types, each low-cost unit must have a minimum built-up area of 550-600 sq ft comprising a living room, a kitchen, a bathroom and two bedrooms.

RM750 household income

The government has a policy to ensure that only the low-income household can buy low-cost housing units. The government policy specifies that only households having a combined income not exceeding RM750 per month are eligible to buy a low-cost unit.

In Malaysia land matters are under the control of the state governments. Therefore the policy that determines the development and ownership of low-cost houses will depend on the state governments' objectives.

Allocation of low-cost units

The government has successfully played its role in ensuring that there is an adequate supply of low-cost houses for the low-income groups in the country through its national development plans and housing policy guidelines. For the low-cost houses to be accessible to the targeted low income group, there must be a good and efficient system of allocation of low-cost units.

The present system of allocation of low-cost houses built by the private housing developers follows the following process:

- The developers inform the relevant state departments or agencies such as the state secretariat or the state economic development corporation about their projects including the details of the low-cost units available for sale; and
- The government departments and agencies in charge of low-cost housing allocation will send a list of selected eligible buyers from the state low-cost register to the developers for interviews and vetting, especially with regards to the buyers' creditworthiness for obtaining mortgage loans from commercial financial institutions.

Although the system of allocation is simple and workable, yet it has received complaints. The main complaints and criticisms levied at the allocation system are:

- The names in the state low-cost registers are not current;
- The system of allocating low-cost houses to eligible buyers from the state register is not transparent; and
- Delays are experienced in sending the buyers' list to the developers for vetting.

State low-cost housing register

State governments periodically invite eligible members of the public to apply for listing in the state low-cost register. However, after their names are entered into the state register, there is no device to regularly update the potential buyers' particulars and change of status. The government uses the point system to determine the allocation priority of eligible buyers. Therefore it is important that the state low-cost register is up-to-date to avoid omitting those who have gained points through change of circumstances and who thus stand a better chance for the allocation of low-cost units. The updating of the state register is also important to weed out those potential buyers who already own homes.

Lack of transparency in the allocation system

As the list of buyers sent to the private developers for the purpose of allocation of low-cost houses is prepared internally by the government, it has been

criticised as lacking in transparency in the allocation process. In response to this criticism, some state governments have carried out the allocation of low-cost houses by the 'drawing of lots' method which is witnessed by the public.

Delays in sending the buyers' lists

When there are delays in sending the list of buyers to the developers, such delays will affect the processing of the sales of the units and the mortgage loans for the low-cost houses. This will in turn increase the cost of development.

In view of the fact that the construction cost of low-cost houses is subsidised, it is important that a clear policy be formulated to ensure that the low-cost units are allocated only to really deserving cases. There must be strict control on the distribution system and any subsequent resale of the low-cost units should be prohibited except to other eligible buyers approved by the state government. In this way speculation and profiteering in the low-cost housing market can be prevented. It would be a good idea for the government to buy back the low-cost units from those who intend to upgrade their homes. The government can maintain a revolving stock of low-cost housing units for reallocation to the target group.

Low-cost housing and squatter settlements

Large cities in developing countries are characterised by rapid urbanisation and urban growth that often results in multiplication of squatter colonies on the urban fringes. Malaysian cities are no exception. There are many reasons that can explain this situation. Urban-rural migration is often cited to be the main cause for the rapid urban growth. The 'pull' factors are associated with more job opportunities created through industrialisation programmes, better urban community facilities and better urban living environment. Most of the immigrants are in the low-income segment of the urban population who are not easily accessible to the formal low-cost housing sector. Furthermore, the supply of low-cost housing cannot cope with the increasing number of immigrants to the cities. The only opportunity that is open to them is to find homes in the squatter settlements that are rather fast and cheap to build.

The inverse relationship between low-cost housing and squatter settlements is not difficult to understand. The higher the number of low-cost housing units made available to the low-income group, the lower is the rate of multiplication of the squatter colonies. Squatter eviction is not the solution as the number of low-cost housing units available is still not sufficient to resettle them. The solution depends on how fast the low-cost units can be made available to them.

Conclusion

In this chapter, issues and problems relating to low-cost housing have been discussed. The question of affordability does not only relate to household income but also to the rising development cost of houses. Problems faced by private developers are manifold, such as delays in getting approvals from government departments, rising costs of building materials, lack of government incentives, concession from financial contribution and waivers on design standards.

Despite these problems, the private sector has played its role in the low-cost housing provision. It even outperformed the public sector in meeting the low-cost housing target in the Sixth Malaysia Plan period.

To ensure that the low-cost units as decreed by the federal and state government policies will reach the deserving low-income buyers, the state governments should adopt and implement an efficient system of housing allocation.

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Low-Cost Housing: The Government Viewpoint

Ahmad Zakki Yahya

Introduction

The need for formal housing programmes in Malaysia was recognised as far back as 1946 during the colonial administration. The colonial government appointed a committee to study the nature and extent of housing problems and to provide recommendations to overcome housing shortages. One of the recommendations paved the way for the establishment of the Housing Trust in 1950. The study group also recommended the alienation of state land at nominal prices, waivers of land premiums and provision of low-interest end-financing. In the absence of suitable state land, the government empowered the Housing Trust to buy private land to develop low-cost housing. With these guidelines, the Housing Trust became fully operational in 1952, marking the beginning of direct intervention by public authorities in the construction of low-cost housing in the country.

Housing performance

Malaysia's housing policy is geared towards the provision of adequate and decent housing, especially for the lower income group. In the area of low-

cost housing, the government has traditionally assumed a leading role through the Public Low-Cost Housing Programme. This programme, implemented by the various state governments, is financed through federal loans and co-ordinated at the federal level by the Ministry of Housing and Local Government. Since the Fourth Malaysia Plan (1981-85), the government has sought the direct involvement of private sector developers in the provision of low-cost housing. Towards this end, the government has, as a matter of policy, required private developers to build at least 30 per cent of their housing development project in the form of low-cost units to be sold at a price not exceeding RM25,000 each. Under the Seventh Malaysia Plan (1996-2000), some 140,000 units of low-cost houses are targeted for implementation by private developers as compared to 60,000 units to be built by the government under its Public Low-Cost Housing Programme. Since the First Malaysia Plan (1966-70), a total of 1,491,822 units of low-cost houses have been built in the country.

Overall sector: 1991-95

During the Sixth Malaysia Plan (1991-95), the public and private sectors constructed a total of 667,745 houses. The public sector's contribution was 104,524 units (15.7 per cent), while that of the private sector was 563,221 units (84.3 per cent). In terms of price breakdown, 260,797 units or 40.9 per cent were low-cost units, 288,877 units were medium-cost units and 118,071 units were high-cost. In terms of Sixth Malaysia Plan targets, the overall achievement was 116.5 per cent, with the low-cost units constituting only 75.9 per cent. The high and medium-cost units exceeded their targets (see Table 1).

Public sector

The overall public sector contribution of 104,524 units of housing during the Sixth Malaysia Plan accounted for 60.1 per cent of the total targeted units. The achievement in low-cost housing was 33.8 per cent, that is, 42,797 out of 126,800 units planned. In the medium and high-cost categories, the target achievements were 124.7 per cent (or 55,616 units out of 44,600 units) and 235.0 per cent (or 6,111 units out of 2,600 units) respectively. The performance of the public sector in meeting the housing needs of the low-income groups was rather low, affected largely by shortfalls in the various programmes.

Public sector programmes

In the public sector, housing activities by the economic development agencies delivered the largest number at 52,958 units, followed by 26,546

Table 1: Public and private sector housing programmes: Targets, achievements and performance, 1991-95

Housing programme	Targets:1991-95 (no of units)			Achievements: 1991-95 (no of units)			Performance: 1991-95 (percentage)		
	Total	Low-cost	High-cost	Total	Low-cost	High-cost	Total	Low-cost	High-cost
Public sector									
Public low-cost housing	24,430	24,430	-	9,103	9,103	-	37.3	37.3	-
Site and services	15,570	15,570	-	3,058	3,058	-	19.6	19.6	-
Land and regional	56,100	56,100	-	12,241	11,486	755	21.8	20.5	-
Economic development agencies	45,300	13,100	29,900	52,958	14,593	32,706	116.9	111.4	109.4
Institutional quarters	32,600	17,600	300	26,546	3,939	22,155	81.4	22.4	150.7
Housing loan scheme	-	-	-	618	618	-	-	-	-
Sub-total	174,000	126,800	2,600	104,524	42,797	55,616	60.1	33.8	235.0
Private sector									
Low-cost housing	44,080	44,080	-	85,579	85,579	-	194.1	194.1	-
Special low-cost housing programme	171,620	171,620	-	129,521	129,521	-	75.5	75.5	-
Medium-cost housing	145,800	-	145,800	223,256	-	223,256	153.1	-	153.1
High-cost housing	24,900	-	24,900	109,909	-	-	441.4	-	441.4
Co-operatives housing	12,600	1,300	10,100	14,956	2,900	10,005	118.7	223.1	99.1
Sub-total	399,000	217,000	26,100	563,221	218,000	233,261	141.2	100.5	149.6
TOTAL	573,000	343,800	28,700	667,745	260,797	288,877	116.5	75.9	411.4

units under the institutional quarters and other staff accommodation category. In the low-cost category, the economic development agencies (public commercial agencies) delivered a total of 14,593 units, constituting 111.4 per cent of the target. The achievement of these agencies is noteworthy compared against the 22.4 per cent achievement under the institutional quarters and other staff accommodation programme and 20.5 per cent achieved by the land and regional development agencies. In the Public Low-Cost Housing programme, the state and federal governments delivered 9,103 houses or 37.3 per cent of their target.

Distribution by state

In Peninsular Malaysia, Selangor produced the largest number with 200,477 units, followed by 110,823 units in Johor. In the low-cost category, the two states were the largest producers at 59,033 units for Selangor and 46,566 units for Johor. This is attributed to the high economic growth rates in the two states. Selangor also led in the provision of medium and high-cost houses. The percentage distribution of housing production by states also indicated that the public sector was prominent in the provision of low-cost units in Pahang, Perak, Terengganu, Sabah and Sarawak. More than 70 per cent of the total houses were constructed in these states (see Table 2).

The distribution of completed units by type showed the terrace or link houses to be the most popular with 60.7 per cent of the total (405,367 units). High-rise units ranked second, accounting for 26.9 per cent (179,956 units) out of the total 667,745 units. The institutional quarters and other staff accommodation programme contributed 16,719 units, constituting 49.3 per cent out of the total of 33,883 high-rise units constructed by the public sector to house uniformed personnel and other public employees (see Table 3).

Private sector programmes

During the Sixth Malaysia Plan period, the private sector delivered a total of 563,221 units of houses. This achievement constituted 141.2 per cent of the total private sector target of 399,000 units. In terms of price category, the performance recorded was 100.5 per cent, 149.6 per cent and 429 per cent delivery in the low, medium and high-cost categories. The good performance can be attributed to the rather low private sector targets set for the low and high-cost categories. Furthermore, the targets were based on the performance capacity of private developers during the recession period in the mid-1980s. Analysis of the results further indicated that the number of houses completed by

Table 2: Housing achievements by price category and type of housing programmes, 1991-95

State/Programme	PLCH	HLS	SSS	Land & Regional	Institutional Quarters	Government Agencies	Public Sector	Co-op Housing	Private Housing	SLCHP	Private Sector	Total
JOHOR												
Low	715	23	0	263	124	970	2,095	338	21,144	22,989	44,471	46,566
Low Medium	0	0	0	0	1,212	2,286	3,498	343	4,339	0	4,682	8,180
High Medium	0	0	0	0	802	3,534	4,336	744	26,222	0	26,966	31,302
High	0	0	0	0	109	305	414	314	24,047	0	24,361	24,775
Total	715	23	0	263	2,247	7,095	10,343	1,739	75,752	22,989	100,480	110,823
KEDAH												
Low	0	87	0	3,537	1,123	4,866	9,613	159	5,106	28,199	33,464	43,077
Low Medium	0	0	0	100	562	3,248	3,910	16	4,699	0	4,715	8,625
High Medium	0	0	0	0	533	1,067	1,600	19	6,533	0	6,552	8,152
High	0	0	0	0	5	917	922	0	2,027	0	2,027	2,949
Total	0	87	0	3,637	2,223	10,098	16,045	194	18,365	28,199	46,758	62,803
KELANTAN												
Low	98	272	64	160	178	30	802	0	1,240	1,887	3,127	3,929
Low Medium	0	0	0	0	225	998	1,223	38	1,580	0	1,618	2,841
High Medium	0	0	0	0	629	379	1,008	6	735	0	741	1,749
High	0	0	0	0	17	14	31	174	207	0	381	412
Total	98	272	64	160	1,049	1,421	3,064	218	3,762	1,887	5,867	8,931
MELAKA												
Low	24	5	0	1	21	1,327	1,378	0	1,067	2,794	3,861	5,239
Low Medium	0	0	0	0	7	1,406	1,413	0	3,500	0	3,500	4,913
High Medium	0	0	0	0	1,103	2,423	3,526	11	8,399	0	8,410	11,936
High	0	0	0	0	0	273	273	0	3,444	0	3,444	3,717
Total	24	5	0	1	1,131	5,429	6,590	11	16,410	2,794	19,215	25,805
NEGERI SEMBILAN												
Low	450	3	0	98	35	0	586	808	5,675	5,708	12,191	12,777
Low Medium	0	0	0	0	885	29	914	227	5,522	0	5,749	6,663
High Medium	0	0	0	0	146	79	225	1,108	5,578	0	6,686	6,911
High	0	0	0	0	44	0	44	110	1,302	0	1,412	1,456
Total	450	3	0	98	1,110	108	1,769	2,253	18,077	5,708	26,038	27,807

... continued

Table 2: Housing achievements by price category and type of housing programmes, 1991-95 ... Continued

State/Programme	PLCH	HLS	SSS	Land & Regional	Institutional Quarters	Government Agencies	Public Sector	Co-op Housing	Private Housing	SLCHP	Private Sector	Total
PAHANG												
Low	2,189	23	517	2,363	188	246	5,526	242	3,672	6,592	10,506	16,032
Low Medium	0	0	0	300	530	366	1,196	94	1,609	0	1,703	2,899
High Medium	0	0	0	0	623	667	1,290	797	4,032	0	4,829	6,119
High	0	0	0	0	21	32	53	17	2,171	0	2,188	2,241
Total	2,189	23	517	2,663	1,362	1,311	8,065	1,150	11,484	6,592	19,226	27,291
PERAK												
Low	273	109	79	509	550	0	1,520	87	12,206	9,003	21,296	22,816
Low Medium	0	0	0	1	84	236	321	256	10,366	0	10,622	10,943
High Medium	0	0	0	0	118	133	1,076	1,076	10,089	0	11,165	11,416
High	0	0	0	0	104	0	104	131	1,620	0	1,751	1,855
Total	273	109	79	510	856	369	2,196	1,550	34,281	9,003	44,834	47,030
PERLIS												
Low	195	4	0	0	34	1,295	1,528	0	75	816	891	2,419
Low Medium	0	0	0	0	10	792	802	16	124	0	140	942
High Medium	0	0	0	0	497	301	798	8	163	0	171	969
High	0	0	0	0	0	323	323	1	0	0	1	324
Total	195	4	0	0	541	2,711	3,451	25	362	816	1,203	4,654
PULAU PINANG												
Low	267	0	0	0	52	594	913	0	3,991	14,444	18,435	19,348
Low Medium	0	0	0	0	16	3,011	3,027	1,022	3,919	0	4,941	7,968
High Medium	0	0	0	0	1,929	3,216	5,145	1,580	15,466	0	17,046	22,191
High	0	0	0	0	0	1,026	1,026	118	8,657	0	8,775	9,801
Total	267	0	0	0	1,997	7,847	10,111	2,720	32,033	14,444	49,197	59,308
SELANGOR												
Low	1,406	16	0	196	147	3,062	4,827	1,069	28,079	25,058	54,206	59,033
Low Medium	0	0	0	0	270	1,857	2,127	334	17,666	0	18,000	20,127
High Medium	0	0	0	0	3,674	3,913	7,587	1,815	63,746	0	65,561	73,148
High	0	0	0	0	66	1,828	1,894	1,034	45,241	0	46,275	48,169
Total	1,406	16	0	196	4,157	10,660	16,435	4,252	154,732	25,058	184,042	200,477
TERENGGANU												
Low	608	76	1,695	3,175	261	449	6,264	0	872	1,014	1,886	8,150
Low Medium	0	0	0	148	176	304	628	19	327	0	346	974
High Medium	0	0	0	139	1,737	345	2,221	19	539	0	558	2,779
High	0	0	0	0	17	32	49	2	41	0	43	92
Total	608	76	1,695	3,462	2,191	1,130	9,162	40	1,779	1,014	2,833	11,995

... continued

Table 2: Housing achievements by price category and type of housing programmes, 1991-95 ... Continued

State/Programme	PLCH	HLS	SSS	Land & Regional	Institutional Quarters	Government Agencies	Public Sector	Co-op Housing	Private Housing	SLCHP	Private Sector	Total
KUALA LUMPUR												
Low	0	0	0	0	0	0	0	197	2,279	8,712	11,188	11,188
Low Medium	0	0	0	0	288	0	288	0	5,347	0	5,347	5,635
High Medium	0	0	0	0	5,157	0	5,157	457	19,238	0	19,695	24,852
High	0	0	0	0	0	529	529	12	17,726	0	17,738	18,267
Total	0	0	0	0	5,445	529	5,974	666	44,590	8,712	53,968	59,942
PENINSULAR MALAYSIA												
Low	6,225	618	2,355	10,302	2,713	12,839	35,052	2,900	85,406	127,216	215,522	250,574
Low Medium	0	0	0	549	4,265	14,533	19,347	2,365	58,998	0	61,363	80,710
High Medium	0	0	0	139	16,948	16,057	33,144	7,640	160,740	0	168,380	201,524
High	0	0	0	0	383	5,279	5,662	1,913	106,483	0	108,396	114,058
Total	6,225	618	2,355	10,990	24,309	48,708	93,205	14,818	411,527	127,216	553,661	646,866
SABAH												
Low	760	0	0	1,113	352	0	2,225	0	167	2,305	2,472	4,697
Low Medium	0	0	0	66	259	0	325	0	0	0	0	325
High Medium	0	0	0	1	208	805	1,014	0	1,867	0	1,867	2,881
High	0	0	0	0	9	380	389	0	1,379	0	1,379	1,768
Total	760	0	0	1,180	828	1,185	3,953	0	3,413	2,305	5,718	9,671
SARAWAK												
Low	2,118	0	703	71	874	1,754	5,520	0	6	0	6	5,526
Low Medium	0	0	0	0	119	304	423	0	1	0	1	424
High Medium	0	0	0	0	356	1,007	1,363	0	1,650	0	1,650	3,013
High	0	0	0	0	60	0	60	138	2,047	0	2,185	2,245
Total	2,118	0	703	71	1,409	3,065	7,366	138	3,704	0	3,842	11,208
MALAYSIA												
Low	9,103	618	3,058	11,486	3,939	14,593	42,797	2,900	85,579	129,521	218,000	260,797
Low Medium	0	0	0	615	4,643	14,837	20,095	2,365	58,999	0	61,364	81,459
High Medium	0	0	0	140	17,512	17,869	35,521	7,640	164,257	0	171,897	207,418
High	0	0	0	0	452	5,859	6,111	2,051	109,909	0	111,960	118,071
Total	9,103	618	3,058	12,241	26,546	52,958	104,524	14,956	418,744	129,521	563,221	667,745

Notes:

PLCH: Public Low-Cost Housing Programme

HLS: Housing Loan Scheme

SSS: Site and services scheme

Land & Regional: Land and regional development authorities programmes

SLCHP: Special Low-Cost Housing Programme

Table 3: Housing achievements and percentages by type of house and programmes, 1991-95

	Achievements: 1991-95 (no of units)						Achievements: 1991-95 (Percentages by rows)						Achievements: 1991-95 (Percentages by columns)					
	Total	Det- ached	Semi- det- ached	Ter- race	Flats/ condo	Shop- house	Total	Det- ached	Semi- det- ached	Ter- race	Flats/ condo	Shop- house	Total	Det- ached	Semi- det- ached	Ter- race	Flats/ condo	Shop- house
PUBLIC SECTOR																		
PLCH	9,103	1,282	864	6,188	769	0	100.0	14.1	9.5	68.0	8.4	0.0	8.7	7.1	9.3	14.9	2.3	0.0
SSS	3,058	3,058	0	0	0	0	0.0	0.0	0.0	0.0	0.0	0.0	2.9	17.0	0.0	0.0	0.0	0.0
L & R	12,241	8,412	3,298	420	0	111	100.0	68.7	26.9	3.4	0.0	0.9	11.7	46.7	35.5	1.0	0.0	6.6
Quarters	26,546	3,073	2,374	4,374	16,719	6	100.0	11.6	8.9	16.5	63.0	0.0	25.4	17.1	25.6	10.5	49.3	0.4
Govt agencies	52,958	1,571	2,755	30,655	16,395	1,572	100.0	3.0	5.2	57.9	31.0	3.0	50.7	8.7	29.7	73.6	48.4	93.1
HLS	618	618	-	-	-	-	100.0	100.0	0.0	0.0	0.0	0.0	0.6	3.4	-	-	-	-
Sub-total	104,524	18,014	9,291	41,647	33,883	1,689	100.0	17.2	8.9	39.8	32.4	1.6	100.0	100.0	100.1	100.0	100.0	100.1
													15.7	69.8	29.7	10.3	18.8	6.7
PRIVATE SECTOR																		
Licensed developers	418,744	5,336	17,541	59,204	114,087	22,576	100.0	1.3	4.2	61.9	27.2	5.4	74.3	68.4	79.7	7.3	78.1	95.6
SLCH	129,521	716	2,716	96,607	29,482	0	100.0	0.6	2.1	74.6	22.8	0.0	23.0	9.2	12.3	26.6	20.2	0.0
Co-op housing	14,956	1,752	1,757	7,909	2,504	1,034	100.0	11.7	11.7	52.9	16.7	6.9	2.7	22.5	8.0	2.2	1.7	4.4
Sub-total	563,221	7,804	22,014	363,720	146,073	23,610	100.0	1.4	3.9	64.6	25.9	4.2	100.0	100.0	100.0	100.0	100.0	100.0
TOTAL	667,745	25,818	31,305	405,367	179,956	25,299	100.0	3.9	4.7	60.7	26.9	3.8	100.0	100.0	100.0	100.0	100.0	100.0

Notes: PLCH – Public low-cost housing ; SSS – Site and services scheme ;

L & R – Land and regional development agencies ; Quarters – Institutional quarters ;

HLS – Housing loan scheme ; SLCH – Special low-cost housing

licensed developers had exceeded the low, medium and high-cost targets by 194.1 per cent, 153.1 per cent and 441.4 per cent respectively.

However, in the low-cost category, licensed private developers managed to produce only 85,579 low-cost units, accounting for 39.3 per cent of the total private sector contribution. This performance is much lower than the contribution made under the Special Low-Cost Housing Programme (SLCHP) which totalled 129,521 units (59.4 per cent). The housing contribution by co-operative societies was insignificant and had little impact on the overall housing market. A breakdown shows that licensed developers managed to deliver only about 16,000 units of low-cost houses per year, which is rather low compared to the 65,000 units achieved in the other cost categories. It is apparent that licensed private developers are not very enthusiastic about the provision of low-cost housing. The Ministry of Housing and Local Government had approved a total of 122,861 units of low-cost housing for construction during the Sixth Malaysia Plan period, averaging 24,000 units a year. Only 67 per cent (82,273 units out of 122,861 units) of the units approved were built.

House type distribution

From 1991 to 1995, terrace houses were dominant in both the public and private sectors. Terrace units accounted for 64.6 per cent of the production by the private sector and 39.8 per cent by the public sector, resulting in 60.7 per cent of the total units produced. In some states, the distribution of completed units by house type differed from the overall pattern. In particular, flatted units were popular in Kuala Lumpur and Penang and detached units in the state of Terengganu. Within the low-cost category a substantial proportion constituted terrace and high-rise units.

Issues and problems

Besides the issues and problems affecting housing development in general, the production of low-cost housing by the public and private sectors was affected, in particular, by the nature of the programme activities which had their own objectives, implementers, mode of financing and target groups. A major issue affecting the Public Low-Cost Housing Programme and the site and services scheme implemented jointly by the state and federal governments was the long process involved in obtaining suitable land from state governments in view of the limited supply of state land and their competing uses. Frequent changes in the scope, project sites, number and type of houses also delayed other project works such as land surveying and the preparation of layout, structure and

building plans. In some locations, the low-cost houses could not be built within the intended state budget. This was attributed to high land prices, and the need to conform to minimum building standards, utilities contributions and infrastructure requirements.

The number of housing units delivered by land and regional development agencies is fast declining due to the postponement of land development activities. A number of these land development agencies like the Central Terengganu Development Board (Ketengah) and the Johor Tenggara Development Board (Kejora) are shifting towards plantation-based activities requiring fewer housing units to be built for settlers.

Co-operative societies can play a bigger role in the provision of housing. There are 3,735 co-operative societies in the country with 4.46 million members from the low and medium income groups. The number of co-operative societies involved in housing development is small and their contributions are minimal compared to other players. The lacklustre performance of co-operative societies in housing can be attributed to lack of expertise and funds to engage in housing development.

Issues pertaining to low-cost housing by private developers can be summarised as follows:

- Being profit motivated, private developers largely tend to shy away from the production of low-cost units. This is obvious from the higher production of high-cost houses in the Sixth Malaysia Plan period.
 - The performance rate of private low-cost housing during the Sixth Malaysia Plan of 17,116 units per year is low compared to the rate of approval of low-cost units, through the licensing and permit system, of 24,493 units per year. In some projects, the development of low-cost units was left unattended until the last phase. In some instances, the project sites for approved low-cost units were converted to other forms of development through subsequent approvals from the authorities.
 - For economic reasons, private developers concentrated on building houses in the more well-developed states. There was less interest in carrying out housing development in states like Kelantan, Terengganu, Perlis and Pahang where the demand for low and low medium-cost housing is substantial.
 - In cases where private developers delivered low-cost units, public authorities did not exercise strict control in allocating those units to target groups.
- Apart from the specific issues pertaining to public and private sector development, other factors generally affecting low-cost housing were:

- House prices and rental values in major towns have increased during the Sixth Malaysia Plan period due to supply and demand factors, speculation and foreign buying. Although the phenomenon was

confined to higher-priced landed property, upward pressure on development costs and rental for low-cost houses will inevitably be felt. A number of fiscal and financial measures were instituted by the government to address the problem including the restructuring of the property gains tax, imposition of a levy on foreign buying and the capping of property-related loans by financial institutions.

- On the design of low-cost houses, there was a general dissatisfaction with the provision of two-room houses. The living space was not sufficient to accommodate gender separation as well as to cater for extended families. In high-rise dwellings, occupants lacked laundry space, playgrounds and generally faced poor maintenance. The government has decided that a low-cost house should have a minimum of three bedrooms and a floor area of not less than 48 sq m. Other design and planning specifications to improve low-cost housing development are specified in the Design and Planning Guidelines for Low-Cost Housing issued by the Ministry of Housing and Local Government. Low-cost housing construction and design competitions have also been held to improve the conditions and to enhance the development of low-cost housing.
- Although a number of financial packages were made available, including the provision of lending guidelines for the purchase of low-cost houses by banks and financial institutions, buyers from the informal sector who do not possess documentary proof of their earnings face difficulty in obtaining end-financing from local private financial institutions.
- The existence of a large number of foreign workers in the bigger towns has exerted pressure on the existing stock of houses and aggravated the conditions in already overcrowded squatter areas.
- Workers including public sector employees face a wide range of problems pertaining to house purchases. These include the lack of having sufficient savings to make the down payment of 10 per cent for the purchase of houses. Finance institutions require the first payment to have been made by purchasers and the sale and purchase agreement to be signed before the release of loans. In many cases these requirements have resulted in the low income groups losing the opportunity to purchase houses.

Housing needs and targets: 1996-2000

Housing needs basically depend on population growth, formation of new households, occupancy rate, loss of housing stock and the number of homeless people. Malaysia's housing needs are very much influenced by population growth and household size formation and, to a lesser extent, by

the loss of housing stock. The occupancy rate, which is determined by the number of households in each living quarter, is almost equal to one and therefore, the contribution of this factor towards housing needs is negligible.

Population change is affected by fertility, mortality and migration patterns. The population of Malaysia grew from 10.4 million in 1970 to 13.7 million in 1980 and subsequently reached 18.5 million in 1991, recording growth rates of 2.3 per cent and 2.6 per cent respectively. The population is projected to touch the 23.3 million mark by the end of this century on the assumption of a continuing moderate fertility rate and low mortality rate.

Although the national population has increased in number over the years, the household size has declined from 5.22 in 1980 to 4.91 in 1991. This is projected to drop further to 4.65 in the year 2000. The sharp decline in the household size formation is largely attributed to demographic and socio-economic factors as well as the cultural transformation taking place in the country. These include higher participation of women in the labour force, a preference for the nuclear family lifestyle and rapid urbanisation and industrialisation.

Housing stock loss results from units demolished to pave way for development activities, infrastructure upgrading, resettling squatters, replacing dilapidated units and units that are destroyed by natural causes such as floods, fire and other disasters.

The Ministry of Housing and Local Government estimated that a total of 800,000 units are needed during the Seventh Malaysia Plan period. Of this total, 740,000 units are required to meet the growing population characterised by a declining household size and the balance of 60,000 units as replacement units (see Tables 4 and 5). The total housing needs is taken as the housing target after taking into account the housing performance during the Sixth Malaysia Plan, construction capacity, finance, technology and expertise provided by both private and public sectors as well as affordability factors.

As in the past, the private sector is expected to play a prominent role in the provision of housing during the Seventh Plan. Of the total target, the private sector is expected to deliver 570,000 housing units or 71.0 per cent compared to 230,000 units or 29.0 per cent by the public sector.

Among the public sector housing activities, the institutional and other staff accommodation programme has the highest target of 102,700 units of which 80,000 units have been identified as rental units for the teaching profession. This is followed by 54,000 units to be delivered by the economic development agencies. A total of 35,000 units will be developed for the hard core poor and those earning below RM500 per month. Land and regional development agencies are to deliver 9,300 units to provide housing for land

Table 4: Housing needs by state, 1996-2000 (units)

States	Total needs	New requirement	Replacement
Johor	113,000	107,600	5,400
Kedah	51,000	46,800	4,200
Kelantan	44,000	34,000	10,000
Melaka	18,000	17,000	1,000
Negeri Sembilan	29,500	27,900	1,600
Pahang	36,000	33,000	3,000
Perak	59,000	53,800	5,200
Perlis	6,500	6,100	400
Pulau Pinang	36,000	34,300	1,700
Sabah	110,000	102,000	8,000
Sarawak	74,000	68,200	5,800
Selangor	157,000	148,500	8,500
Terengganu	27,000	24,300	2,700
Kuala Lumpur	34,000	31,900	2,100
Labuan	5,000	4,600	400
Total	800,000	740,000	60,000

settlers, a substantially reduced number due to the postponement of land settlement activities. The federal and state governments will jointly build about 29,000 units of low-cost houses, mostly a continuation of projects from the last plan period. Compared to the previous plans the role of the government as house builder is reduced. The government will focus more on the role of facilitator and enabler in the provision of housing through the formulation of policies and programmes, monitoring and evaluating project implementation, carrying out licensing and enforcement activities as well as providing facilities to promote private sector housing and access to housing for low-cost income earners.

In the private sector, developers, through the licensing and permit system are expected to deliver a total of 555,000 units, of which 237,000 units are low medium-cost, 137,000 low-cost and the remainder medium and high-cost houses. The co-operative societies are encouraged to provide housing for their members with 15,000 units, a small contribution compared to national targets.

Table 5: Public and private sector housing targets, 1996-2000

Programme	Total	Housing for the poor	Low-cost	Low medium-cost	Medium-cost	High-cost
Public sector	230,000	35,000	60,000	110,000	20,000	5,000
(%)	29.0	15.2	26.1	47.8	8.7	2.2
Public low-cost	29,000	-	29,000	-	-	-
Housing rehabilitation	20,000	20,000	-	-	-	-
Site & services	15,000	15,000	-	-	-	-
Housing by commercial agencies	54,000	-	23,000	16,000	10,000	5,000
Housing by land schemes	9,300	-	8,000	1,000	300	-
Institutional quarters & staff accommodation	102,700	-	-	93,000	9,700	-
Private sector	570,000	-	140,000	240,000	110,000	80,000
(%)	71.0	-	24.6	42.1	19.3	14.0
Private developers	555,000	-	137,000	237,000	102,000	79,000
Co-operative societies	15,000	-	3,000	3,000	8,000	1,000
Total	800,000	35,000	200,000	350,000	130,000	85,000
(%)	100.0	4.4	25.0	43.8	16.2	10.6

The main thrust of housing under the Seventh Malaysia Plan has shifted from low-cost housing to low medium-cost housing to cater for the fast growing number of households within the RM750 to RM1,500 month income brackets. It is estimated that the proportion of households in the low income groups has dropped from 33 per cent in 1992 to 15 per cent in 1995 requiring adjustments in the housing target. Private developers are still the main players in the provision of low-cost housing with a target of 140,000 units compared to 60,000 units by public sector. In the low medium-cost category, out of the 350,000 units, a total of 110,000 units will be developed by the public sector. Of the total public sector targets, government agencies are to provide 93,000 low-cost rental houses for public employees. A larger proportion of this number will be flats in the major towns.

To achieve effective planning and policy implementation the plan also provides housing targets by state. Selangor will account for 157,000 units followed by 113,000 units in Johor. The housing needs in Sabah and Sarawak are also quite substantial, accounting for 110,000 units and 74,000 units respectively.

Strategies towards low-cost home ownership

The need for adequate housing to meet the requirements of various groups in the country has been recognised. In particular, the difficulties faced by the low income groups in house ownership and rental housing, both in the free market situation and in projects developed by the public sector, are many and remain the priority concern. Towards this end, the government has adopted a number of specific strategies in the current as well as in the previous national development plans especially to address access to housing among the lower income groups.

Private sector emphasis

Compared to the previous plans, the Seventh Malaysia Plan places greater emphasis on the private sector's role in the provision of housing for all levels of society. This is in view of the overall better performance achieved by private developers in the Sixth Malaysia Plan. The provision of housing for the very poor comes under government's agenda of social responsibility. The Seventh Malaysia Plan objective is for the private sector to provide low medium and low-cost housing, accounting for 70 per cent of the total targets.

Public sector role

The public sector will play a lesser role as housing provider by providing only 29.7 per cent of the targeted housing units. The government will continue to emphasise on its role as enabler and facilitator and provide institutional support for the delivery of low-cost houses by developers and to extend greater assistance to low-cost house buyers.

Housing targets at state level

The Seventh Malaysia Plan incorporates housing needs and targets by state to facilitate state governments in the preparation of housing targets, programmes and strategies at various tiers and in various growth centres. The state housing targets will guide and specify the appropriate number of houses to be supplied in the market. These should be addressed during the preparation of micro level planning incorporating housing targets by type and cost category by considering social, economic and demographic factors. These details will provide future direction in the development of housing.

Housing finance for informal sector

The government encourages private financial institutions to increase accessibility to end-financing for the informal sector despite the lack of documentary proof of income. Most low-cost housing, whether constructed by private or public developers, by virtue of being a controlled priced item incorporates some form of direct or indirect subsidies and enjoys a higher market price than the fixed RM25,000 per unit. On this argument, the financial institutions face low risks in recovering the default loans.

Open registration system for low-cost housing

It is not enough just to provide adequate houses if the houses, especially the low-cost units, are not fairly distributed to target groups. Towards this end, and to overcome any weakness in fair distribution, state governments have been asked to implement the registration of applicants for low-cost houses and the adoption of specific guidelines to check abuses or unfairness. Under the guidelines, the successful applicants will be selected from the central registries maintained and updated at state levels.

Expanding low-cost housing fund

Following the mid-term review of the Sixth Malaysia Plan, the government has increased the allocations for low-cost housing. The government through its implementing agencies channel funds for various housing programmes especially to expedite the construction of more housing units in the low and low medium-cost categories. In this endeavour the federal government in collaboration with corporate companies has set up a revolving fund of RM600 million to construct low-cost flats in urban areas for rental at a nominal rate of RM120 per month. Since 1994, Bank Negara Malaysia has allocated RM3.6 billion under the Housing Development Fund to carry out mixed housing development projects, in which a considerable proportion are low and low medium-cost components. A revolving fund of RM500 million to assist private developers by providing them nominal lending terms has also been established to accelerate the construction of low-cost units. The Employees Provident Fund in co-operation with its subsidiary company, Malaysia Building Society Berhad, is developing a total of 12,518 units, 6,164 of which are in urban areas, to alleviate housing and squatter problems.

Provision of infrastructure grant

All public low-cost houses undertaken by state governments are funded with loans set aside solely for low-cost house construction. In many projects this has resulted in the exclusion of mixed development that could otherwise be utilised to cross-subsidise low-cost housing. Under the circumstances, many state governments have been hard pressed in trying to build low-cost houses at the ceiling price of RM25,000 per unit. In many instances this has resulted in public low-cost housing being shelved or delayed or in the state government having to subsidise additional costs. To overcome this problem, the government has agreed to allocate grants to supplement the infrastructure cost of public low-cost houses that exceed RM25,000 per unit to build.

Rental housing for urban poor

With a growing urban population, the majority of which comprises ordinary workers, the demand for cheaper accommodation is on the rise against a trend of higher purchase and rental costs. Since the launching of the Low-Cost Housing Fund in 1993 for rental housing, the government has increased the allocation for rental houses in major

towns to meet the accommodation needs of urban households in the hard core poor category. The government has agreed to increase the stock of public low-cost houses through the purchase of units developed by the private sector. The ceiling for monthly rental is RM120 per month subject to a tenancy of five years.

Housing for estate and industrial workers

Under the provision of labour laws pertaining to the plantation sector, estate owners are required to continue providing living amenities for their workers. This will, in a way, help them to retain the labour force in the plantation sector. In recent years a large number of estate workers in rubber and oil palm plantations have moved out to urban areas in search of better job opportunities. To counter this flow, the government has encouraged the implementation of house ownership schemes for estate workers as an incentive and to provide permanent living arrangements and security. Similarly, employers in the manufacturing sectors are encouraged to provide housing or housing interest subsidies for local workers and decent rental housing for foreign workers. The need for rental accommodation in the form of dormitories has also been identified in industrial areas.

Housing programmes for government employees

The government continues to provide rental housing for public sector employees particularly those in the essential services and government officers serving in the outlying areas of the country. House ownership among government servants is encouraged through the government housing loan scheme which provides loans at concessionary terms.

Standardising technical and planning standards

The Ministry of Housing and Local Government is continually improving the technical and planning standards of low-cost houses. This effort has included the establishment of one-stop agencies to simplify regulations and laws pertaining to infrastructure standards, specifications, and building and layout plan approvals. Optimisation and increase in densities of land for low-cost houses have also been considered to reduce construction costs and increase units delivered. To accommodate cultural and social needs, three-bedroom houses are now encouraged and new designs incorporating facilities to improve living conditions and the environment have been incorporated.

Research and development in housing

In the Seventh Malaysia Plan, the government places a great emphasis on research and development activities through greater participation by higher learning institutions and the private sector. Research and development activities in the housing sector are important to enhance the production of cheap and efficient building materials, to impart capital-intensive technology to save labour costs, and to create more efficient housing finance systems to help the poor.

Feasibility of low-cost ceiling price

During the Third Malaysia Plan (1976-80), the public sector delivered houses for low income groups at a price of RM7,700 per unit for terrace houses and RM12,500 per unit for flats in Peninsular Malaysia and about RM10,000 per unit for terrace houses in Sabah and Sarawak. The target groups were households with monthly incomes of RM500 in Peninsular Malaysia and RM700 in Sabah and Sarawak. Under the Fourth Malaysia Plan the ceiling price for public low-cost houses was increased to RM25,000 per unit although public low-cost houses continued to be delivered at around RM15,000 per unit. The price subsequently increased to RM20,000 per unit during the Fifth Malaysia Plan period (1986-90) for target groups with an average household income of below RM750. Since the beginning of the Sixth Malaysia Plan the price of low-cost units developed by the public sector has been tagged at RM25,000 per unit. The ceiling price for low-cost houses constructed by the private sector was increased from RM20,000 per unit in the Third Malaysia Plan to RM23,000 per unit in the subsequent plan period and finally to the current RM25,000 per unit.

Initially, the ceiling of RM25,000 was within the actual cost of construction although developers would of course be happier if the prices of low-cost houses were left to market forces to dictate. Over time, with cost escalation, the provision of low-cost housing in the country has been subject to elements of subsidies. Specifically, private sector low-cost units are made possible through mixed development activities that allow cross subsidy from high-cost to low-cost units. Similarly, the public sector low-cost housing provision is subject to many forms of direct subsidies. These include infrastructure grants, alienation of state lands at nominal prices, lower land premiums, low interest end financing ranging from 4-5.5 per cent, convenient amortisation periods, 100 per cent bridging financing facilities and free technical and advisory services. Currently, direct and indirect subsidies may not be sufficient to support the

construction of low-cost houses arising from the inadequate release of land, rising prices of building materials and high labour costs. Low-cost housing is also affected by changes in affordability levels, social and cultural preferences, and expectations of higher quality housing and neighbourhoods. These factors directly or indirectly pose difficulties in the delivery of low-cost housing at RM25,000 per unit especially in the major towns and economic growth centres.

The supply of suitable land for housing is fast becoming scarce and prices have spiralled because of competing uses. Housing Price Index (HPI) and Building Cost Index (BCI) statistics provide some indication of the extent of price escalation in house prices due to land resources. The Valuation and Property Services Department started publishing the HPI statistics in 1990, while the Department of Statistics has been compiling the BCI statistics since 1980 with the base year revised to 1990 recently. The HPI rose from a base value of 100 in 1990 to 212.8 in 1996, recording an increase of 112 per cent in overall house price inclusive of land and building materials and labour components. Over the same duration, the BCI showed an increase of about 22 per cent, attributed to the rise in the cost of major building materials components. Looking at these two independent sets of indicators, it may be concluded that the rise in house prices was largely attributed to land and labour. Of these two, the impact of land cost is more pronounced than the labour component since the latter is to some extent regulated by importing cheap workers into the construction sector. House prices are also affected by property speculation. These factors concurrently tend to exert pressure on the delivery of low-cost housing at the fixed price. In such circumstances, it is not only difficult for the private sector to deliver low-cost houses at the specified price. The public agencies are also burdened with having to bear heavy subsidies.

The number of households earning less than RM750, which is the target group of low-cost houses, has declined from 33 per cent in 1990 to 20 per cent in 1995 except in some states where a substantial number of households earning less than RM750 a month still exists. On the other hand in comparison, the number of households moving up into the medium income category of between RM750 to RM3,000 a month has increased from 55.8 per cent in 1992 to 59.3 per cent in 1995. In view of this, the Seventh Malaysia Plan emphasises the delivery of low medium-cost houses.

Changing circumstances have also necessitated the review of an appropriate price for low-cost houses meeting the minimum technical and planning standards as stipulated by the local authorities. The review of the low-cost price involves a clear differentiation of houses by type and by location to justify the different cost elements and price behaviour for individual types of development and localities.

Low-cost housing and illegal squatters

The influx of immigrants from outlying areas to urban centres and from neighbouring countries has affected housing conditions. The squatter population, especially in the major towns, has increased over the years in tandem with the buoyant economic growth. The growth of squatters is closely related to the shortages in supply of affordable housing for the poor who require accommodation near to their work places. Most squatter colonies occupy lands belonging to the government such as former mining areas, road, rivers, railway reserves and urban fringes pending development. A small number also occupy private lands.

There are about 413,700 locals living in squatter areas. The largest number is concentrated in the Klang Valley, with 294,930 persons or 71.3 per cent of the total. This is followed by 56,739 persons or 13.7 per cent in Sabah, 27,420 persons or 6.5 per cent in Penang, and 21,747 persons or 5.2 per cent in Perak. Data collected so far indicated 90,417 persons of foreign origin living in squatter areas with a substantial number not netted in the records. Sabah has the largest number of foreign squatters with 58,370 persons followed by 8,313 persons in Kuala Lumpur. In terms of housing units, out of a total of 96,738 units, 66,629 units (69 per cent) are located in the Klang Valley, 16,618 units (17.2 per cent) in Sabah, 9,220 units (9.5 per cent) in Penang. The ethnic distribution of squatters varies from state to state. For instance, in Kuala Lumpur 44.5 per cent of squatters are Chinese followed by 34.0 per cent Malays and 15 per cent Indians. Similarly, in Penang the distribution is 47.4 per cent Chinese, 26.5 per cent Malays and 21.6 per cent Indians. In Terengganu all squatters are from the Malay community.

Most of the squatters are blue-collar workers in the low income groups. Preliminary findings have shown that about 76.4 per cent of squatter households earn less than RM1,500 a month. In terms of housing provision these households require low or low medium-cost housing.

In the Seventh Malaysia Plan about 60,000 units have been estimated as replacement needs mostly directed to squatter resettlement. The replacement needs arising from factors such as natural disasters (fire, landslides, floods, etc) and units demolished to pave way for development projects are minimal. The target number also takes into consideration implementation factors such as capacity of builders, allocation, etc. However, the government has formulated various strategies and programmes to eliminate squatter areas mainly in the urban areas, at least within the first decade of the next millennium.

Squatter settlements hinder work progress of major projects besides posing health and safety hazards. The government adopts a multi-prong approach in solving the squatter problem in the country. Some states carry out full enumeration of all squatter settlements for resettlement programmes, stepping up enforcement activities to prevent emergence of new squatters, increasing adequate and affordable housing in the open market, creating special housing provisions for foreign workers and deporting illegal workers. Currently, the RM600 million revolving fund, the RM500 million bridging finance facility to the private developers, and the mixed development housing activities undertaken by the EPF and Bank Negara Malaysia are geared towards reducing the housing woes in major town areas.

Conclusion

In formulating the policy strategies and programmes for the housing sector under the Seventh Malaysia Plan, the government has clearly emphasised aspects such as the affordability of the target groups, the suitability of the houses to be built, as well as the quality of the living environment in housing settlements in line with the objective of upgrading the quality of life of the people. In both physical and qualitative terms, the housing programmes under the Seventh Malaysia Plan emphasise the concept of housing on a wider and more comprehensive shelter perspective based on the concept of human settlement development.

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CHAPTER 7

Rural and Estate Housing

A Navamukundan

Introduction

This chapter describes the housing situation and related issues specific to communities in rural areas especially in Peninsular Malaysia. The concept of housing extends beyond the popular notion of 'shelter'. It encompasses all basic household facilities and amenities, including electricity and potable water supply, community facilities including community halls, places of worship, schools and education centres, sports and recreation centres and shopping, and transportation, which links the individual and his family to the community and the community to the region in which it grows and progresses. A comprehensive concept of housing, therefore, includes shelters, basic amenities, community facilities, social amenities and services. All these aspects are important and form an integral part of housing.

Categories of rural housing

The 1991 Population and Housing Census of Malaysia defined rural areas as areas which had a combined population of less than 10,000 at the time of the census. Gazetted areas, which covered entire administrative districts

and areas on both sides of the main roads linking existing towns, were excluded from being classified as rural areas. It is estimated that approximately half of the nation's population and living quarters are located in rural areas. The rural areas in Malaysia are diverse in terms of individual characteristics and comprise various categories of housing including:

- Orang Asli (aborigines) settlements,
- Traditional villages (referred to as kampongs),
- 'New villages' created during the 1948-60 Emergency era,
- 'Land settlement villages' created by statutory organisations such as the Federal Land Development Authority (Felda); and
- Villages made up of workers' living quarters in plantations owned by the private and public sectors.

The Orang Asli settlements comprise clusters of detached houses or longhouses for community living in the forest and rural areas. The traditional villages or kampongs are settlements of indigenous people. In Peninsular Malaysia, traditional villages are dominated by the Malay population while those in Sabah and Sarawak are specific to individual tribes. The new villages, where approximately 75 per cent of the population are Chinese, were created during the Emergency era, especially in the early 1950s. Smallholders and peasant farmers, who were scattered in rural areas especially on the fringes of the jungle, were regrouped into settlements for security reasons and to exert control over the population and their movements in order to cut the supply of food and other essentials to the communists. The land settlement villages were created after Independence by Felda and other statutory corporations involved in land development for agriculture and resettlement of population. Villages made up of workers' living quarters on plantations were created by plantation owners to accommodate plantation workers, mainly South Indian immigrants.

These five types of settlements have distinct social and economic characteristics which influence the nature of housing in the rural areas. What these settlements have in common are their economy, which is largely based on agriculture, forest and fishing activities, and the relatively low income levels of the rural population.

Orang Asli settlements

Houses in Orang Asli settlements are detached units which are temporary or semi-permanent in nature to suit the nomadic way of life of shifting agriculture and forest occupations. Houses on stilts, built deep in the forest and at the fringes of traditional villages, utilise bamboo and other forest materials, such as timber and palm leaves, for construction. These shelters are merely huts on

stilts with no amenities such as potable water, toilet facilities and electricity. Rivers and wells are the main sources of water supply. Rivers also serve as a means of communication while timber tracks serve as access roads.

The Aborigines Affairs Department plays an important role in bringing the aborigines into the mainstream of social and economic development. An important aspect of the department's work is to create permanent settlements with agricultural projects to change the nomadic way of the life of the aborigines. These government-funded settlements comprise wooden houses with basic amenities such as potable water, electricity and rural access roads where possible. Durable construction materials such as planks and bricks are used in the building of houses undertaken by the Aborigines Affairs Department. The 1991 census data shows that there are 20,841 housing units for aborigines in Peninsular Malaysia, out of which 17,779 units are in rural areas.

Traditional villages

Traditional villages are made up of both clusters of individual houses as well as longhouses. The houses are basic shelters easily constructed with materials obtained from the environment. The structures are of wood with thatched roofs. The houses are built on stilts for safety reasons and incorporate steeply declining roofs for rainwater flow. The traditional villages rely on wells and streams for sources of water supply. Infrastructure in terms of roads, drains and sewerage and rubbish disposal is basic and left to the care of individual households. There is no public regulatory authority looking after the planning, the approval for construction of houses, and the certification of fitness for occupation.

Houses in traditional villages follow architectural styles specific to their regions and cater for individual dwellings and collective dwellings such as the Sarawak longhouses. Traditional villages have evolved over time with improvements to the structures and amenities based on economic prosperity of the individual household. Basic amenities for the improvement of quality of life in rural areas such as electricity, water supply, roads and telecommunications are provided under the government's rural development programmes. Since Independence in 1957, rural development programmes have played an important role in the provision of basic amenities to improve the quality of life in rural areas.

New villages

New villages, which are populated by approximately 75 per cent Chinese, were created after the declaration of Emergency in 1946. These villages were planned and built by the British military authorities, especially between

1950 and 1952, with the primary consideration being the need to create a village layout to comply with security measures in the guerrilla war against the communists. During the Emergency years, 536 new villages were created to resettle approximately 573,000 rural dwellers. About 80 per cent of the new villages are located on the west coast of Peninsular Malaysia, with nearly half of them in Perak and Johore. The houses are built on plots of between 2,500 to 4,000 sq ft. These houses, which are mainly wooden structures with galvanised iron roofs, were confined within the village perimeter barbed wire fencing. Basic community facilities including schools and temples, and infrastructure facilities such as roads, electricity and water supply were also provided.

These villages were designed to contain and control population rather than to provide scope for development. The residents of these new villages were expected to travel to work in their smallholdings during the day and return to their homes before curfew hours which were imposed at that time. These villagers had few economic opportunities other than their basic agricultural and artisan activities.

The quality of life in the new villages, especially in terms of infrastructure and amenities, has improved since Independence with government intervention through the activities of the Ministry of Housing and Local Government. Matters such as the extension of the leasehold tenure for housing lots from 30 to 60 years, and the issuance of land titles have been addressed by the government. However, the lack of available land adjacent to new villages, which is suitable for housing, has been a major problem facing new villages resulting in growing population pressure especially in the rural areas. Since Independence, several new villages adjacent to urban areas have been absorbed into urban development including Jinjang, Salak South and Air Panas in Kuala Lumpur.

Land settlement villages

Land settlement villages are created by statutory corporations involved in land development for agriculture. The objectives of these corporations are to expand the supply of agricultural land for distribution to settlers and plantations owned by subsidiaries of these corporations. The main statutory corporations involved in these activities are Felcra, the Federal Land Consolidation and Rehabilitation Authority (Felcra), Johor Tenggara Development Board (Kejora), Central Terengganu Development Board (Ketengah), Kedah Regional Development Authority (Keda), Pahang Tenggara Development Board (Dara), South Kelantan Development Board (Kesedar), Jengka Regional Development Board (Jengka), Rubber Indus-

try Small holders Development Authority (Risda), Sabah Land Development Authority and Sarawak Land Development Authority.

The Felda settlements were planned and implemented carefully with considerations for organised infrastructure facilities such as roads, drains, potable water supply, electricity supply and disposal of sewerage and rubbish. These houses were similar in design to the traditional dwellings of villages but were improved and standardised for easy construction. These wooden structures have single or double bedrooms, asbestos roofing and scope for future extension. The land area per housing lot is approximately between a quarter to half an acre. The settlements were well organised in terms of layout as well as the provision of community facilities such as mosques, community halls, schools and playgrounds. The concept is to provide a basic dwelling with all amenities which are within the incomes of settlers in the initial stages of land development. However, the land development authorities also recognised and catered for the scope for improvement of these dwellings through renovations and extensions to the dwellings based on the potential improvement in economic status of the settlers.

A total of 114,288 settlers, (95.7 per cent of whom are Malays, 1.6 per cent Indians, 1.2 per cent Chinese and 1.5 per cent others) are involved in 308 schemes under Felda. The regional development authorities have also contributed to the development of housing in the new rural townships and villages for both settlers and non-settlers. A total of 11,486 low cost housing units were completed through the housing programmes under the land and regional development agencies between 1991 to 1995.

Living quarters in plantations

Both the private and public sectors are involved in the plantation industry. The non-settlers' land development schemes are plantations owned by various statutory corporations either directly or through wholly-owned subsidiary corporations while the traditional plantations pioneered by the British colonial investors are now owned by Malaysian corporations.

Villages made up of workers' living quarters are created by plantation owners to maintain a pool of readily-available workers in the working environment. The employers' expectations from this group of labourers were that they must be capable of hard manual work for relatively low wages and respond to strict discipline. The colonialists who developed these plantations built isolated single-room quarters in rows away from native community settlements to minimise costs and prevent social integration. The quarters had basic single-room sleeping and living facilities with cooking facilities in the verandahs. In cases where the quarters were built on stilts, cooking facilities were located

below the raised floor. Common bathing and toilet facilities were provided. Water supply was usually from rivers and wells. Electricity, if supplied, was available mainly in the night. Other social amenities including temples and primary schools were provided.

This concept of human settlement catered for a group of immigrant labourers who were regarded as a 'transit' population in the plantation during their working life and who planned ultimately, to return, to their country of origin. However, this concept changed after Independence when immigrant plantation workers became citizens and began to aspire to be part of the mainstream of social and economic development. The dominant ethnic group in the plantation villages is south Indians with minority communities of Chinese and Indonesians. There are 1,456 plantations with 85,729 units of workers quarters and a resident population of 300,000 in Peninsular Malaysia-62 per cent of whom are Indians, 25 per cent Malays, 5 per cent Chinese and 8 per cent foreign workers.

Three areas of concerns prevail in considering the issue of housing and home ownership for plantation workers:

- Quarters which are provided by employers for workers;
- The quality of housing and living conditions on subdivided plantations; and
- Home ownership programmes for plantation workers.

The Workers Minimum Standards of Housing and Amenities Act 1990, sets out the minimum standards that must be adhered to by employers should they provide quarters for workers. The enforcement of this Act falls under the purview of the Director-General of Labour in the Ministry of Human Resources. Although this Act sets out minimum standards, employers are able to postpone or avoid complying with them especially when the provision of labour services on plantations is increasingly sourced through third-party contractors. In this case, employment becomes 'casual' in nature and formal obligations in statutes and collective agreements with regard to housing can be avoided. In Sabah and Sarawak, the respective ordinances of both states – Labour Ordinance (Sabah Cap 67) and Labour Ordinance (Sarawak Cap 76) – regulate the standards for workers' quarters.

Employers provided quarters to workers to maintain a 'captive' population in the working environment to have on call a ready supply of labour. One improvement to this is to ensure that the quarters are designed with appropriate facilities to promote the healthy development of families. The traditional single-room 'barracks' have now given way to semi-detached quarters with up to three-bedrooms to enable the family to live with basic amenities such as potable piped water, electricity and sanitary facilities.

However, investments in building new quarters and the upgrading of existing quarters to comply with the Workers Minimum Standards of Housing and Amenities Act, 1990 are limited. In 1994, 45 per cent of the quarters were considered sub-standard and had to be replaced. Some 78 per cent out of 833 child-care centres in plantations needed replacements as the buildings were more than 25 years old. Only 27 per cent of the plantations had potable water supplied by the Waterworks Department while 73 per cent relied on rivers and wells. Some 41 per cent of the plantations had electricity supply from the National Electricity Board, another 40 per cent had their own generators for electricity supply, and 19 per cent had no electricity supply.

The enforcement of this Act through a concerted programme of improvements was implemented as a five-year programme from 1992 to 1996 and involved an expenditure of RM515 million. Data available from the Ministry of Human Resources showed the following expenditures were made up to December 31, 1996.

Purpose	No of plantations	No of units	Total cost (RM million)
Quarters	343	16,259	361.8
Child care centres	120	24	5.2
Water supply	352	28,422	44
Electricity	316	30,696	52
Community hall	57	57	2.3
Total			465.3

Approximately 75 per cent of the physical targets set in the five-year plan programme have been met to date. The programme has been extended to achieve all the targets.

The poor quality of housing and living conditions on subdivided plantations has been highlighted by the media from time to time. During the 1960s, a wave of sales of plantations and subdivision took place. Living quarters, the majority of which were pre-war semi-detached wooden structures, were 'sold' through assignments to resident workers who were reluctant to move and continued to work in the subdivided plantations where formal obligations for labour standards and collective agreements no longer applied. These quarters and the living environment became the responsibility of the individual occupants with little or no support from the public authorities. Living conditions deteriorated and these settlements of living quarters in the midst of subdivided plantations are popularly referred to as 'green ghettos'.

The government has in the recent decade addressed issues of potable water supply, electricity and extension of rural development services such as health and medical care to these settlements. However, the problems are deep-rooted. The issuance of land titles to the houses is a problem that has yet to be resolved and the scope for development and improvement of existing structures is limited and confined within the financial means of these workers. Public policy interventions in this area will require a proactive approach on the part of the government to resolve the issue of land titles and to initiate appropriate low-cost home ownership and improvement programmes through allocations set aside for low-cost housing. Home ownership programmes for plantation workers consistent with their needs and means, and the peculiarities of the plantation industry have been discussed from time to time especially since Independence. Such home ownership programmes must be relevant in the context of the social and economic environment of the plantation workers. In the early 1970s, a committee comprising government agencies and employer associations had been set up to look into this and make recommendations. Following this, a RM10 million revolving fund had been launched to implement this programme for plantation and mine workers. This fund provided workers who had land titles the opportunity to obtain loans of up to RM7,500 each to construct their homes.

Despite the setting up of the RM10 million revolving fund and periodic statements made by the government regarding low-cost housing for lower income groups, there has been little progress in the implementation of these programmes for plantation workers. Since the launching of the home ownership scheme for plantation workers in 1973, only 31 plantations and two mines have embarked on the project. Together they have built 4,238 units of low-cost houses below the RM25,000 price level. Currently five schemes are in progress.

One of the reasons for the slow progress is the lack of a clear policy on what home ownership programmes for plantation workers ought to be in our society today. Therefore, there is a need to set up a tripartite committee, comprising representatives from government agencies, employer associations and the National Union of Plantation Workers, to tackle this issue. The committee should objectively work out a practical and feasible concept, especially in the current context of rapid development with plantations being converted into industrial, housing and other recreational uses. The transformation of plantations in Selangor, especially in the Klang Valley, is a good example of the rapid changes encountered in the utilisation of plantation land. Any policy recommended must be specific to the

changing patterns in the plantation industry – from traditional plantation models to integrated agro-based industries with ‘out grower’ schemes and plantations with potential for urban and industrial development.

Issues in rural housing

The experiences in rural housing have highlighted the following issues of concern.

Policies for target groups

One issue is the lack of a clear policy specific to target groups among the rural population and environment, for instance, aborigine settlements, plantation villages, fishing villages, traditional villages with individual dwellings, traditional villages with community dwellings/longhouses, new villages, etc. The significant improvements in the traditional villages in terms of the construction of houses, water supply, electricity supply, roads and telecommunications have been the result of direct government intervention. While there have been encouraging policy statements made by the government about efforts to improve housing and living conditions under the rural development programmes, not all the target groups have equitable access to these programmes. For example, plantations are considered private sector owned land and, therefore, allocation of public funds to improve roads and provide basic amenities such as water, electricity and telecommunications, is not readily provided.

One of the rare concessions made in recent years, perhaps the only one, is the cost-sharing for provision of electricity on a equal share basis between the government and the National Electricity Board for plantations below 200 hectares in size. For plantations between 200 hectares to 405 hectares in size, the costs are shared equally between the government, the National Electricity Board and the plantation owners.

Alienation of land

Land for housing is scarce. In rural areas, especially in the traditional villages, land matters are bound by both tradition and legislation. Land reform measures to acquire or reallocate land for new housing projects in rural areas, especially in traditional villages, must be sensitive to the cultural traditions related to land. In the case of new villages, their expansion depends upon adjacent land being available for development. However, not all new villages have the opportunity for expansion especially when adjacent land is Malay reserve land. Since land is a state matter, peculiar restrictions

apply for land alienation, conversion, subdivision and distribution to potential owners. State governments impose specific quotas for ethnic group ownership and in some cases restrict inter-ethnic transactions. The government's role in imposing restrictions and conditions for transactions in the land market does not encourage private sector entrepreneurs to venture into rural housing projects.

For plantations, land designated for home ownership projects must be alienated by plantation owners. However, plantation owners are often reluctant to alienate or surrender land for the creation of independent villages within their plantations, to ensure crop security and to control movement in and out of the plantation. Agricultural land is highly valued and plantation owners are aware of the value and the potential for real-estate development, especially on the west coast of Peninsular Malaysia. Obviously, plantation workers would not be able to pay the full opportunity costs to the plantation owners for land alienation, conversion, subdivision and distribution. There is thus a need for plantation owners to alienate land at an affordable price to enable plantation workers to purchase such land. The government has yet to take a proactive role to acquire land from plantation owners to set up independent plantation villages for the workers.

The National Union of Plantation Workers has consistently urged the government to resolve the issue of housing for plantation workers before giving approvals for the commencement of development work on plantations. Although some positive statements have been made by the government, the practical realities on the plantations are different. Efforts are often made by plantation owners and developers to coerce and evict plantation workers from their quarters. The social costs of the human problems arising out of the displacement of plantation workers in this process are severe, especially when these workers are forced into homelessness and have to migrate to urban squatters and join the informal sector of the labour market.

Area of land for a household

The majority of the rural population live in their working environments. Hence, the area of land allocated for a rural household will have to take into consideration the way of life of the rural population. Traditional villages have evolved with this consideration. For land settlement villages such as those in Felda schemes, such considerations were taken into account and with improved and organised layout planning. For new villages, the sizes of the housing lots were determined for residents, alongside security considerations required during the Emergency era. The economic activities of

the residents of new villages were influenced by the size of the smallholdings they owned in the rural areas away from the villages.

Similarly, villages of plantation workers' quarters were created with cost and security considerations. In the case of home ownership for plantation workers, the area of land allocated to a household is an important consideration. Plantation workers cannot depend on shelter alone. They need additional land to be turned into a compound adjacent to their homes to engage in supplementary income activities, for example, food crop cultivation and animal husbandry for domestic consumption and other home-based economic activities. The National Union of Plantation Workers has advocated that plantation households should be allocated an acre of land each for shelter as well as for their supplementary economic activities in home ownership projects in traditional plantation areas. This also circumvents the need for conversion of the land from agriculture to housing. However, this recommendation was not well received by plantation owners since parting with an acre of land per household will mean a substantial reduction in their opportunities for profits during future development.

The trends for future development are already clearly visible in plantations adjacent to the North-South highway in Johore, Malacca, Negri Sembilan, Selangor, Perak and Kedah. Many plantations have been converted and developed into industrial parks, housing and recreation centres, such as golf clubs.

It is evident that the development of plantations will transform rural patterns of settlement, from agriculture into urban and industrial settlements. Land, a scarce commodity, is obviously highly valued. Urban settlement patterns will emerge where low-cost terrace houses and apartments will be needed to meet the demands of displaced plantation workers. Therefore it is necessary to identify plantations for potential industrial and urban development so that home ownership programmes for plantation workers can be considered in the context of the potential future development. This will enable the household land requirement to be reconsidered depending on the designated development for the areas. For example, some plantations in the Klang Valley, which had undergone urban and industrial development, had resolved the home ownership problems of workers by offering them opportunities to purchase low-cost housing at subsidised prices. The planning authorities must also be aware that traditional locations of population settlement together with their community facilities of places of worship, graveyard, schools, etc, may need to be relocated in the context of proposed development plans. A peaceful transition can be envisaged only if all the issues involved in home ownership are resolved.

Potential areas for home ownership schemes

Rural areas with the potential for home ownership development must be identified by the Town and Country Planning Department. Although the traditional villages cannot be disturbed, it is envisaged that with improved household incomes in rural areas there will emerge a demand for better and more permanent houses with modern facilities. For example, in some traditional villages in between district towns, there are signs of modern homes being constructed in rural areas. For land settlement villages, home improvements are taking place in tandem with the economic success of the settlers. The original temporary and semi-permanent wooden structures have given way to permanent structures with modern facilities. New villages have also experienced similar changes since the end of the Emergency era. In plantations, employers have always preferred to have their plantation workers living within the confines of the plantations to maintain more control over their labour force. The creation of independent villages adjacent to the highway or main roads would end such control. Furthermore, embarking on ventures of this nature with a cluster of houses does not provide adequate opportunities for large scale development and profits.

Housing design and community facilities

It is necessary for a dwelling to meet basic standards to promote healthy family development. The one or two-room temporary structures designed in the past are inadequate for a family. Nevertheless, most of the first-generation dwellings in rural areas were of this type. The recommendation is for dwellings to have three bedrooms, a sitting room, kitchen and dining area, and bathroom and toilet. It is envisaged that the size of a dwelling should be not less than 1,000 sq ft for a household of five persons. However, cost considerations in the construction of individual dwelling within a ceiling price of RM25,000 can only be possible with subsidisation of land costs and infrastructure facilities such as electricity, water supply, roads and telecommunications. The achievements thus far have shown that housing development in rural areas, especially for plantation workers, is not an attractive profit-making proposition. The exception is when plantation development undergoes major industrial and urban development and a portion of the substantial profits derived can be used to subsidise low-cost housing.

Funding

Funding home ownership schemes for rural housing projects must take into account two specific considerations – the relatively low and fluctuating

income of the rural population, and the demand for long-term low-interest housing loans. In the 1970s there was a loan scheme for low-cost housing priced below RM20,000 with purchasers given loans of up to 90 per cent of the price, with an interest rate of 5.5 per cent per annum and a repayment period of 20 years. Although this facility was made available by Malaysia Building Society Berhad (MBSB) there was only one project for plantation workers in Jempol which took up the facility. Obviously, meaningful funding schemes suited to the needs of the rural population are necessary for rural home ownership projects. Public policy intervention with adequate resources is vital for the successful implementation of viable funding of rural home ownership projects.

Conclusion

The issues of rural and estate housing highlighted here will have to be seriously considered in any attempt to formulate relevant and practical recommendations or policies to upgrade the quality of life of specific target groups in the rural areas. Such policies, if imposed, should help in arresting the out-migration of labour from rural to urban areas. Plantation workers, who are affected by the rapid pace of development, will not be totally displaced and become a social problem. Policies to be considered should pave the way for rural households to own homes and, in some cases, to have sufficient land area to provide supplementary income activities for the families.

It is recommended that the government set up a committee with representatives from all relevant organisations to formulate a policy for home ownership in rural areas, taking into account the following objectives:

- Review of efforts and projects by the government, employers and other organisations (such as co-operative societies) for home ownership in rural areas since Independence;
- Identify the needs of rural households in a home ownership programme specific to target groups;
- Examine the potential for the implementation of home ownership programmes for rural households in specific areas based on the needs identified;
- Examine the scope for funding the recommended policy and the projects for implementation through low-cost development finance; and
- Propose time frames for the specific completion of projects and target groups in the implementation of such policies.

It is obvious that the current market-oriented approach to the development of home ownership in rural areas will not meet the peculiar characteristics of demand in this sector. Private sector developers are

reluctant to venture into housing development in rural areas since the scale of the projects is limited and hence the potential for substantial profit levels, in a limited market dominated by a relatively low-income population.

The demand for low-interest financing for home ownership programmes in rural areas is high. However, banks and financial institutions do not consider such lending to be an attractive business proposition since there are relatively higher risks in lending to low-income groups with only restricted land titles for temporary or semi-permanent structures as security. It is thus necessary to make special allocations to finance home ownership programmes in rural areas. The Employees Provident Fund (EPF) can be considered an important source to fund home ownership projects. Its current benefit of allowing partial withdrawal of contributions for home ownership is helpful, especially to workers in the formal employment sector. However, the high incidence of self-employed and casual labour in rural areas isolates such workers from EPF benefits. A review could perhaps be made by EPF to consider the impact of this situation in the context of rural workers housing projects and to find ways to enable the organisation to play a catalytic role in rural housing projects.

Land in rural areas is mainly agricultural land. Furthermore, the land is classified based on various restrictions such as categorisation of Malay reserve land. Traditional villages are mainly on Malay reserve land and, therefore, transactions are confined to the Malay population. Further restrictions on land may exist, such as the ownership of land in Kelantan being limited to Kelantanese. It is obvious that plantation land is one of the few sources of unencumbered land available for development. Before undertaking any development, plantation groups with such land banks must consider the needs of home ownership projects and programmes for their workers. On its part, the government must review the procedures required to enable plantation owners to implement home ownership programmes for workers without going through costly formalities.

Government approval for housing development is subject to payment of premiums for conversion and subdivision. The premiums imposed on conversion and subdivision for rural housing projects should be reduced so that the cost of development can be kept within affordable pricing for low-income groups in the rural areas. Restrictions on the distribution of housing can also act as a disincentive for private sector developers to venture into rural housing projects. For example, in plantations where the residents are of Indian origin, it will be virtually impossible to comply with the 30 per cent Bumiputera quota as there would be few, if any, takers. The government has introduced a Housing for the Poor Programme in the Seventh Malaysia Plan. However, the plan envisages only 35,000 units to be

built through the Ministry of Rural Development, the site and services scheme and regional development agencies. This target is small compared to the demand and should be reviewed.

The government's current approach to encourage the private sector to participate in rural housing is appreciated. However, with lukewarm response from the private sector, the government is faced with the challenge of implementing these programmes through privatised projects. Even when privatisation is encouraged, the private sector will react more positively if more financial support and expedient approvals of land matters, which have always been constraints, were forthcoming. In fact, the most success achieved in improving the quality of life in rural development programmes so far has been through the direct intervention programmes of the government and its agencies. This aggressive spirit in the rural development programme with a focus on home ownership and housing must continue until such time when country living becomes fashionable and the private sector responds to demand willingly.

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Bumiputera House Ownership: The Industry Viewpoint

Lawrence Chan

Bumiputera house ownership is generally regulated by the quotas set by state governments requiring developers to reserve 30 per cent of the developed units for sale to Bumiputera purchasers at discounted prices ranging from 5-15 per cent off market sales prices. This quota was imposed in line with the government's objectives to enable more Bumiputeras to own houses and to promote greater interaction among the various ethnic groups of Malaysia so as to bring about multi-ethnic communities. As key players in the industry, private sector housing developers fully support the government's efforts in meeting these objectives. However, it is strongly felt that certain aspects of the Bumiputera quota imposition in housing development pose serious problems which may hamper the growth of the industry if no immediate and effective remedial actions are taken.

Challenges faced by the industry

Since land is a state matter, policies pertaining to land, including those related to Bumiputera quotas, differ from state to state. Nevertheless, irrespective of where the developments are being undertaken, the

following problems are the biggest challenges commonly faced by the industry.

Bumiputera quota units and their release mechanisms

When Bumiputera quota housing units cannot be sold, developers are faced with the burden of higher holding costs. To secure the release of unsold Bumiputera units is a tedious and long process in many states of Malaysia.

State governments have various guidelines on the actions to be taken by developers before they can apply for release of the Bumiputera quota status, including requiring developers to:

- Place a certain number of insertions of media advertisements of specified sizes publicising the availability of Bumiputera units;
- Show confirmation that the construction stage of the project has reached at least 50 per cent;
- Allow sales of such units to be undertaken by state agencies for a fee;
- Submit reports on the sales progress of Bumiputera units;
- Make announcements through the electronic media (radio) about the availability of such Bumiputera units;
- Confirm that non-Bumiputera units are sold out; and
- Show proof that they have tried their best to market the Bumiputera quota units without success.

In general, the time frame before developers can appeal for the release of Bumiputera units is between six months to 12 months from the date of the launching of sales. However, it is pertinent to note that even after this period of time has lapsed, release is not automatically given and is subject to the state government's approval.

Some states, such as Melaka, have established independent agencies to handle Bumiputera quota issues. In Melaka a Bumiputera company, Pertam (Perbadanan Kemajuan Tanah Adat Melayu), was formed ostensibly to deal with the Bumiputera quota issue. The company is entrusted with the task of assisting developers to find buyers for unsold Bumiputera lots and giving advice and making recommendations to the Chief Minister for the release of Bumiputera lots.

In Johor, the state government imposes a 7.5 per cent fee on developers to secure the release of unsold Bumiputera units on top of a two per cent sales commission. The 7.5 per cent fee payable to the state government is reportedly to be used for the construction of infrastructure and public amenities.

In projects where the percentage of Bumiputera quota is high or in locations not favoured by Bumiputera purchasers, developers would have to bear the heavy financial burden of high holding costs. With the additional two

per cent sales commission, the registration fee of RM1,500 in Melaka and the 7.5 per cent service fee in Johor, there would be a tendency for house prices in other categories to be increased to make it viable for the developer to subsidise the quotas for Bumiputera units and the low-cost housing units.

Pricing for Bumiputera buyers

Bumiputera purchasers are usually given a five per cent discount off the market sales price irrespective of the types of houses except in Johor which gives a 15 per cent discount for all categories of housing except low-cost housing. This means discounts are not only given for purchases of lower-end market segments but also upmarket properties. Generally, buyers who can afford such upmarket houses would have attained a certain economic status and such discounted pricing is a bonus rather than an aid to them in the acquisition of the properties. Therefore, there should be a review of this policy to ensure that privileges such as discounts are given only to deserving parties.

Scarcity of land

The availability of non-Malay reserve land for housing developments, which allow the sale of houses to non-Bumiputeras, is getting scarce and is critical in some states such as Terengganu, Kelantan and Kedah, due to the large percentage of Malay reservation lands in urban areas. In addition, the scarcity of non-Malay reserve land in these areas has resulted in an increase in land prices and subsequently land cost per housing unit, especially for low-cost housing.

Medium and low-cost housing

Provision of medium and low-cost housing for the Bumiputera sector has been allocated under the Bumiputera quota. Demand for such units is very good, especially for low-cost houses, and Bumiputera lots are usually snapped up first. The same goes for low medium-cost housing costing between RM25,001 to RM60,000 per unit, especially in Malay-dominated locations.

In the case of medium-cost houses costing more than RM60,000, demand from the Bumiputera sector is relatively lower. This may be mainly due to the following reasons:

- Low preference for the locations;
- Lack of affordability by Bumiputera purchasers (a purchaser of a RM100,000 property has to earn a monthly household income of around RM3,000);

- The tendency of Bumiputera purchasers to buy only for long term investment and not speculation. (Bumiputera purchasers usually buy houses for long-term investment and, due to financial constraints, can buy only one or two units in their lifetime. Buying for speculation is rare among Bumiputeras and thus this does not create expansion in demand).

Conclusion and recommendations

The Bumiputera quota is undoubtedly an effective way of promoting social integration and assisting house ownership by Bumiputeras. However, in view of the various issues which could adversely affect the growth of the housing construction industry, a review of various procedures and requirements of the quota is necessary to ensure that the objective of the quota is met without jeopardising the industry as a whole.

Release of Bumiputera quota units

Genuine cases of unsold Bumiputera units should be automatically released after all the requirements have been met. This would be a more professional approach in handling the matter as developers would have done their best to provide potential Bumiputera purchasers the opportunity for house ownership. Such scheduled releases would enable developers to plan their projects more efficiently and ease cash flow problems.

Discounts for Bumiputera buyers

Discounts for Bumiputera purchasers should be limited to properties within a certain price range as buyers of the higher-end properties would have achieved a certain level of economic status and would therefore not require special discounts in prices.

Service charges for release of Bumiputera quotas

Developers, in providing Bumiputera quota housing units, are exercising their social responsibilities in meeting the objectives set by the government. Therefore, it is only fair that state authorities or other agencies representing them recognise this and return the gesture by not charging exorbitant fees for the release of unsold Bumiputera units. While a two per cent sales commission may be fair and reasonable, other registration charges or service fees should not be imposed.

Establishment of a special trust fund

Lastly, to assist Bumiputera house ownership, state and federal governments should consider setting up a special trust fund to purchase Bumiputera quota units for subsequent rental or sale to Bumiputera purchasers.



Bumiputera House Ownership and Participation and Other Issues Relating to the Housing Industry

Salleh Buang

This chapter is divided into two parts to focus discussion on the statutory provisions, and the current issues affecting the housing industry. The first part on statutory provisions explains the impact of two principal legislative acts – the Housing Developers (Control and Licensing) Act 1966 and the six separate enactments relating to Malay reserve land. It examines the scope, rationale, strengths, weaknesses and limitations of these legislation and makes recommendations for their future improvement. The second part looks at various critical issues affecting the housing industry in Malaysia, and makes the recommendation that housing should not only be affordable but also be quality homes. It examines the current status of the Bumiputera quota in housing and the manner of its enforcement in the various states. Other issues considered are low-cost housing, incentives for private sector developers to undertake low-cost housing and recent developments affecting this sector of the housing industry. The chapter concludes with a re-appraisal of the national housing policy. It takes a fresh look at the enabling role of the governments, the safety of housing estates, the limitations, if any, on multiple house ownership, the environment, the lack of Bumiputera participation as developers and possible incentives that may be offered to them to accelerate their participation.

I. THE STATUTORY POSITION

The housing developers

The governing law

There is no comprehensive Code or Act of Parliament specifically governing the housing industry or the house-owning public in Malaysia. What we have is the Housing Developers (Control and Licensing) Act 1966 (Act 118), passed by Parliament principally to redress the malpractices of the then infant housing industry, to regulate the activities of housing developers and to protect house buyers. Apart from the 1966 Act, which came into force on August 29, 1969, we have a host of other legislation which is enforced, not directly by the Ministry of Housing and Local Government, but by other ministries and state authorities.

A point that is lacking in the 1966 Act is that it applies only to Peninsular Malaysia. It had not, since its inception, been made applicable to Sabah and Sarawak, and the status quo regrettably remains until today. This is admittedly an unhappy state of affairs, which has prompted several quarters to ask (rather cynically) whether Malaysia is truly one and a single nation, or a country divided into three parts.

As of mid-1997, there is no indication when, if at all, and whether the Act will be extended and made uniformly applicable to Sabah and Sarawak as well.

Subsidiary legislation

Apart from the principal Act, the housing legislation in Peninsular Malaysia is contained in two other important regulations, namely the Housing Developers (Control and Licensing) Regulations 1989, and the Housing Developers (Housing Development Account) Regulations 1991.

The 1989 Regulations were a marked improvement on the 1982 Regulations, which had earlier repealed the Housing Developers (Control and Licensing) Rules 1970.¹ The 1970 Rules were in fact the first legal ground rules laid down by the federal government to regulate the housing industry.

In retrospect, the 1966 Act and the 1970 Rules could be regarded as the first attempt at putting together a coherent and comprehensive body of laws to regulate the housing industry in this country. Prior to that, the domestic housing industry was completely unregulated. Any RM2 company can start a housing project (at times even without owning any piece

1. PU (A) 268/70, which came into force on July 15, 1970.

of property), put up its signboard on an empty piece of land, and immediately start collecting booking fees from eager house buyers.

Main objective of the law

It is necessary to remember, and understand, the antecedent history of the local housing law to appreciate fully the declared objective of the 1966 Act, as judicially recognised and enunciated in several cases (discussed below) – which is ‘to protect the interest of purchasers’.

However, an amendment to the 1989 Regulations passed in 1994 (in force since August 1, 1994) has made house buyers wonder whether the law has changed direction – from one primarily protecting the purchaser’s interest to one maintaining a balance between the interests of the purchasers and those of the developer.

The 1994 amendment was passed to put to rest a judicial conflict regarding the actual meaning of the developer’s duty to provide the ‘connection of water and electricity supply to completed houses’. This legislative answer to resolve a judicial conflict is nothing new, but in the context of the 1966 Act, it has been viewed as a step backward in protecting housing purchasers. This will be discussed in greater detail later.

Another watershed in the history of the housing law in this country is the huge unprecedented number of abandoned housing projects towards the close of the 1980s – principally due to mismanagement by the developers. This led to the passing of the 1991 Regulations, which came into force on August 26, 1991.

What about the future?

In July 1995, the legal adviser to the Ministry of Housing and Local Government was quoted as saying that the 1989 Regulations would, from time to time, ‘be amended to accommodate the wishes of the environmental group’.²

Scope of the 1966 Act

The Preamble to the Act states that its principal objective is the ‘control and licensing’ of ‘the business of housing development’ in Malaysia and for matters connected therewith.

‘The business of housing development’ is defined in section 3 of the Act as ‘the business of developing or providing monies for the developing

2. Housing and Local Government Ministry Legal Adviser Pritam Singh, in a Seminar organised by the Housing Developers Association Malaysia on July 17, 1995 in Petaling Jaya, Selangor.

or purchasing, or of partly developing and partly providing monies for purchasing, more than four units of housing accommodation which will be or are erected by such development...'

The above definition cannot be taken in its literal sense because the business of 'providing monies' per se (though specifically for 'developing' or 'purchasing') is not intended to be, and never has been, covered by the 1966 Act.

The expression 'housing accommodation' has been specifically defined in the Act to include 'any building, tenement or messuage which is wholly or principally constructed, adapted or intended for human habitation or partly for human habitation and partly for business premises...'

In essence, the Act only applies to cases where a housing developer is undertaking the development of at least five units of 'housing accommodation', that is, complete housing units (houses, flats, apartments) or partly houses and partly shops or offices.

Thus, if a developer were to build a three-storey building where the ground floor is a flatted factory, the first floor is a shop premise and the second (top) floor is an office, the project will not be covered by the Act. Consequently, the purchaser of such properties will not be protected. His position vis-a-vis the developer will be based purely on contract law. Here lies, as always, the potential for abuse of the weaker party by the stronger party.

Would the law be enlarged in its scope in the future to cover such a scenario? Will a separate legislation be passed? Since many of these aspects are still shrouded in uncertainty and speculation, this is one area of the law that the Ministry of Housing and Local Government should consider.

Applicability of the Act

It is regrettable that the 1966 Act is not made applicable to bodies registered or incorporated under any written law relating to co-operative societies as spelt out in section 2(1)(a). This means that all housing projects undertaken by co-operative bodies are not governed by the 1966 Act.

Likewise, it is also regrettable that the Act does not apply to housing projects undertaken by statutory bodies or agencies of the federal or state governments: section 2(1)(b). Consequently, all housing projects undertaken by public sector agencies such as the State Economic Development Corporations (SEDCs) are not governed by the 1966 Act.

The question which inevitably arises is therefore, if we accept that the stated objective of the 1966 Act is to protect purchasers (see the several cases discussed below), should we allow this state of affairs to continue indefinitely?

If we are to practise accountability at all levels of society, should not the public sector agencies be also covered by the Act and be made accountable

(just like any other private developers) to their purchasers for any shortcomings and omissions?

Protecting the purchasers

In a leading case from the Klang valley area, *SEA Housing Sdn Bhd v Lee Poh Choo* (1982) 2 MLJ 31, the purchaser sued the developer for breach of contract and for delivery of the issue document of title to a house he had purchased from the developer. The house in question was completed after 23 months, instead of 18 months as stated in the Sale and Purchase Agreement. The issue before the court was whether the developer could be excused for the delay, due to acute shortage of building materials, a state of affairs which was then public knowledge. The developer had relied on Clause 32 in the agreement which purported to exempt him if non-fulfilment of any terms of the agreement was caused by circumstances beyond his control.

At the High Court, the trial judge held that the 1966 Act and the 1970 Rules were passed by the authorities to protect the interests of the public and the developer could not contract out of the Rules. Upon appeal to the Federal Court, the appeal was dismissed.

Role of Ministry of Housing and Local Government

Section 11 of the Act is a good example of the principal legislative intent of the 1966 Act – to protect the interests of the purchasers. Under this section, whenever it becomes apparent to the Controller of Housing (either through investigation or information) that the developer has become unable to meet his obligations to his purchasers, is about to suspend his building operations or is carrying on his business in a manner detrimental to the interests of his purchasers, the Minister is empowered by law to give several directions to the housing developer or take such other measures as he may deem necessary. These directions, when given, must be complied with. The directions which the Minister can issue under this provision include:

- Directing the developer to rectify or resolve any matter or circumstances;
- Appointing a person to advise the developer in the conduct of his business;
- Appointing a company to assume control and carry on the business of the developer upon such terms and conditions as the Minister may determine (with the concurrence of the Minister of Finance);
- Directing the developer to present a petition to the High Court for the winding up of his business; or

- Taking such other actions as the Minister may consider necessary.

It is an open question whether the Minister has fully invoked section 11 of the Act in the past when there were definite signs that developers were facing difficulty in continuing or completing their projects. In many cases, regrettably, actions taken were too little and too late.

If section 11 of the Act had been fully resorted to by the Ministry of Housing and Local Government, it is questionable whether the scale of abandoned housing projects in the 1980s would have reached such catastrophic proportions.

Implications of section 12

Section 12 of the Act states that the Minister may give a housing developer 'such directions as he considers fit and proper for purpose of ensuring compliance' with the Act. Such directions (which shall be given in writing) are binding on the licensed developer – in other words, they must be complied with by the developer to whom such directions had been given.

Unfortunately, despite the apparently wide scope of the provisions, the courts have placed a narrow interpretation on it.

In *Public Prosecutor v Anamaly a/l Narayanan* (1989)1 MLJ 45, the issue before the Seremban High Court was whether the Minister is empowered under section 12 of the Act to issue a 'direction' to the developer to make refunds to 16 purchasers.³ The developer in this case had failed to start his housing project and the distressed purchasers had demanded the refund of their payments. When the developer refused or failed to do so, the purchasers had sought the assistance of the Minister. The Minister had directed the developer, pursuant to his powers under section 12 of the Act, to refund the purchasers' payments. When the developer still failed to do so, he was brought to court to face criminal charges.

Justice Mustapha Hussain held that the Minister had no such power to order the developer to refund the purchasers' money. The Public Prosecutor did not appeal and, since this decision by the Seremban High Court has never been overruled in any subsequent cases, the decision must be regarded as the abiding law.

Regrettably, no action had been taken by the Ministry since then to initiate any amendment (improvement) to this provision. If a similar situation were to arise in the future, the Minister would continue to be powerless to assist housing purchasers.

3. The marginal note of the section states 'Powers of the Minister to give *general* directions' (emphasis added).

In April 1997, an unlicensed developer in Kulim, Kedah had been collecting 'booking fees' from several would-be purchasers. While such actions are clearly illegal under the law and the fraudulent developer could be hauled to court to face criminal charges and, upon conviction, be punished accordingly; this would not be of much help to the purchasers who wish to get their money back. If the purchasers were to seek the Minister's help (as in the Seremban case) to get their refund from the developer, the end result would be the same. The Minister would be powerless to act under section 12 to assist them.

Licensing of developers

A housing developer must be in possession of a valid licence issued under the Act before he undertakes any housing development: section 5(1). A licence is required for each housing development. Where a housing development is to be undertaken in phases, a licence is required for each and every phase of such housing development as spelt out in Regulation 3(5) of the 1989 Regulations.

In *Keng Soon Finance Bhd v MK Retnam Holdings Sdn Bhd & Anor* (1989) 1 MLJ 457, Lord Oliver of Aylmerton said that to carry on a 'business of housing development without a licence is a serious offence'.

There are stringent conditions imposed under the 1966 Act which must be complied with before an applicant can be granted a licence. No licence will be granted unless the company has an issued and paid-up capital in cash of not less than RM250,000 (if the applicant is a company) or has made a deposit with the Controller of not less than RM100,000 in cash or in the form of a bank guarantee if the applicant is a 'person or a body of persons' (in other words, a sole proprietorship or a partnership): section 6(1)(a) and (b).

While the figure of RM250,000 might appear to be sufficient in the late 1960s, is it still realistic today? Will an incorporated company having that much paid-up capital be able to undertake a medium-size housing development – say, a project consisting of over 100 units of terrace houses covering a land area of 10 acres?

Even worse, will a sole proprietorship or a partnership having a minimum capital of RM100,000 be able financially to undertake the medium-size development as stated above? It would seem to be timely to raise the figure in section 6(1)(a) further, say to RM1 million, and to repeal and expunge section 6(1)(b) from the statute book.

There has been no indication whether the Ministry of Housing and Local Government has any plans to raise this RM250,000 ceiling. If such a move were planned, it would have been politic to implement it in the late 1980s, in the aftermath of the many cases of abandonment of housing projects.

The Act also requires that no member of the company or firm should have been convicted of an offence involving fraud or dishonesty or be an undischarged bankrupt. However, Section 6(2) empowers the Minister, in his absolute discretion, to waive any or all of the conditions mentioned above.

Revocation of licence

If, in the opinion of the Controller of Housing, any licensed housing developer is carrying on his business in a manner detrimental to the interest of his purchasers or to any member of the public, the Controller may, subject to the procedure set out in section 14 of the Act (opportunity of being heard), revoke the licence issued to the developer or suspend it for such period as the Controller may determine: section 13(a).

Likewise, the Controller may either revoke the licence or suspend it if, in his opinion, the developer has insufficient assets to cover his liabilities, has contravened any provisions of the Act or has ceased to carry on housing development in Peninsular Malaysia: section 13(b).

Any developer who carries out any housing development without having been duly licensed under section 5 or fails to comply with any of the conditions imposed on the licence shall be guilty of an offence and shall, on conviction, be liable to a fine of not less than RM10,000 but not exceeding RM100,000 or imprisonment not exceeding five years or both: section 18. This enhanced penalty was the result of an amendment made effective from December 1, 1988.

Duties of developers

Section 7 of the Act requires the developer:

- (a) Within four weeks of making any alterations in any of the documents submitted to the Controller under section 5(3), to furnish to the Controller written particulars of such alterations;
- (b) To exhibit, at all times, in a conspicuous position in any office or branch office, a copy of his last audited balance sheet and the names and particulars of each person who has the control and management of the business of the company;
- (c) To keep such accounting and other records as will sufficiently explain the transactions and financial position of the company;
- (d) To appoint auditors each year to carry out the annual audit;
- (e) Within three months of the close of the company's financial year, to send to the Controller a copy of the auditor's report prepared under section 9 of the Act;

- (f) To send a statement in the prescribed form to the Controller twice a year, not later than January 21 and July 21 of each year; and
- (g) To inform the Controller where he considers that he is likely to become unable to meet his obligations to the purchasers.

These are onerous obligations indeed and a question that had arisen in the past was how thorough and consistent had the Ministry been in enforcing these stringent provisions of the law?

According to Ministry of Housing and Local Government statistics, the number of prosecutions conducted in the past several years were as follows:⁴

- 1990: 18 prosecutions
- 1991: 28 prosecutions
- 1992: 12 prosecutions
- 1993: 94 prosecutions
- 1994: 167 prosecutions
- 1995 (January to June): 200 cases filed in court

From 1993-96, the Ministry of Housing and Local Government had collected a total of RM1.3 million in fines from defaulting developers in 536 cases out of 622 prosecutions filed before the courts.⁵ These prosecutions were the result of 1,698 complaints from house buyers lodged with the Ministry.

Ministry statistics show that out of the 622 cases filed in court, the offences most frequently committed by the developers were:

- Advertising the sale of housing units without a permit;
- Carrying out housing projects without a valid licence;
- Not having a Housing Development Account; and
- Receiving deposits before a formal Sale and Purchase Agreement has been signed.

If the house buyers in the 1980s had been similarly active in lodging their complaints in time with the Ministry and the Ministry had been able to take effective and concerted enforcement then, the number of abandoned housing projects would perhaps not have been so large.

According to media reports, the rehabilitation of 424 abandoned housing projects (mid-1993 figures) was initially only marginally successful. Less than half (about 190 stalled projects) could be fully rehabilitated,

4. Figures provided by Ambalawan Suppiah, Assistant Secretary, Control and Enforcement Division, Ministry of Housing and Local Government, at a Housing Developers Association Malaysia Seminar on July 13, 1995.

5. Berita Harian Online, April 1, 1997, Berita Harian Internet website.

at a staggering cost of RM1.85 billion. In that initial exercise, some 32,686 units were completed, bringing cheer to some 22,850 purchasers.⁶

Much later, some 50 other projects were rehabilitated, at a cost of RM1.2 billion. Unfortunately, the rest could not be revived, with 116 of these abandoned projects classified by the Ministry of Housing and Local Government as being 'beyond rescue'.⁷

A recent report said that the Sabah state government had been able to rehabilitate five housing projects abandoned by their developers. The rehabilitation exercise was carried out by a state-owned corporation established in 1995.

Regrettably, not all states in Malaysia had taken the initiative shown by the Sabah state government. Apart from expressing their sympathies to the aggrieved purchasers, most state governments did not do anything to assist.

Housing Development Account

Section 7A of the Act (a new provision inserted by Act A703 with effect from December 1, 1988) requires the developer to open and maintain a Housing Development Account. Under this provision, unless the developer is undertaking the project on a 'build-then-sell' basis, he is required to open and maintain a Housing Development Account with a bank or a finance company for each housing development undertaken by him. The deadline for opening the account was August 31, 1991.

Where the housing project is developed in phases, the developer is required to open and keep such an account for each phase of the project. The developer is required to put into the account all payments received by him from the sale of the housing accommodation in the project and any other sum which may be required by any regulations made under the Act to be paid into such an account. The developer is not allowed to withdraw from the account except as authorised by the Housing Developers (Housing Development Account) Regulations 1991.

Section 7A was enacted specially to solve a growing problem of the 1980s – developers who siphoned off funds from projects which were currently in progress to other 'ventures' including for personal use and gratification. The Ministry of Housing and Local Government

6. The rehabilitation of abandoned housing projects was carried out with funds made available initially by Bank Negara Malaysia (RM500 million) and later by the Ministry of Finance (totalling RM1.6 billion).

7. *Berita Harian*, March 22, 1993.

has stated that the provision has been largely successful in putting a stop to this unhealthy practice.

Section 7A does not apply if a housing developer undertakes his project on a 'build-then-sell' basis. While such a system clearly benefits the house buyer (who can actually see and inspect the property before parting with a single sen of the purchase price), not many developers, including public sector agencies, are willing to implement this because not many financiers are prepared to provide financing.

If the average low-wage Malaysian, buying a RM30,000 Kancil car on hire-purchase can actually see and test-drive the vehicle which he intends to buy, why can't or why shouldn't he be given the similar opportunity to inspect a dream home he intends to buy, say a RM25,000 low-cost house?

If the 1966 Act is viewed as the legislature's maiden attempt to protect the interest of purchasers, it would seem timely to revise and update the Act, and come up with provisions that would no longer require purchasers to finance their developers who would, instead, have to secure their own financing and be allowed to sell housing units only on completion.

As a pilot project, low-cost and medium-cost houses under RM60,000 can be subject to the 'build-then-sell' basis, with the developer given a free hand to enjoy the present status quo in respect of the more expensive housing units.

Sale and Purchase Agreement

Since the Act is intended as a consumer-oriented legislation, the common law doctrine of 'freedom of contract' does not apply to the Sale and Purchase Agreement between a housing developer and the purchaser. Their contractual relationship is regulated by law and the two parties can only be allowed to enter into a standard Sale and Purchase Agreement as stipulated in the law.

Regulation 11 of the Housing Developers (Control and Licensing) Regulations 1989 states:

- (1) Every contract of sale and purchase of a housing accommodation together with the subdivided portion of land appurtenant thereto shall be in the form prescribed in Schedule G and where the contract of sale is for the sale and purchase of a housing accommodation in a subdivided building, it shall be in the form prescribed in Schedule H.
- (2) No housing developer shall collect any payment by whatever name called except as prescribed by the contract of sale.

The intention behind Regulation 11 is obvious – no housing developer is allowed to ‘contract out’ of his obligations under the law. No sum of money can be collected by the developer until the parties have signed the Sale and Purchase Agreement and thereafter further payments can only be collected in accordance with the terms of the Sale and Purchase Agreement.

Regrettably, however, a large section of the general public is still ignorant of the law. As a result, there are cases of housing developers collecting ‘booking fees’ from unsuspecting purchasers. Some of these developers had not even obtained the necessary approvals from the relevant authorities for their housing projects and the necessary developer’s licence and advertising permit from the Ministry of Housing and Local Government. Such a case was reported in Kulim, Kedah as recently as May 1997.

The duties of the developer under the standard Sale and Purchase Agreement can be briefly summarised as follows:

- (a) To sell the property free from any restrictions and encumbrances other than those conditions expressed or implied affecting the title;
- (b) Upon execution of the agreement, not to encumber the property save with the prior approval of the purchaser; and to undertake that the property shall be rendered free from any encumbrance immediately prior to the handing over of vacant possession of the building to the purchaser;
- (c) To complete the construction of the house on time, as para 7 of the standard Sale and Purchase Agreement (see Schedules G and H) states that ‘Time shall be the essence of the contract in relation to all provisions of this Agreement’. For standard housing units, the period of completion and handing over vacant possession is 24 months (para 20 of Schedule G) while for sub-divided buildings, the period is 36 months (para 24 of Schedule H);
- (d) To obtain the issuance of a separate document of title (para 10 of Schedule G), and in the case of a sub-divided building, to obtain a separate strata title (para 10 of Schedule H);
- (e) To execute a valid and registrable memorandum of transfer of the property to the purchaser (subject to the payment of the purchase price by the purchaser);
- (f) To construct the building in a ‘good and workmanlike manner’ in accordance with the description set out in the Fourth Schedule to the agreement and in accordance with the plans approved by the relevant authorities;
- (g) To construct the infrastructure, including roads, driveways, drains, culverts, water mains and sewerage plants serving the housing project as a whole in accordance with the requirements and standards of the

relevant authorities, and to maintain and upkeep the same (with the purchaser having to contribute to the costs of such upkeep) until they are taken over by the relevant authorities;

- (h) To provide services, including refuse collection, cleaning of public drains and grass cutting on the road reserves, from the time of handing over of vacant possession until the same is taken over by the relevant authorities (with the purchaser having to contribute a fair proportion of the cost);
- (i) To lay all necessary water, electricity and sewerage mains to serve the housing project, and to apply for the connection of internal water, electricity, sanitary and gas installations (if any) of the building to the mains –but not obliged to ensure that there is water and electricity flowing into the building upon its completion (the effect of an amendment in the Regulations in 1994);
- (j) To comply with ‘any written law for the time being in force’ (a number of developers have been taken to court for contravening several provisions of the Environmental Quality Act 1974 and the Occupational Safety and Health Act 1994);
- (k) To apply for certificates of fitness (CF) of occupation and, to ensure that there shall be no delay in the issuance of such certificates, the developer is required to ‘duly comply with the requirements’ of the relevant authorities;
- (l) To remedy defects, shrinkage and other faults during the defects liability period (18 months after handing over of vacant possession of the building to the purchaser).

So much for the law in theory. In practice, let us look at how it is actually being implemented.

Problem of water and electricity supply

This is one area where uncertainty in the law has led to a lot of pain and suffering on the part of house purchasers.

Until the 1989 Regulations were amended in 1994 (effective from August 1, 1994), there was some doubt to whether or not ‘completion’ means that water and electricity supply has been connected to the building – in other words, whether water and electricity supply is actually available on the premises. Judicial decisions on the matter have been evenly divided.

In *Kandasamy a/l Sreenivasagam v Syarikat Muzwina Development Sdn Bhd* (1990) 1 MLJ 15, Justice Abdul Malek held that vacant possession must include electricity and water.

In *Charles Muriel (f) v Newacres Sdn Bhd* (1994) 2 AMR 23:1145, the same issue came before the Shah Alam High Court, upon hearing an appeal from the decision of a Sessions Judge. Justice Abu Mansor held that vacant possession must include electricity and water.

However, in *Tay Ket @ Chan Kong Seong v Bumibakti Development Sdn Bhd* (1994) 2 AMR 35:1833, Justice Wan Adnan expressed a different opinion. The judge held that under the 1982 Regulations (the applicable law to the case), the developer (defendant) had duly fulfilled its obligations 'as soon as the defendants had energised the sub-station to enable electricity to be connected to all the houses in the project'.

In *Salmah binti Sulaiman & Anor v Metroplex Development Sdn Bhd* (1994) 3 AMR 47:2514, Justice Siti Norma held that under the applicable law to the case – Rule 12(1)(l) of the 1970 Rules – the developer's obligation:

...is only to connect the outside electricity and water mains to the internal electricity and water mains and not to the flow of water and electricity, for which deposits had to be made to the appropriate authorities and there may well be a delay in the tendering of such deposits, not to mention the delay that may be caused by the authorities concerned in the actual supply of such amenities.

In *Hoya Holding Sdn Bhd v Chia Thin Hing & Anor* (1994) 3 AMR 48:2532, Justice Abdul Malik Ishak said that:

In my judgment ... there must be water and electricity supplies actually running through the internal water pipes, electric lines and power lines in the dwelling house before the question whether or not vacant possession has been delivered could be considered.

Malaysian house buyers must surely insist and expect that the handing over of vacant possession of completed houses can only be effected if and only if the water and electricity meters have been installed and energized within the completed houses. This seems to be the trend and thinking of the Malaysian Courts...

While the legal uncertainty (and contradictory case-law) continues unresolved, the purchasers' problem was further aggravated by the attitude of most local authorities that as long as the completed houses have not been issued with certificates of fitness for occupation, the authorities will not allow water and electricity to be connected to the premises. In 1993, Selangor Waterworks Department director Liew Wai Kiat was reported as saying that water supply will not be connected to phase two of Taman Pandan Mewah houses in Ampang until the certificates of fitness have been issued by the local authorities. He was quoted saying, 'The only way for them to get their water supply is to produce the certificate of fitness'.⁸

8. *New Straits Times*, December 28, 1993.

This unhappy state of affairs has made victims of innocent people. Consider, for example, the plight of purchasers of low-cost flats in Taman Muliajaya, Ampang Tasik, who had reportedly been left 'high and dry' for 18 months after the developer had given them 'vacant possession' of their properties.⁹

The uncertainty, for better or for worse, was finally resolved in the 1994 amendment. For housing projects launched after the amendment came into force (August 1, 1994), the developer is only required to ensure that water and electricity supply is 'ready for connection'. The phrase 'ready for connection' has been defined in the amended regulations to mean:

- Water and electrical fittings have been installed by the developer;
- The fittings have been tested and commissioned by the appropriate authority; and
- Supply is available for tapping into individual homes.

While the amendment is welcomed in having finally resolved the uncertainty, the substance of the amendment can hardly be said to be good news for house purchasers.

Problem with certificates of fitness

This is the second area which has caused immeasurable anxiety and distress to house purchasers.

The local judiciary is generally in agreement that 'The certificate of fitness for occupation is... distinct and separate from the issue of vacant possession...' as cited in *Syarikat Lean Hup (Liew Brothers) Sdn Bhd v Cheow Chang Thai* (1988) 3 MLJ 221.

In *South East Asia Brickworks Sdn Bhd v Maria Antonette* (1974) 2 MLJ 46, Justice Abdul Hamid (as he then was) said that 'completion' does not mean that the developer must have obtained a certificate of fitness for occupation of the building. In the judge's opinion, to do so would be to import 'a term which was not within contemplation of the parties and would have the effect of frustrating the contract'.

As far as the purchaser is concerned, the legal position with regard to completion of the house, vacant possession and the issuance of certificates of fitness may be summed up as follows:

- (a) Within 24 months (or 36 months in the case of subdivided buildings), the property bought by the purchaser must be completed by the developer and handed over to the buyer. Keys must be given to the purchaser. It does not follow that the purchaser can immediately

9. *Malay Mail*, April 5, 1993.

occupy the house, that is, not until and unless the certificate of fitness has been issued by the authorities.

- (b) It was originally thought that water and electricity supply must actually be connected to, and flowing in, the building when vacant possession is handed over to the purchaser. Effective from August 1, 1994, the legal uncertainty has been put to rest – the developer now knows that he need not discharge that duty to the purchaser.
- (c) Everything that needs to be done by the developer must have been done to comply with the requirements of the appropriate authority for the issuance of a certificate of fitness. However, the developer is not required to guarantee when the certificate of fitness will be issued.

The problem for the purchaser is that, as long as the certificate of fitness has not been issued by the relevant local authority, he cannot legally occupy the house, even though in law he 'is deemed' to have taken delivery of the house.

In one case at the end of 1993, some 100 house buyers of Bandar Puchong Jaya still could not get their certificates of fitness because the developer had not built an access road as outlined in the development plan. What the developer did in this case was to upgrade an existing temporary access road.¹⁰

Media reports in late 1993 highlighted the fact that some 200 buildings in Kuala Lumpur were issued with temporary certificates of fitness. The question is, how temporary is temporary? It would appear that in some cases, the temporary certificates were renewed as many as six times.

The causes for the delay in issuing the certificates of fitness had been attributed to several things such as non-completion of drainage and sewerage works and landscaping, non-payment of development charges, unauthorised alterations and failure to clear the site.

In another case, the Hulu Langat District Council said it would not issue a certificate of fitness to a condominium project until the developer has satisfied the authorities that it has taken appropriate 'safety measures' for the project.¹¹

Although local authorities had in the past been urged by the Ministry of Housing and Local Government to issue temporary certificates of fitness in certain cases which merit such an issuance, the Ministry announced in early 1997 that such a practice was to be discontinued. Developers and purchasers believe that irrelevant conditions imposed by many local authorities 'have resulted in delayed issuance of certificates of fitness

10. *New Straits Times*, December 9, 1993.

11. *Utusan Malaysia*, August 28, 1995.

for buildings throughout the country, preventing thousands of owners from moving into their premises'.¹² Some of the conditions considered irrelevant include:

- Requirement of a Bumiputera quota;
- Developer to maintain sewerage system even after the issuance of certificate of fitness;
- Developer to grow plants to a certain height; and
- Developer to carry out landscaping works.

On January 10, 1996, the Cabinet directed all local authorities to issue certificates of fitness within 14 days of a building having met all structural and legal requirements. This directive followed a joint study by the Ministry of Housing and Local Government and the Malaysian Administrative Modernisation and Management Planning Unit (Mampu), which found that many house owners were compelled to wait for indefinite periods for certificates of fitness even though they had been given their keys by the developers.

Local authorities should emulate the Kuantan Municipal Council. In March 1997, the Housing Ministry confirmed that the Kuantan local authority was able to issue certificates of fitness within two days of the application – provided all documents were in order.

Problem with encumbrances

Under the earlier 1970 Rules, the developer was not allowed to subject the land to any encumbrances without the approval of the purchaser after the contract of sale has been signed: rule 12(1)(a) and (b). If the purchaser gives his approval, the developer had to ensure that the land would be free from any encumbrances on the date when vacant possession of the property was to be given to the purchaser. These provisions are now contained in the schedule to the 1989 Regulations, in the form of a developer's covenant to the purchaser. The covenant is divided into two parts. First, the developer undertakes that after the execution of the Sale and Purchase Agreement he will not charge the land without any prior consent of the purchaser. Second, assuming he had obtained the purchaser's consent and had then charged the property, he must discharge it immediately before he is required to deliver vacant possession of the property to the buyer.

The rule of prudence to be observed when buying properties without titles (whether they are sited on terra firma or are 'bungalows in the air') is to ensure that the developer has a solid reputation. Law reports are littered with many cases of purchasers being left in the lurch by developers – their

12. *New Straits Times*, August 5, 1995.

dream homes in shambles, their precious investments down the drain. This happens when the developer is unable to proceed with the project and the bridging financier has to commence foreclosure proceedings.

Defective housing

In April 1994, Housing and Local Government Minister Datuk Dr Ting Chew Peh commented that the 'relevant professional bodies' in the construction industry should closely examine the reasons for their members 'not delivering fully on the standards and ethics'. In a long-awaited move to arrest the decline in standards, he said the Ministry will 'tighten construction laws' to 'restore the confidence in the industry'.

The Minister's remarks on the local construction industry have a direct bearing on the subject of housing because quality homes, as a finished product, can only be delivered by a professional body of contractors. Such homes cannot come into being without the latter.

Examples of defective houses arising from poor construction work are legion. An example often cited is a major housing project, consisting of 1,800 low-cost flats and terrace houses at Bandar Indera Mahkota, Pahang, which was undertaken by the Pahang State Economic Development Corporation.¹³ The contractor for the project was a joint-venture company set up by the Pahang SEDC and a South Korean company. Soon after the housing project was completed, complaints started surfacing – cracked walls and floors, collapsing door frames, generally shoddy workmanship, sub-standard building materials, cement bags and styrofoam stuffed into walls instead of bricks, and shoddy wiring which short-circuited when rain water seeped in. The project was ultimately condemned as unsafe and the residents were resettled by the SEDC.

Several quarters have suggested to the authorities to consider enacting a legislation similar to the United Kingdom Defective Premises Act 1972. The Housing and Local Government Ministry has not indicated whether it is prepared to introduce this in the near future.

On May 12, 1994, the Housing and Local Government Minister said that complaints on housing projects have increased due to the corresponding increase in the number of housing projects undertaken. Statistics disclosed by the Ministry at a Housing Developers Association Malaysia Seminar on July 13, 1995 showed the extent of the problem:

- 1990: 446 complaints
- 1991: 414 complaints

13. *New Straits Times*, January 3, 1994.

- 1992: 452 complaints
- 1993: 507 complaints
- 1994: 642 complaints

The normal complaints were shoddy workmanship, late delivery of houses, inability to get the certificate of fitness on time, no water and electricity connection, poor infrastructure works at the site and houses not built according to specifications or in contravention of current regulations.

Attempts have been made to resolve the issue. Remedial steps taken include requiring developers to submit statements and progress reports every six months, and ad hoc site inspections by Ministry officials.

A promising sign surfaced in February 1997 when the Housing and Local Government Minister announced the federal government's offer to provide incentives to developers to build 'zero defect' houses. It was announced that a technical committee had been set up to draw up guidelines for the scheme and that the types of incentives offered would be publicised later. However, to date the guidelines have yet to be made known to the public.

What have been publicised are statistics of complaints by purchasers regarding defective housing. According to the Minister, the number of complaints 'had not decreased' over the years. In 1996, Selangor had the highest number of complaints with 433, followed by Kuala Lumpur with 177, Penang with 111 and Perak with 106.¹⁴

Ensuring open spaces

Reports from several states, including Selangor, show that continuity in the provision of open spaces in housing estates cannot be taken for granted. When purchasers buy properties in a housing estate, they expect that open spaces and recreational areas (as designated in the housing estate's layout plan at the time of purchase) will remain as they are over time. However, in several housing projects, this was not the case. The open areas were subsequently alienated, sometimes to the same developer and at times to other enterprising applicants. What was a green lung yesterday can turn into a multi-storey apartment today.¹⁵

14. For detailed statistics regarding complaints from house buyers for the period 1990-95, see also Dr AB Marbeck, 'The Legal and Administrative Framework for Promoting Healthy House Development and Housing Finance: The Private Sector Viewpoint', paper presented at the National Housing Convention, Kuala Lumpur, May 26-27, 1997.

15. *New Straits Times*, July 25, 1994.

In the face of increasing complaints by distressed house owners, the Housing and Local Government Minister finally took action in March 1997 to request all state governments to discontinue the practice of degazetting such open spaces and turning them into development sites. Commenting on this, the Chief Minister of Penang was quoted as saying that he would 'heed the Ministry's advice' but he wanted concrete and clearer guidelines.

In Selangor, the Menteri Besar acknowledged that land officers sometimes 'overlooked' and approved applications for development projects without realising that the open areas had been gazetted for other purposes, such as recreation. He agreed that open spaces must be left in their present state and that land officers 'must automatically reject applications to develop them'. Asked about an instance in Subang Jaya, where approval had been given to build a condominium project at a playground, the Menteri Besar admitted that it was a mistake and said the matter had been duly rectified.¹⁶

Other applicable legislation

The Housing Developers Act 1966 is not the only legislation affecting developers in the country. Another statute which has in recent times gained equal prominence and demanded equal attention from the developers is the Environmental Quality Act 1974.

An excellent example is the case of Puncak Permata Sdn Bhd, which pleaded guilty to a charge (four counts) under section 22(1) of the Act for discharging smoke and dust into the air by burning wooden construction materials without a licence. Counsel for the developer told the court that the open burning was carried out by one of its subcontractors. The subcontractor had burnt the waste materials without supervision after the developer's engineer had left the construction site at the end of the day. The Sessions Court imposed a fine of RM10,000 or three months jail for each of the offences.

Among the other statutes affecting the housing developer are the following (not an exhaustive list):

- (a) Town and Country Planning Act 1976 (applicable to Peninsular Malaysia only, since Sabah and Sarawak have their own respective legislation);
- (b) Street, Drainage and Building Act 1974 (applicable to Peninsular Malaysia only, since Sabah and Sarawak have their own Local Government Ordinances);
- (c) Strata Titles Act 1985 (for Peninsular Malaysia only. Sarawak has its own Strata Titles Ordinance 1995 but there is no equivalent legislation in Sabah); and

16. *New Straits Times*, March 19, 1997.

(d) Uniform Building By-laws 1984.

Apart from primary and subsidiary legislation governing their activities, housing developers are also required to conform to various guidelines issued by the relevant authorities. One of the latest guidelines issued by the Housing and Local Government Ministry in May 1997 required developers to take steps to ensure that the topography and vegetation at the development site are preserved.

Malay reserve land

Need for Malay reservation land

In a speech delivered at the United Malays National Organisation (Umno) General Assembly in October 1996, Prime Minister Dato' Seri Dr Mahathir Mohamad, said that 'we (Malays) are here, living in our own country' – which means that 'we are masters of our destiny, masters in our own country'. If that is indeed true, then 'Why do we need a Malay reservation?' he asked. It was a question to which no one in the assembly had a good answer.

The Prime Minister added that if we were to visit the United States and seek out pockets of poverty there, we would find them in the Red Indian reservations. He asked whether the Malays could call these people, who were compelled to settle in the reservations, 'masters in their own lands'. Turning his attention to the future, the Prime Minister promised that 'One day, we will no longer need such Malay reserve land. We want the Malays to be as well-off as the others in this country and that all land will have the same economic value.' Will that promise be fulfilled in the present generation or the next?

General overview of the law

What we have in Malaysia today is not just one law on Malay reserve land but six separate pieces of legislation. For the former Federated Malay States (Selangor, Perak, Negri Sembilan and Pahang), the law is contained in one uniform legislation – the Malay Reservation Enactment (Cap 142), which had been in force since 1913, and amended and updated from time to time. In addition to that, we have five other state enactments – one each for the former unfederated Malay states of Kelantan (1930), Kedah (1931), Perlis (1935), Johore (1936) and Terengganu (1941). There is no equivalent law for Melaka, Penang, Sabah and Sarawak although Melaka does have its Malay customary land (MCL), estimated to be about a quarter of all alienated land in the state.

Admittedly, while there are differences in several aspects of the law, they cannot be regarded as fundamental in nature. Generally there are common

threads running through the fabric of the law in the Cap 142 and the other five state enactments. These similarities are summarised as follows:

- First, there is a blanket prohibition against alienating Malay reserve land to non-Malays. While the National Land Code 1965 gives wide powers to the state authority to alienate land to whomsoever it wishes, whether in perpetuity or for a term of years (not exceeding 99 years), the enactment categorically states that no Malay reserve land can be alienated to non-Malays.
- Second, there is also a blanket prohibition against all forms of land 'dealings'. While the National Land Code 1965 empowers a proprietor to enter into any 'dealing' in respect of his land (such as transfers leases, charges, liens and easements), the enactment clearly states that he cannot do so if the other party is a non-Malay. Any dealing entered into with a non-Malay affecting Malay reserve land is null and void.
- Third, the enactment also prohibits certain actions affecting the land, covering restrictions on dealings by attorneys, on caveats based on lien by deposit of titles, on other caveats, on attachments in execution, and on trusts being created in favour (or for the benefit) of Malays.

Creating 'artificial Malays'

Since land is regarded by the banking and financial sector as the best security for all forms of term loans and other financing facilities, the authorities have long realised that opportunities for such facilities must not be closed to owners of Malay reserve lands. A way out must be found to enable owners of Malay reserve lands to charge their properties as security for badly needed funds.

The solution was found by invoking section 17 of the Federated Malay States Enactment (Cap 142) and its Second Schedule. A similar approach was also taken in the other five states, under their own respective legislation. Thus by legal fiction, the law witnessed the gradual birth of more and more 'artificial Malays'. Through this legal mechanism, various agencies and commercial banks became 'Malays' for the purposes of the enactment, thereby enabling them to accept Malay reserve lands as security for loans granted to their owners.

Consequently, while there is a general prohibition against dealings in Malay reserve land, the mortgage of such land to certain institutions is permitted—because by legal fiction these chargees are considered 'Malays'. Call it legal acrobatics if you must, legal ingenuity if you want, but it underscores the age-old adage 'necessity is the mother of invention'. The law is no exception.

Weaknesses and criticisms

Critics have viewed Malay reservation law as a relic of a distant age when Malays were regarded by former colonial masters as simple and uneducated village folks, devoid of any political clout and bereft of any substantial economic strength. Thus, so the argument goes, since these people were unable to fend for themselves, they had to be provided with some legal safeguards to prevent their landed properties from falling into non-Malay hands.

The question that arises now is whether the present and future generations of Malays who are educated, assertive, entrepreneurial in spirit and body, politically united and strong, still need such a legal crutch. Beyond this, others have raised several other questions revolving around:

- Whether the law itself is not an anachronism;
- Whether as a state policy it has brought any real, lasting and substantial benefits to the Malays;
- Whether, assuming it had indeed been beneficial at one time, it had outlived its purpose; and
- Whether as a piece of legislation, it is now totally irrelevant and should be expunged from the statute book.

The present generation of Malays is markedly different from the Malays of yesteryears. In distant times, the Malays were farmers, padi growers, fishermen, smallholders – essentially a peasant community. Since the 1970s, more so in the 1980s and 1990s, the Malays have become traders, shopkeepers, businessmen, technocrats, bureaucrats, administrators, seasoned politicians and global entrepreneurs. In the context of these changes, should the Malay reservation law remain in its current mode and content?

In the constitutional context, many Malay scholars, politicians and land administrators share the opinion that there is no longer any valid reason, under prevailing circumstances in the nation, why the term ‘Malay’ (as defined in these six statutes) should continue indefinitely to bear different meanings – as they do now. Likewise, while there may be historical justifications for such a difference in the past, there is no reason for the term ‘Malay’ in Malay reservation enactments to continue to have a different meaning from that of the Federal Constitution.

A close examination of the current use of Malay reserve lands indicate that, except for minor exceptions in certain locations such as south Johor, the coastal area of Pahang and pockets of growth areas in the Klang Valley, most Malay reserve land is left idle by their owners. In addition, these lands are mainly uneconomic in size, isolated or excluded from mainstream development, and of comparatively lesser value.

Developing Malay reserve land

In October 1996, the Cabinet directed the Ministry of Land and Co-operative Development to undertake a study to determine how idle Malay reserve land could be developed. Ministry Parliamentary Secretary Datuk Fauzi Abdul Rahman said one of the study's aims was to determine whether the development of Malay reserve land could be undertaken jointly by their owners in collaboration with non-Malay developers, assuming that the owners were in no position to undertake the development work on their own. He added that since land is a state matter under the Federal Constitution (see Schedule 9 Part II), it is up to the state governments to decide how best to develop idle Malay land. By way of example, he said, Pahang had been developing Malay reserve land along its coastline into tourist resorts.

In November 1996, Land and Co-operative Development Minister Datuk Osu Sukam said the Ministry would recommend to the National Land Council and the Cabinet that owners of Malay reserve land be allowed to lease their lands to non-Malays, for a period not exceeding 30 years, for purposes of development. Asked to comment on this, the Prime Minister said the proposal had to be studied closely, the main consideration being whether it will indeed best serve the interests of the Malay owners.

In August 1997, the Deputy Minister of Land and Co-operative Development, Dr Goh Cheng Teck, reiterated that the government intended to develop Malay reserve land in the near future with non-Malays given the option to lease it for a maximum of 30 years. Stating that the government would decide on this soon, Goh said that feedback from the Malay owners indicated that they were agreeable to such an idea.

Other recommendations and suggestions were also put forward by participants of a Conference on Malay Reserve Lands in November 1996. Organised jointly by Universiti Kebangsaan Malaysia's Economic Faculty and the Perak state government, the conference recommended, *inter alia*, that the government:

- Set up a land bank consisting of Malay reserve land;
- Pass a new law to enable the amalgamation of small uneconomic lots as a necessary prelude to development (apparently such a law exists in Taiwan, South Korea and Japan);
- Amend the law so that Malay reserve land can be leased to non-Malays for purposes of development;
- Set up a National Malay Reserve Council, so that uniformity in the law can be achieved;
- Set up a Malay Reserve Land Trust Fund (to serve as a ready source for funds to carry out development);

- Develop Malay reserve land through privatisation; and
- Request the state governments to identify Malay reserve lands with high potential for future development.

While not all of these recommendations may be sound, nevertheless they merit careful consideration by the appropriate authorities. Whether Malay reserve land is located in the heart of an exploding metropolis (like Kampong Baru) or deep in the fringes of remote villages, the aspirations of their owners are still the same, that is, to improve their circumstances in tandem with their neighbours.

What of the future?

Malay reservation law is no excuse for areas such as Kampong Baru to continue to be a distressing spectacle of urban poverty while the surrounding real estate has more than quadrupled in value and gained the reputation for becoming the most highly-valued Golden Triangle in the nation.

If the country's principal land legislation (the National Land Code 1965, especially sections 115, 116 and 117) had been implemented and enforced effectively by the land administrators, there would be no idle land in the nation. Under the Code's three provisions affecting agricultural, building and industrial lands, any alienated land left idle for more than three years would be subject to several options which could be taken by the state authority to remedy the situation. The state authority could forfeit the land on the grounds that there has been a breach of condition under sections 127 and 128 of the Code. Alternatively, it could take possession of the land for purposes of cultivation and development, either by itself or by appointing a private sector outfit to do so by way of privatisation (section 129 of the Code).

In July 1994, the Selangor state government boldly announced that owners of Malay reserve land 'need not go through the hassle of getting approvals from various departments to develop their land'.¹⁷ The then Menteri Besar, Tan Sri Muhammad Taib, said this move was intended 'to uplift the living standard of the Malays, besides getting them involved in the economic development of the state'. The initiative was aimed to accelerate the pace of development for the state to become industrialised by the year 2005. According to media statistics, Selangor has 70,000 hectares of Malay reserve land, situated in Sepang, Sabak Bernam, Kuala Selangor, Ulu Selangor and the Klang Valley. Under the

17. *New Straits Times*, July 25, 1994.

procedure, owners of Malay reserve land merely have to 'check with the town planning department as to what their site had been zoned for and carry out the development projects accordingly'.

It is an open question whether this procedure had actually been implemented since the 1994 announcement. According to a 'lawyer turned developer' in Klang (name withheld upon request), it appears that the 'waiting time' for approval of new housing projects remains as before – anything between two to three years.

The future of Malay reservation land lies in the hands of two sets of people – the owners themselves and the authorities¹⁸. Landowners must learn to adapt to changing times and act accordingly, and the authorities must have a vision of what the future of Malay reservation land will be and implement the appropriate strategies to achieve that vision.

II. CURRENT ISSUES AFFECTING HOUSING INDUSTRY

Housing in Malaysia

The concept of 'housing'

Professor Parid Wardi aptly said that 'housing is more than just houses'.¹⁹ Housing projects, in the Malaysian context, do not just take into account the building of housing units but also incorporate the provision of various prescribed facilities and amenities, and the safeguarding of the environment. In short, the housing industry's role is not just to build houses but to build quality and decent homes. Professor Parid has correctly noted that according to the dominant view in the context of the Malaysian situation, housing is seen as an end, a product, and an object to be possessed. Importance is therefore placed on its physical form, standards, facilities, quality of construction and physical infrastructure. From the perception of it being seen as a product, only two issues need to be considered – how to build quickly and cheaply, and how to secure the necessary financing.²⁰

18. As of January 1, 1995, the size of Malay reserve land in the country was 4.4 million hectares (*New Straits Times*, August 18, 1997).

19. See Parid Wardi Sudin, 'Low-Cost Housing', paper presented at the National Housing Convention, Kuala Lumpur, May 26-27, 1997.

20. Parid Wardi Sudin, *op cit*.

Affordable housing

One of the declared objectives of the national housing policy is to provide all Malaysians, particularly those in the lower income categories, accessibility to adequate and affordable housing. 'Accessibility' here implies that there must be an adequate supply of housing units for the purchaser to choose from and to buy, while 'affordability' means that the prices of such houses must be within the range for which the prospective purchaser can readily obtain the necessary end-financing to facilitate his purchase.

As the average monthly household income of the typical Malaysian is just over RM1,500 (1993 figure), this means the average Malaysian house buyer can only afford low and medium-cost houses. If the average house buyer were to purchase a housing unit costing more than RM100,000, he would find it difficult to obtain end-financing, since standard banking practice dictates that the monthly repayment of a housing loan should not be more than one-third of a person's salary. Availability of flexible and long-term financing must therefore be considered as an integral element in the question of affordable housing, since very few Malaysians (if any) are in a position to buy their houses in cash.

Surprisingly, some quarters hold the view that the current monthly repayment amounts are well within the means of most Malaysian wage-earners.²¹ However, this view was based on the assumption that the loan repayment period is extended over 20 years. Dismissing the 'lack of affordability' as only 'perceived' (and therefore not 'real'), David Chua said 'the present generation of first time house buyers are able to afford houses well above the repayment scheme applicable to the low-cost, low medium-cost and medium-cost house types'.²² With regard to future price trends, he noted that, based on the experience of the last three decades, the increase in wage levels has been able to keep pace with the increase in residential property prices. He also stated that 'it is the affordable levels that dictate residential price levels'.

21. David Chua, 'Will Tomorrow's Houses Be Priced Out of Reach of Tomorrow's Generation?' paper presented at the National Housing Convention, Kuala Lumpur, May 26-27, 1997.

22. The fact that David Chua omitted to mention 'high-cost' houses is taken to imply that he has doubts about the affordability of houses beyond RM100,000.

Quality homes

Accessibility and affordability of housing will not be of much benefit if purchasers were not provided with quality homes. As noted in the United Nations Habitat II Conference in Turkey in 1996: 'Adequate shelter means much more than just having a roof over one's head. It also means privacy, adequate space and security, a place with which to thrive...' ²³

If the houses are in areas heavily polluted by noise, dust, uncollected rubbish, etc, constantly subjected to flash floods or threatened by rivers of mud from adjoining hills where development is ongoing, can they be considered to be quality homes where the owner can thrive? Can it be called a quality home if, just after occupying his dream home, the owner discovers that the authorities have approved the construction of a factory or the development of an industrial site in the vicinity?

The lack of quality homes, or decent housing, is clearly seen in plantation/estate housing and rural housing. ²⁴ A Navamukundan said that in the 1960s, conditions in the plantations and estates were so wretched that these living quarters became known as the 'green ghettos'. Fortunately, in recent times, legislation passed by Parliament requires minimum standards to be maintained to uplift the living conditions of people in the estates. Navamukundan has said the main reason for this distressing state of affairs is that there is 'no clear policy on what home ownership programmes for plantation workers ought to be in our society today.' ²⁵ He suggested that a tripartite working committee be set up with representatives from the government, the employer associations and the National Union of Plantation Workers to work out a programme, which should then be implemented early in view of the present trend of converting plantations into industrial parks, housing estates and high-priced recreational areas.

Rental homes

Since housing prices (other than for low and medium-cost houses) are dictated by location and the law of supply and demand, how should we respond to the

23. Cited by Meenakshi Raman in 'Housing and the Concerns of Consumers', paper presented at the National Housing Convention, Kuala Lumpur, May 26-27, 1997.

24. A Navamukundan, 'Rural Housing', paper presented at the National Housing Convention, Kuala Lumpur, May 26-27, 1997. The writer is national executive secretary of the National Union of Plantation Workers (NUPW).

25. A Navamukundan, *op cit*.

problem of the average wage earner who cannot, at least for the moment, afford to buy? What happens in the case of wage earners who are not eligible for low-cost houses and yet cannot afford higher-priced units?

Provisions have been made to take care of the needs of low-cost housing. The government has stated that the National Housing Corporation, set up in 1996, would be charged with the duty of buying low-cost houses from private developers for resale to the public. It would also buy land from state authorities to carry out low-cost housing – again to be sold to the public. However, the main focus of the corporation is directed at a specific target group. To enhance its role, it should consider ‘adding on’ to its present list of priorities that of providing decent homes for rental to those who are no longer eligible for low-cost houses but who, for the moment, still cannot afford to buy houses in the upper bracket. Having provided rental homes, the corporation should in due course allow the tenants to purchase the properties they have been occupying when they are financially able to do so.

The issue of ‘accessibility to adequate and affordable housing’, in the context of the Malaysian housing policy, must be widened to include the provision of decent shelter for rental to the homeless – as a prelude to home purchase.²⁶

Bumiputera quota in housing

The meaning of ‘Bumiputera’

The definition of the term ‘Bumiputera’ is not clear-cut. While the term may be clearly understood in the political context (as referring to Malays and the indigenous people of this country), the position is different in considering the Bumiputera housing quota at the state level.

A case in point surfaced recently in Melaka. A Malaysian citizen, a Bumiputera from Sarawak, was not allowed to purchase a housing unit reserved for Malays in Melaka. The relevant authority had refused to register the transfer of the property purchased in his name.

This episode underscores the familiar expression that in most cases, the law is several steps behind industry or commerce. Needless to say, the matter has to be attended to and the uncertainty resolved once and for all – preferably through a uniform federal legislation and not left to be dealt with separately by the state authorities.

26. Similar sentiments were expressed by Lawrence Chan in ‘Bumiputera House Ownership: The Industry Viewpoint’, paper presented at the National Housing Convention, Kuala Lumpur, May 26-27, 1997.

Determining the quota

The determination of the Bumiputera quota in the housing sector has actually never found its way into any federal law or regulation. The matter is handled wholly at state level by the relevant state authorities and, invariably, through terms and conditions imposed on developers when obtaining conversion and subdivision approvals or development orders, as the case may be.²⁷ Since 'land' is a state matter for the purposes of the Federal Constitution, the federal government has practically no say in the issuance of such approvals or development orders – except for the Federal Land Committee in the case of the Federal Territory of Kuala Lumpur.

The imposition of a Bumiputera quota at the stage of the granting of approval by the state authorities has been judicially noted and recognised as wholly legitimate and completely in order – see *Khaw Daw Yau v Kin Nam Realty Development Sdn Bhd* (1983) 1 MLJ 335.

Based on existing data, it is anticipated that by the year 2000, Malays are expected to reach 50 per cent of the total population in urban areas.²⁸ In view of this expected growth, it might be timely to review and accordingly revise the present quota of reserving 30 per cent of the housing units for Bumiputera buyers. Revised quotas could, as a start, be implemented for housing projects in Malay dominant urban areas such as Bandar Baru Bangi in Selangor, Bandar Tun Razak in Kuala Lumpur, Kampong Melayu Majidee in Johor Bahru, and other areas in the district of Kota Setar.

Enforcing the quota

The enforcement of the Bumiputera quota has met with varying degrees of success in various states. Not all states have their own Bumiputera housing divisions or departments. For example, the Kedah state government only established such a division under the purview of the State Secretary in April 1997. The move was made only after the state authorities had received constant complaints from Bumiputera buyers in the state that several developers had openly defied the imposition of the quota and had devised ways and means to sell the Bumiputera lots to non-Bumiputera buyers.²⁹

27. Lawrence Chan, *op cit.*

28. Dr Mohd Razali Agus, 'House Ownership by Bumiputeras: Achievements, Shortfalls and Proposals', paper presented at the National Housing Convention, Kuala Lumpur, May 26-27, 1997.

29. Dr Mohd Razali Agus, *op cit.* He stated: 'The quota system should be enforced to ensure that the quota is taken up by the Bumiputera buyers. State governments should also set up a Bumiputera housing unit to buy these units for Bumiputera buyers if there are no takers.'

It is not difficult for the developer to circumvent the Bumiputera quota system, if he chooses to do so. Human ingenuity has always succeeded in finding the proverbial loophole in the law.

Under the law as it stands today, the developer is not compelled to display a list of units sold and the particulars of the buyers at his office premises for public view. In this case, how is the Bumiputera buyer going to prove otherwise when informed by the developer's sales staff that all Bumiputera lots have been sold? When the appropriate waiting time for the sale of Bumiputera lots ends, the developer could then inform the relevant authorities that he was unable to sell the Bumiputera units –because there were allegedly no Bumiputera buyers interested in purchasing them – and request to be allowed to sell to non-Bumiputera buyers.

The state authorities' response to such requests varies. Some states will insist that more time be allocated for Bumiputera buyers. Other states will require the developer to hand over the unsold Bumiputera lots to their appropriate departments or agencies for them to try and sell the lots to Bumiputera buyers. However, there are states which will, without hesitation, accept in good faith what had been told to them and allow the developer to sell the lots to non-Bumiputera buyers.

Housing Developers Association Malaysia president Lawrence Chan said state government guidelines to the private sector for the release of Bumiputera lots should contain the following requirements:

- (a) Advertisements must be carried in the media to inform the public about such unsold lots;
- (b) The developer must confirm that the construction stage of the housing project has reached at least 50 per cent;
- (c) The developer must first allow the sale of the unsold lots by state agencies;
- (d) The developer must submit a sales progress report on the Bumiputera lots;
- (e) Announcements must be made through the electronic media (radio) to highlight such unsold and available Bumiputera lots;
- (f) The developer must confirm that all non-Bumiputera lots have already been sold; and
- (g) The developer must prove that he has used his best endeavours to sell the Bumiputera lots, without success.³⁰

The association has recommended that automatic release should be given to 'genuine cases' of unsold Bumiputera lots after 'all requirements have been met'.

30. Lawrence Chan, *op cit.*

A question that arises in relation to this issue is whether Bumiputera buyers who had purchased the Bumiputera quota units should subsequently be allowed to sell their houses to non-Bumiputera buyers, and if so, when? The answer to this also varies from states to state. In Johore, where Bumiputera lots are sold at an attractive discount to Bumiputera buyers, it is extremely difficult for Bumiputera owners to sell their houses subsequently to non-Bumiputeras. In other states, where the appropriate endorsement (restriction in interest) has not been made on the issue documents of title, Bumiputera owners do not face any difficulty in disposing their properties to non-Bumiputera buyers.

Registration procedures

An issue that directly affects the success of the implementation of the Bumiputera quota is the registration procedure adopted by developers when launching housing projects. Developers have openly initiated, encouraged and permitted prospective purchasers (at times in unbelievably large numbers) to queue outside their premises overnight to register their interest to purchase housing units about to be officially launched the following day. Such marketing strategy has only added fuel to the belief that if buyers do not buy now, the prices of houses will soon be beyond their means. The strategy has benefitted speculators, who have been known to employ agents to queue, register and subsequently purchase housing units for resale at hefty profit margins.

To some extent, the activities of speculators have been curbed by a recent Bank Negara Malaysia directive issued in March 1997. In guidelines to the banking and financial sector, Bank Negara Malaysia has directed that no further loans or facilities be given to borrowers if the purpose of such loans is to enable the borrowers to engage in activities which are economically non-productive and speculative in nature.

To facilitate the effective implementation of the Bumiputera quota system, a modern and open pan-Malaysian system of registration should be made available throughout the year. This system should be applied to all types and categories of houses, not just low-cost houses. Such a system would require the necessary physical and human infrastructure support and close monitoring by the appropriate authorities. Apart from ensuring that everyone will have an equal chance in purchasing a house, it would enable the authorities to identify speculators and disprove the allegations of some developers that there are no Bumiputera buyers for their houses.

Follow-up measures subsequently carried out upon registration and purchase will enable the authorities to expose the malpractices of some developers who employ Bumiputeras to act as their nominees. In a recent case in Temerloh,

Malay nominees were engaged by developers to buy the Bumiputera units in the developers housing projects.³¹ In an immediate effort to check such abuse, the relevant authorities have directed all sales of housing units under the Bumiputera quota to be handled by the Housing Division of the Pahang state government.

State intervention to preserve the quota

Media reports in July 1997 indicated that several state governments have taken the necessary steps to preserve the Bumiputera quota. A good example is Pahang, which announced the establishment of a RM200 million fund to buy unsold shop units reserved for Bumiputera buyers in private commercial projects located in strategic areas in the state. Pahang Menteri Besar Tan Sri Mohd Khalil Yaakob said the shops would be rented out to Bumiputera businessmen until such time as they are able to purchase them.

The Perak State Economic Development Corporation has set up a subsidiary company charged with the task of buying unsold houses and shoplots reserved for Bumiputera buyers in the state. Perak Menteri Besar Tan Sri Ramli Ngah Talib said the state government had allocated RM10 million to enable the company, Maju Kawal Sdn Bhd, to buy the properties, especially in urban and new growth centres. Until such time when these properties could be sold to Bumiputera buyers, they would be rented out to generate income.³²

Low-cost housing

Definition

A low-cost house is one in which the total liveable space (floor area) is approximately 650 sq ft and cannot be sold for more than RM25,000. This definition has been in existence for more than a decade. As a general rule, a low-cost house, whether built on terra firma or built upwards as walk-up flats or in high-rise buildings, is a one-bedroom affair or at the very most, a two-bedroom space.

Low-cost houses are sold at a fixed ceiling price of RM25,000 while low medium-cost houses have a ceiling price of RM50,000, as defined by Dr Goh Ban Lee. Beyond that, there is a third category—high medium-cost houses with a ceiling price of RM100,000 – and above that, the high-cost houses.³³

31. Berita Harian Online, March 25, 1997.

32. *New Straits Times*, July 24, 1997.

33. Goh Ban Lee, 'Housing In Malaysia: Inadequacy in the Midst of Plenty', paper presented at the National Housing Convention, Kuala Lumpur, May 26-27, 1997.

David Chua offers an alternative point of view. He has defined low-cost houses to be those with a ceiling price of RM25,000 (a different price structure for Johore and Penang), low medium-cost houses to have a ceiling price of RM60,000, while medium-cost houses are priced at more than RM60,000 but not more than RM100,000. Beyond that, houses are considered as high-cost and the market is wide open for the developers to exploit to the fullest, with no limitations as to price levels.³⁴

The good news is that the authorities are now in the midst of enlarging the dimension of low-cost houses and, in the process, increasing the ceiling price to RM35,000 or RM40,000 – depending on the location of the housing project.

A matter of expectation

Under the current Seventh Malaysia Plan (1996-2000), the target is to build 800,000 units of houses. Out of this figure, 29.4 per cent or 235,000 units will be low-cost, 43.8 per cent or 350,000 units will be medium low-cost, 16.3 per cent or 130,000 units medium-cost and the remaining 10.6 per cent or 85,000 units high-cost.

If the Seventh Malaysia Plan targets could be fully implemented, it will be a marked improvement from the earlier Sixth Malaysia Plan (1991-95) – that is, taking together the low-cost and the low medium-cost houses. During the earlier plan period, a total of 647,460 units were built, of which 222,672 (representing 34.39 per cent of the total figure) were low-cost houses.

According to present practice, low-cost houses are meant only for the average Malaysian worker with monthly salaries of between RM751 to RM1,500 (the so-called 'low-income group'). The problem is that there are many would-be purchasers whose monthly incomes exceed RM1,500 but who could not afford or obtain the necessary end financing to buy medium-cost units.

If and when the government approves the raising of the ceiling price of low-cost houses to RM35,000 or RM40,000, depending on house dimensions and locations, Malaysians with monthly incomes of above RM1,500 who were left out in the past could be included amongst those eligible to purchase low-cost and low medium-cost units. The term 'low-income group' has to be redefined.

Low-cost houses in urban areas are needed not only to meet the needs of the real homeless but also to resettle the squatters. Judging from the number of people who still do not possess their own homes and the ever-growing squatter communities in major urban centres across the nation, it would appear that

34. David Chua, *op cit.*

efforts in this respect have not been very successful. However, the overall picture is not totally gloomy. At least 27 projects involving some 14,721 units of low-cost flats, valued at RM573.26 million, have been approved to date for 1997 with more than half located in urban areas – Kuala Lumpur, Johor Bahru and Penang.³⁵

A matter of allocation

Earlier this year, the Housing Developers Association Malaysia, in a memorandum to the relevant authorities, urged them to take a closer look at the present system of allocating the sale and distribution of low-cost housing to the public. It said this action was necessary to check the unhealthy activities of speculators in low-cost housing.³⁶ The association also urged the authorities to impose a complete ban on the resale of low-cost houses by their present owners.

The Consumers Association of Penang said that speculation thrives today because the 'booking system' is still practised by some developers.³⁷ The continuance of such an unhealthy, in fact illegal,³⁸ tactic explains why houses can be 'completely sold out' almost immediately after their official launching date.

Incentives for private sector developers

To encourage private sector developers to build more low-cost houses, the government had drawn up a strategy of extending an attractive funding package to them under the 'Fund to Accelerate the Construction of Low-Cost Houses'. Under this strategy, loans were provided by the government to commercial banks at an interest rate of 0.5 per cent, and in turn extended to developers at a nominal interest of two per cent per year as bridging finance.

The fund had received encouraging response from private sector developers. As of August 1996, loans amounting to RM416.8 million have

35. Economic Report Summary, Star Online, 'The Star Internet website. Figures were given in the speech of Acting Prime Minister, Dato' Seri Anwar Ibrahim, in *New Straits Times*, June 24, 1997.

36. Berita Harian Online, April 8, 1997.

37. Meenakshi Raman, *op cit*.

38. Under the law, the developer is allowed to collect payment (10 per cent of the purchase price) from the purchaser only when the parties have actually signed the Sale and Purchase Agreement.

been approved for the private sector to finance the construction of 23,466 low-cost houses in 58 separate projects. Out of the 58 projects, six had been completed by early 1997, benefitting 1,531 families.³⁹

Public sector performance

For the average low-wage earner in search of an affordable home, a low-cost or at best a medium-cost house, where can he turn to? There are two sources of supply in Malaysia – the public sector and the private sector.

To the prospective purchaser, the ‘public sector’ comprises the federal government, the 13 state governments, the 13 State Economic Development Corporations, Kuala Lumpur City Hall and also other statutory bodies such as the Pilgrims Management and Fund Board (Lembaga Tabung Haji) and regional bodies such as Johor Tenggara Development Board (Kejora) and Central Terengganu Development Board (Ketengah). All others are regarded as private sector.

Regrettably, the performance of public sector housing so far has not been very encouraging. At the end of the Sixth Malaysia Plan, while private sector developers were able to achieve 100 per cent production, the public sector was only able to attain 43.7 per cent.⁴⁰

In Hong Kong, public sector housing programmes had succeeded in providing homes to at least 48 per cent of its population. In Singapore, the overall picture is even better. The Singapore Housing and Development Board (HDB), set up in 1959, was able to provide homes to 87 per cent of the island’s population by the year 1993. In contrast to the HDB’s performance, the results achieved by the Malaysian public sector have been disappointing.

However, this dismal picture might end soon if the promised injection by Petronas of RM1 billion into the coffers of the National Housing Corporation can indeed result in an accelerated supply of affordable housing units into the nation’s property market.⁴¹

Low-cost houses built and sold by the public sector are usually one-room and two-room flats in high-rise buildings, where lifts constantly break down, amenities are either not adequately provided or not consistently maintained, and the living environment is congested and altogether not

39. Economic Report Summary, Star Online.

40. For further detailed figures, see Parid Wardi Sudin, *op cit*.

41. See the announcement by Acting Prime Minister Dato’ Seri Anwar Ibrahim in *New Straits Times*, June 24, 1997.

very pleasant. Despite such conditions, the queue for public sector housing is long. At times, the quest for decent homes by the prospective purchaser is made more difficult when other factors such as political connections and patronage come into play.

There has been some recent indications that the public sector might consider building three-room low-cost flats when the ceiling price of such houses is raised from the present RM25,000 to possibly RM35,000 or even RM40,000 depending on location.

Recent developments

The government has announced that it would give priority to low-cost house applicants whose houses had been destroyed in natural disasters or had to be demolished to make way for development projects. It also stated that it would set up three special low-cost housing funds to accelerate the provision of these houses.

To ensure that low-cost houses are actually sold to eligible applicants, an open registration system will be implemented requiring applicants to register themselves with the governments of the various states where they intend to purchase or rent such units. Applicants who only intend to rent low-cost houses will have to prove that their monthly incomes do not exceed RM500. All applicants are expected to undergo a thorough selection process for short-listing by a selection panel in each state. They will have to furnish information on their age, household income, family size and their place of work, among others. In due course, the registration system in various states will be integrated into a central registry to ensure that low-cost houses are only purchased by those in the target group.

In a concerted move to deal with the problem of the hardcore poor, the government announced that grants will be provided to state governments under a RM600 million housing fund to build low-cost high density flats for rental of up to five years at a nominal monthly rental of RM120. For Kuala Lumpur, the monthly rental will be slightly higher, at RM124.

The national housing policy: A reappraisal

The role of the government

In 1987, the United Nations General Assembly endorsed a 'Global Strategy for Shelter' up to the year 2000. Pursuant to it, all governments were asked to play an 'enabling role' under its own national housing industry. Governments were also urged to make the necessary adjustments or paradigm

shifts in their national housing policies, based on the shared experiences of other countries at the Habitat I Conference in Vancouver in 1976. Governments were encouraged to be more decentralised, broad-based and community-focused in implementing their national housing projects and were reminded of the need to allow more players in the housing industry. In terms of the 'enabling role', the United Nations General Assembly urged governments to offer more incentives to the housing industry and adopt measures that will facilitate rather than hinder the participation and growth of the housing industry.

At the National Housing Convention organised by the Institute of Strategic and International Studies (Isis) Malaysia in Kuala Lumpur on May 26-27, 1997, several examples cited highlighted the fact that the state governments have failed to live up to the 'enabling role' envisaged by the United Nations. How could there be an 'enabling role' if state authorities took anything from three years to five years to approve an average housing project? This is despite the assurances made several years ago by the authorities themselves that such approval could be easily granted within 44 weeks (at the most) from the time of application.

In a Housing Developers Association Malaysia memorandum early this year, the association urged the authorities, *inter alia*, to speed up the administrative process of granting approval to the housing developers to start their projects.⁴² The association also urged the state authorities to make more land available for low-cost housing and the banking sector to provide housing loans under more flexible terms.

Safety in housing estates

Accessibility and affordability of housing will be meaningless if there is no guarantee that the owners and occupants of such houses will be safe from the undesirable and criminal elements in society.

In a move to ensure the safety of residents, a novel scheme (at least for Malaysia) was introduced recently in a housing estate in Johor Bahru.⁴³ The move was the result of a collaborative effort on the part of the developer and the Johor Police Department. A building was handed over by the developer to the police, for the latter to use as a 'Pondok Polis' cum residence for police personnel

42. Berita Harian Online, April 8, 1997. See also Lawrence Chan, *op cit*. He said: 'One of the major areas of weakness in the whole process of housing development in Malaysia is the long gestation period from land purchase to final delivery of housing units. This is largely attributable to the length of time required for processing of applications and issuance of approvals at every stage of the development process'.

43. Berita Harian Online, March 26, 1997.

assigned to the place. In addition, the developer also furnished the police with a Perodua Kancil car to make their rounds within the housing estate.

Ownership of multiple houses

At present, except for low-cost houses, there is no law which says that a person cannot own more than one house. It is also unlikely that such a law will be passed in the near future. When approached for his views on the matter, Housing and Local Government Minister Datuk Dr Ting Chew Peh said there is no intention to initiate any legislation limiting a citizen's rights to buy more than one house – except for low-cost houses.⁴⁴

Preserving the environment

Housing developments undertaken on hill-slopes and mountain-slopes (hereinafter referred to as 'hillside developments') have in the past been permitted by local authorities. The effect, at times, had been catastrophic.

Despite the tragic incident involving the Highland Towers in Ampang, Selangor, and the collapse of newly-constructed buildings in Cameron Highlands, Pahang, some time ago, it seems that some people never learn. The urge to tamper with nature and disturb the eco system appears to continue unabated. A case in point is the current proposal to develop Bukit Larut in Taiping.

However, as a result of intervention by Prime Minister Dato' Seri Dr Mahathir Mohamad, the days of hillside developments are probably now numbered. In March 1997, while on a return flight from Kuantan to Kuala Lumpur, the Prime Minister saw massive hillside development being carried out in an area in Selangor. That incident led to the Prime Minister issuing a directive to curb such development. Local authorities have been told not to grant any approvals for housing projects where trees had to be cut, and hills and mountains levelled and flattened. In cases where approvals had already been given, local authorities were instructed to liaise with the developers to make the necessary changes to the development orders or approvals.

In a related move, the Ministry of Housing and Local Government also directed local authorities to assign officials to conduct checks and physically inspect proposed development sites to ascertain for themselves the topography of the land in question before granting any approval to the developer. Following a Cabinet decision on the matter, the Ministry has also prepared and issued guidelines for developers on the preservation of topography and vegetation.

44. Berita Harian Online, June 6, 1997. Dr Ting quite correctly drew a line where low-cost houses are concerned.

Bumiputera participation in property development

Statistics on Bumiputera participation in property development are not readily available. Statistics provided by the Housing Developers Association Malaysia on its Internet website showed that a total of 609 developers are currently registered as members of the association. However there was no breakdown to show the number of Bumiputera developers. A query raised in Johore yielded the answer (reliable but not officially confirmed) that the number of Bumiputera developers in that state does not even come close to five per cent. A similar query in Kedah produced an equally disappointing figure. A personal tour of several housing projects around Alor Setar and the district of Kota Setar did not show up the presence of any fully-owned Bumiputera development company.

If the situation in Johore can be accepted as typical of the other states in Malaysia, then it can be deduced that the participation of Bumiputera developers in the housing industry is minimal. The question is why? The reasons are varied and may be attributed to:

- Lack of own capital;
- Difficulty in getting loans, for completion of purchase as well as bridging finance to undertake the project;
- No land bank;
- Inadequate skills;
- Difficulty in obtaining the necessary approvals, resulting in increased holding costs and diminishing projected profits;
- No special privileges or incentives granted by the authorities;
- Dependence on contractors and suppliers.

New Bumiputera developers are generally those with modest funds of their own. They start out with modest projects with minimal risk, but yielding modest returns. Not having any previous track record means that getting financial assistance from the banking sector will not be easy – the familiar ‘Catch 22’ situation. Delay in getting bridging finance means more holding costs. Likewise, delay in getting the necessary approvals from the state authorities for conversion and subdivision approvals and from the local authorities for building plans will also hamper the viability and profitability of the developer’s maiden project.

A number of abandoned projects on the outskirts of Muar bear testimony to this state of affairs. A mixed development project in Alor Setar, owned and managed by a Bumiputera developer, was abandoned despite a second attempt at rehabilitating it.

Bumiputera developers usually faced cash problems when the built units could not be sold at the early stage of construction. Units could not

be sold either because purchasers do not particularly like the location or they could not obtain the necessary end financing. In a particular case, involving the Laxamana Apartments in Jalan Kelang Lama, a project undertaken in the early 1980s, the Bumiputera developer was unable to complete the project and had to abandon it due to cash flow problems. The bridging financier, Bank Bumiputera Malaysia Berhad, subsequently foreclosed on the property.⁴⁵

Every industry requires its players to have the necessary skills, if they want to survive. The same goes for the housing industry. While the federal and state governments have initiated several programmes to bring about a Bumiputera business community, there is no special programme to build a corps of competent Bumiputera housing developers. That explains why, in most cases, current successful Bumiputera developers were formerly contractors.⁴⁶

Most Bumiputera developers do not have their own land bank since they lack the funds to buy landed properties for the project. They also do not have the necessary skills and initiative to locate land owners who could be persuaded to enter into joint-ventures with them. Of course, owners are also reluctant to form joint ventures with new developers because of hesitancy over their inexperience. Like other developers, Bumiputera developers face the same hurdles and delays in getting the necessary approvals, licences and permits from the various authorities. Coping with limited funds and tight budgets, Bumiputera developers usually shy away from retaining experienced and more expensive consultants and advisers. Consequently, applications for approvals are often repeatedly rejected and have to undergo numerous corrections and amendments. At the very least, applications do not progress at the speed at which they should, since consultants and advisers paid low fees would not be encouraged to exert themselves. One other reason for the scarcity of Bumiputera developers is attributed to the fact that the housing industry is very much dependent on the construction industry – which is dominated by non-Bumiputera contractors, suppliers and sub-contractors. Unless the Bumiputera developer has a Bumiputera contractor as part of his working team during the launch of the project, he would have to rely on other, non-Bumiputera contractors.⁴⁷

45. *Perwira Habib Bank Bhd v Bank Bumiputera Malaysia Bhd* [1988] 3 MLJ 54.

46. A case in point is the Safuan Group of Kuala Lumpur.

47. A housing project undertaken by the Safuan Group in Batu Pahat in the early 1980s was subsequently abandoned – partly due to poor sales and partly due to difficulties with a non-Bumiputera building contractor.

Incentives for developing Bumiputera land

Incentives can take various forms, including:

- (a) Provision of special soft loans for Bumiputera developers to acquire their land bank and to commence their projects, including term loans and bridging finance;
- (b) The expediting of procedures in processing and granting approvals such as the setting up of the 'one-stop agency';
- (c) Providing skills training for workers and support staff employed by the developer, either at government expense or at subsidised costs;
- (d) Assistance in procuring sales of the built units. If completed units are not sold, there is a standing guarantee by the public sector to buy over such units; and
- (e) Willingness on the part of the state authorities to de-gazette Malay reserve land, if such requests are made by the Malay owners, so that upon development they could offer greater returns to the developer.

The setting up of the National Housing Corporation, soon to be injected with RM1 billion in funding by Petronas, might offer a ray of sunshine to Bumiputera developers, possibly extending to assurances of guaranteeing the sales of completed units. However, with regard to the other matters mentioned above, despite assurances by some state authorities to facilitate the easy approval of projects involving Malay land, the status quo remains pretty much the same.

Legal and Administrative Framework for Housing Development and Finance: The Legislative Viewpoint

S Y Kok

Legislation for promoting healthy housing development

Housing the nation prior to legislation

After the Second World War and right up to 1966, no statutes were enacted to regulate the housing industry in Peninsular Malaysia. During those early years, the industry developed rapidly due to the migration of rural folks to the major towns in search of employment, which in turn increased the demand for houses. During that period, housing schemes were quite unlike the ones prevalent today – consisting of a few thousand units of housing accommodation in each mega housing project.

The housing schemes of the early 1950s and 1960s were small by today's standards and far in between. In those days, a project with 200 or more units was considered a fairly sizeable scheme. Housing accommodation was not built in great numbers nor at such rapid speeds of construction experienced today. Consequently, the demand for residential houses far outstretched supply. As a result, squatter colonies sprang

up overnight.¹ To add fuel to an already overheated housing industry, the government started a subsidised loan scheme enabling public servants to obtain housing loans at a preferential rate of four per cent per annum. Bank Negara Malaysia (the Central Bank) also introduced certain housing loan portfolio quotas for commercial banks and licensed finance companies to observe and fulfil, including providing loans for low-cost houses. In 1982, in the Federal Court case of *SEA Housing Sdn Bhd v Lee Poh Choo*,² Suffian LP noted: 'It is common knowledge that in recent years, especially when government started giving housing loans making it possible for public servants to borrow money at four per cent interest per annum to buy homes, there was an upsurge in demand for housing.'

The intention and effort of the government then were designed to encourage a property-owning democracy. This prompted Suffian LP in another 1979 Federal Court case of *Pengarah Tanah Dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd*³ to comment: 'Above all, in the Malaysian context, the Committee should bear in mind avowed official policy to promote development, to provide as much housing as possible ("property-owning democracy"), that promptness in approval enables purchasers to acquire property and homes at more or less current prices.'

Unfortunately, some unscrupulous persons or organisations took advantage of the demand for houses and engaged in fraudulent activities to cheat purchasers. There were many instances of purchasers being victimised in dubious ploys of shady fly-by-night operators. These operators would, for instance, put up signboards over pieces of vacant land, which do not even belong to them but to unrelated absent landowners, and invite unsuspecting house-hungry purchasers to book imaginary subdivided lots of their choice before the so-called housing projects were officially launched. Purchasers, in their eagerness to buy the so-called preferential lots ahead of the launch, would rush for such houses thus falling prey to con men who would disappear overnight after collecting deposits from the unsuspecting purchasers.

Another frequent complaint about the then uncontrolled and free-for-all housing development concerns shoddy workmanship and inferior building materials which will eventually result in sub-standard housing

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1. The case of *Sidek bin Haji Muhamad & 461 Ors v The Government of the State of Perak* (1982) 1 MLJ 313, FC is a good example of land hungry masses who illegally opened up large areas of virgin jungle and then built huts on the cleared land for human habitation.
 2. (1982) 2 MLJ 31, FC.
 3. (1979) 1 MLJ 135, FC.

accommodation.⁴ For example, in a development scheme which lies outside the building controlled jurisdiction of any local authority, a developer is under no compulsion to observe and comply with any existing building by-laws nor does he come within the supervision of the local authority. Such lack of control and supervision could possibly result in sub-standard development, such as roads with potholes, poor drainage, lower ceiling heights, narrow doors and passages, smaller living room spaces and high density with many houses squeezed into the construction area.

Under such uncontrolled housing development in the 1950s and early 1960s, various complaints were received by the then Minister of Local Government and Housing (the late Khaw Kai-Boh) who, when moving the Housing Developers (Control and Licensing) Bill for its Second Reading in Parliament on March 25, 1966, to curb malpractice in the industry, cited three instances requiring urgent redress:⁵

Case A: In November, 1964, a resident in Ipoh addressed the Minister for Local Government and Housing stating that in January 1964 he booked a terrace house from Company A for which he paid a deposit of \$1,800.00. The house cost \$9,000.00 and he was told he could occupy the house at the end of the year. At the time of writing the letter, which was 11 months later, no work had commenced. He asked for the return of his deposit but this was refused.

Case B: In June 1965 a resident of Kuala Lumpur addressed the Minister for Local Government and Housing stating that in September 1964, Company B called for booking deposits for their housing project in Gombak Road. They collected \$2,000.00 each from about 100 prospective purchasers. In about April 1965, seven months later, they obtained a second deposit of between \$3,000.00 to \$3,500.00 for the houses. Up till June 1965, nine months later, no work was commenced much to the consternation of the purchasers although completion of the houses was promised by August 1965. The writer requested the Ministry to introduce suitable legislation to control housing developers.

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4. In *Teh Khem On & Anor v Yeoh & Wu Development Sdn Bhd & 3 Ors* (1995) 2 AMR 1558, HC, the plaintiffs/purchasers signed the sale and purchase agreement in 1983 for a double-storey link house in Ipoh for RM78,500. The plaintiffs took possession of the house in November 1984. In August 1985, the plaintiffs had to move out of the house due to movement of the soil which caused the house to crack badly. Expert evidence indicated that the loose silty sand which was used to fill the construction site was unsuitable and was not sufficiently compact.
 5. Hansard, March 25, 1966, pp 7250 and 7251.

Case C: In June 1965, a resident of Klang and 16 others addressed the Minister for Local Government and Housing stating that he and 16 others booked a house each from Company C in Klang. This was in 1961, four years earlier. They paid the deposits required of them, ie, \$1,300.00 for a terrace house and \$5,000.00 for a semi-detached house and all these years the so-called developer has been making use of the money paid to him as deposits. Since then these people have been pressing the developer to build but without any response. In July 1964, Company C invited the purchasers to the Head Office in Kuala Lumpur whereupon they were told that house plans have been changed. The price of a terrace house was raised from \$5,000.00 to \$11,000.00 and the cost of land from 80 cents per square foot to \$1.20. In the case of semi-detached houses, the price was increased from \$16,000.00 to \$18,000.00. This Company called for a further deposit of \$900.00 for the terrace house and \$1,000.00 for the semi-detached. If anyone disagreed with the new arrangements, the Company was willing to return the original deposit. Despite the unfairness of the whole position the persons concerned agreed to this arrangement reluctantly.

The Houses were completed in 1964 and could not be occupied, because water and electricity had not been connected. The developer was also to blame for not having taken the necessary steps to ensure that water and electricity were available. This was taken up by the Ministry with the Town Council. On the same case, *The Malay Mail* on November 29, 1965 referred to a petition to the Honourable Prime Minister by 200 residents in Klang seeking his assistance in obtaining certificates of occupation for the new houses in the housing estate in Klang they bought four years before that. The Town Council refused them the certificates because the houses were not in accordance to plans required by the Council. The Council was trying to get the contractor to fulfil the requirements.

Such was the deplorable situation prevailing in the early 1960s. There were many errant developers in the housing industry who were only interested in making quick profits. It was timely for the industry to be controlled and regulated to achieve some semblance of orderly housing development. Legislation was imminent.⁶ The inevitable happened in 1966 when the Housing Developers Act was first introduced.

6. The Minister, *ibid*, at 7251, continued: 'I, therefore, consider that legislative measures should be taken to protect the people from bogus and or unscrupulous housing developers. Hence this Bill.'

Legislation governing housing developers

The first piece of housing legislation took the form of the Housing Developers (Control and Licensing) Act 1966.⁷ One of the principal aims and objectives of the Act is to eradicate would-be fly-by-night operators who could tarnish the image of the housing industry through their activities – such as fraudulently putting up advertising and sales signage of fictitious housing schemes on land which did not belong to them or the possession of which has not been delivered to them under some form of joint-venture development,⁸ then collecting deposits from unsuspecting purchasers and absconding with the payments.

The Housing Developers (Control and Licensing) Act 1966 – more commonly referred to as the Housing Developers Act – finally became law in Peninsular Malaysia on August 29, 1969.⁹ The Act was amended in 1972¹⁰ and revised in 1973.¹¹ There were further amendments to the Act in 1977¹² and subsequently in 1988.¹³ By virtue of section 24 of the Act, the Minister for Local Government and Housing (as the Minister was then called) is empowered to make various subsidiary rules and regulations to ensure a proper and healthy development of an already booming housing industry. However, there were no controls on the purchase price for a housing unit together with the land on which the house or flat will be constructed until much later when a maximum ceiling price of RM25,000 for each unit of low-cost housing unit was imposed by the authorities. The prices for other types of housing accommodation remain uncontrolled.

7. Act of Parliament (Act 38 of 1966). Now Act 118 of 1973.

8. Cases of joint-venture developments are *Rafeah binti Ahmad v Bank Bumiputra Malaysia Berhad* (1995) 2 AMR 1544, HC; *Kumarasamy a/l Sengainy & Ors v Revathy Development (M) Sdn Bhd* (1995) 2 MLJ 586, HC; *Omar bin Mat Ziki v Mokhtar bin Amin* (1996) 2 MLJ 687, HC; *Megapillars Sdn Bhd v Loke Kwok Four* (1996) 3 MLJ 71; (1996) 4 CLJ 82, HC and *Sri Alam Sdn Bhd v Newacres Sdn Bhd* (1997) 1 MLJ 297, CA.

9. PU(B) 212/69.

10. Housing Developers (Control and Licensing) (Amendment) Act 1972 (Act A116).

11. Housing Developers (Control and Licensing) Act 1966 (Revised Act 118 of 1973).

12. Housing Developers (Control and Licensing) (Amendment) Act 1977 (Act A402 of 1977), came into force on June 10, 1977.

13. Housing Developers (Control and Licensing) (Amendment) Act 1988 (Act A703 of 1988), came into force on December 1, 1988: PU(B) 630/88.

In 1969, three sets of rules were assembled by the authorities to meet the urgent requirements of the times – the Housing Developers (Licences) Rules 1969,¹⁴ the Housing Developers (Advertisement) Rules 1969,¹⁵ and the Housing Developers (Sale of Housing Accommodation) Rules 1969.¹⁶ The 1969 Licensing Rules have undergone the most number of changes. Less than a year after its inception, the Licensing Rules of 1969 were found to be inadequate and were repealed the following year and replaced by the Housing Developers (Control and Licensing) Rules 1970.¹⁷ After another 12 years of trial and error, the 1970 Rules were repealed and replaced in 1982 by the Housing Developers (Control and Licensing) Regulations 1982.¹⁸ The 1982 Regulations introduced, for the first time, a standard format for the sale and purchase of houses which have yet to be built. The standard contract took the form of the Schedule E agreement. However, the 1982 Regulations were in turn repealed and replaced by the Housing Developers (Control and Licensing) Regulations 1989 which is currently the applicable law.¹⁹ The new standard contract, in the form of Schedules G and H, were then introduced to replace the Schedule E contract. The 1989 Regulations have been amended in 1994 by the Housing Developers (Control and Licensing) (Amendment) Regulations 1994²⁰ which substituted the phrase ‘with the connection of water and electricity supply’ with a new phrase ‘to which water and electricity supply are ready for connection’ so as to clarify and pinpoint the exact time when vacant possession of the completed house is expected to be delivered or is deemed at law to

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14. PU(A) 29/69, came into force on August 29, 1969: PU(B) 210/69.
 15. PU(A) 30/69, came into force on August 29, 1969: PU(B) 211/69.
 16. PU(A) 31/69, came into force on August 29, 1969: PU(B) 209/69. This latter set of rules was amended by the Housing Developers (Sale of Housing Accommodation) (Amendment) Rules 1969: PU(A) 118/69.
 17. PU(A) 268/70, came into force on July 15, 1970.
 18. PU(A) 122/82, came into force on June 1, 1982.
 19. For an account of the dates on which such Rules and Regulations took effect and a brief account of these rules and regulations, see Salleh Buang: *Law on Housing Developers* (1993) Central Law Book Corporation, Chapter 2 and Visu Sinnadurai: *Sale and Purchase of Real Property* (1984) Butterworths, Chapter 13.
 20. PU(A) 359/94, came into force on August 1, 1994.

have been delivered.²¹ The Housing Development Account was also introduced via the Housing Developers (Housing Development Account) Regulations 1991.²²

Aims and objectives of the Housing Developers Act

The preamble of the Act states that its aims and purposes are to control and license the business of housing development, albeit its main purpose is to protect innocent purchasers from being cheated by unlicensed developers or perhaps by licensed and yet unscrupulous developers. Thus, in the Federal Court case of *SEA Housing Sdn Bhd v Lee Poh Choo*,²³ Suffian LP observed: 'It is common knowledge that in recent years, especially when government started giving housing loans making it possible for public servants to borrow money at four per cent interest per annum to buy homes, there was an upsurge in demand for housing, and that to protect home buyers, most of whom are people of modest means, from rich and powerful developers, Parliament found it necessary to regulate the sale of houses and protect buyers by enacting the Act.'

Similar judicial sentiment was expressed by VC George J (as he then was) in the High Court case of *Khai Daw Yau v Kin Nam Realty Development Sdn Bhd*²⁴: 'The scheme of the Housing Developers (Control and Licensing) Act 1966, and the Rules of 1970 is to provide a measure of protection to purchasers of housing accommodation in a housing development against unscrupulous developers.'

In an earlier case of *Gan Hoe @ Gan Buan & Anor v Golden Century Development Sdn Bhd & Anor*,²⁵ Mohd Yusoff bin Mohamed J, sitting in the

21. See SY Kok's articles: 'Does Delivery of Vacant Possession include the Energizing of Water and Electricity Supplies?' (1993) 4 CLJ ix and 'Its Sequel' (1994) 4 CLJ xxiii. See also footnote 67, *infra*.

22. PU(A) 231/91, came into force on August 26, 1991.

23. (1982) 2 MLJ 31, FC. At the initial trial of the action, Mohamed Dzaidin JC (as he then was) took the view that the Act and the 1970 Rules which then governed the facts of the case were to protect the interests of the public at large and hence the developer could not contract out of the provisions of the 1970 Rules. See also the cases cited in footnote 46, *infra*.

24. (1983) 1 MLJ 335, HC.

25. (1981) CLJ 89 at 90, HC. In *MK Retnam Holdings Sdn Bhd v Bhagat Singh* (1985) 2 MLJ 212 the Supreme Court, at page 213D, said: 'The primary object of that legislation is to protect the weak against the strong.' This case was referred to by Anuar J in *Keng Soon Finance Bhd v MK Retnam Holdings Sdn Bhd (Bhagat Singh s/o Surian Singh & Ors, Interveners)* (1996) 2 MLJ 431, 453C; (1996) 4 CLJ 52, 73e, HC.

High Court at Johor Bahru, opined that the Housing Developers (Control and Licensing) Rules 1970 is designed to control developers and to protect bona fide purchasers of housing accommodations as provided under rule 10(3): 'For purposes of this Rule the term "booking fee" shall include any payment by whatever name called which payment gives the purchaser an option or right to purchase the housing accommodation including the land.'

Likewise, in *Yeo Long Seng v Lucky Park (Pte) Limited*,²⁶ the High Court in Singapore shared the same opinion that the Singapore Housing Developers (Control and Licensing) Ordinance, 1965 is intended to regulate and control developers and to protect bona fide purchasers of housing accommodations.

The business of housing development

The Act, in its preamble, spells out that it is designed to control and license the business of housing development in Peninsular Malaysia.²⁷ Although the root words 'housing development' have been defined in the Act, yet the phrase 'business of housing development' has not been defined by the Act. Its meaning, therefore, has to be extracted from the day-to-day housing operations as well as from the normally accepted practices of the housing industry. Thus, the business of housing development in Peninsular Malaysia may be interpreted to mean the business of constructing or causing to be constructed more than four units of housing accommodation on housing project land with the accompanying sales of more than four of such units of houses and/or flats to members of the public for a profit, if ever and whenever possible. After all, the core business of the housing industry is the sale of houses and/or flats which have yet to be constructed. Without sales, the housing industry cannot survive. In other words, the industry is sensitive to the market forces of supply and demand.

26. (1971) 1 MLJ 20, HC.

27. Replying to a question by the Member of Parliament for Batu, the Minister said: 'As to the query why this Bill does not extend to the Borneo States, the answer is a simple one. It is not a question that I have such great confidence that no bogus developer will proceed to Borneo territories; rather that, under the IGC Report housing is a State matter and under the IGC Report there are lots of reservations pertaining to the Borneo States, and until the concurrence of the Borneo States is obtained, no Federal legislation, such as this one, which is actually under the State – it is a State matter – can be extended to the Borneo States without first obtaining their concurrence'. The Minister then explained that representatives from the Borneo States were present at the National Council for Local Government in which the Bill was discussed but no response was given by the delegates from the Borneo States.

While the root words 'housing development' and 'business of housing development' are intertwined, the former is narrower than the latter. This is because section 3 has defined the term 'housing development' to cover the construction stage, the sales stage, the completion stage, the post-completion stage and the defect liability stage only. In comparison, the phrase 'business of housing development' carries a wider meaning and extends to earlier periods such as the acquisition of land stage, the planning stage as well as the application for approval stage. During the initial acquisition of land stage, the first step which every intending developer has to perform is to purchase sizeable alienated land or several pieces of contiguous lands for development.²⁸ If the existing category of land use is 'agriculture', the potential developer would be required to convert the land by applying to the relevant land office for a change of land use from the existing category of 'agriculture' to that of 'building'.²⁹

Subdivision of the land must be applied for in accordance with a prepared layout plan. Consultants such as licensed surveyors, soil engineers, civil and structural engineers, electrical engineers, valuers and architects, and a host of other professionals need to be engaged for the preparation of layout plans, building plans, specifications, roads and bridges, drainage, sewerage and electrical plans plus numerous other plans in reference to the proposed housing development. After the planning stage, the business of housing development will entail applications to 42 governmental or quasi-governmental departments for their comments and recommendations of the proposed housing scheme in general, including the Department of Environment which has become more vocal after the tragic collapse of Highland Towers in

28. In *Tsoi Ping Kwan v Medan Jata Sdn Bhd* (1996) 3 MLJ 367, CA; *Ayer Hitam Tin Dredging (M) Bhd* had to weather turbulent waters to purchase two pieces of land in Cheras for RM21 million for housing development. See also *Kumarasamy a/l Sengainy & Ors v Revathy Development (M) Sdn Bhd* (1995) 2 MLJ 586, HC where the developer has failed to obtain the necessary development approvals by the agreed deadline and an earlier case of *National Land Finance Co-operative Society Ltd v Sharidal Sdn Bhd* (1983) 2 MLJ 211, FC.

29. See section 124(1) of the National Land Code 1965 which expressly confers upon any registered proprietor of any alienated land the right to apply to the state authority for an alteration of any existing category of land use to another category. For a discussion of land use which has been pre-determined before the NLC came into effect on January 1, 1966, see *Garden City Development Bhd v Collector of Land Revenue, Federal Territory* (1982) 2 MLJ 98 at 100H; PC. For a commentary on the judgment of the Privy Council in this case, see SY Kok's article: 'Alienation of State Land and Conversion, Subdivision, Partition and Amalgamation of Alienated Land' (written in July 1993 as a conference paper).

Ampang on December 11, 1993 and the landslide in Genting Highlands on June 30, 1995. A long wait in the various government departments for approval will be the order of the day.³⁰ Furthermore, applications for a developer's licence and an advertisement and sale permit also need to be applied for.

Finally, when all the necessary approvals have been obtained, the implementation stage will commence and quantity surveyors and clerks-of-work need to be engaged. So too will the advertising, sales and launch stages. Earthworks and the building of infrastructure must be carried out by main contractors who are engaged by the developer. Only then may the houses be constructed stage by stage and phase by phase. Before this implementation stage can take place, construction or bridging loans have to be arranged, perhaps via consortium loans or via club deals.³¹ This is because of the restrictive provisions contained in clause 2 of the standard sale and purchase agreement in the form of Schedule G or H, as the case may be, which prohibit any registered proprietor and the developer (if they are not one and the same person) from encumbering the land immediately after the execution of the standard sale and purchase agreement of housing accommodation together with the land unless prior written approval from each and every one of the bona fide purchasers for value has been obtained. Section 3 of the

30. On the point of delay, Lord President Suffian in delivering the judgment of the Federal Court in *Pengarah Tanah Dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd* (1979) 1 MLJ 135, at 146F-G, said: 'Above all, in the Malaysian context, the Committee should bear in mind avowed official policy to promote development, to provide as much housing as possible ("property-owning democracy"), that promptness in approval enables purchasers to acquire property and homes at more or less current prices, that delay in approval, on the other hand, apart from causing dissatisfaction and breeding corruption, leads to delay in completion of projects and forces purchasers to pay prices swollen over time by inflation and hinders national development. It is a mistake to suppose that delay in approval harms developers. Delay inflates the value of their land and they can get round increased building and other costs by simply passing them down to their customers.' In this instant case, it took the authorities some 15 months before a reply (not an approval) was given to the proprietor's application for subdivision of its land.

31. Local cases which involve the raising of bridging loans for the development of project lands include *Keng Soon Finance Bhd v MK Retnam Holdings Sdn Bhd* (*Bhagat Singh s/o Surian Singh & Ors, Interveners*) (1996) 2 MLJ 431; (1996) 4 CLJ 52, HC; *Soo Hong & Leong Kew Moi & Ors v United Malayan Banking Corporation Bhd & Anor* (1997) 1 MLJ 690, CA and *Tsoi Ping Kwan v Medan Juta Sdn Bhd & Anor* (1996) 3 MLJ 367, CA.

Housing Developers Act has expressly defined a ‘purchaser’ to be ‘any person who has or will have any dealing with any housing developer’. This definition will include any body corporate, firm or society as well as anyone who has the money or means to obtain money to purchase a unit of housing accommodation with the land thereon.

Upon the completion of the building within the permissible construction period of 24 or, as the case may be, 36 calendar months as prescribed by statute, vacant possession of the housing accommodation has to be delivered to the purchaser failing which a 10 per cent interest penalty on the purchase price will be triggered off. To capitalise on the issue of late delivery, purchasers³² have been known to insist, quite unreasonably, that water and electricity meters must be installed, tested and commissioned at the time of practical completion and delivery of vacant possession; that is to say, well within the statutorily prescribed construction period of 24 or 36 calendar months, instead of at the time during the post-vacant possession period when the newly constructed house or flat has been inspected by the appropriate authority and subsequently certified fit for human habitation,³³ as intended by the prescribed statutory provisions.

Unconditional certificates of fitness for occupation for the completed houses have to be applied for and obtained. Individual qualified titles or strata titles must be applied for and subsequently transferred to the respective purchasers. Existing bridging loans must be repaid by that time. Thereafter, the prescribed 12 calendar months’ defect liability period must be waited out. This period was subsequently changed to 18 calendar months.³⁴ Then, and only then, may a housing developer be said to have discharged all his contractual obligations to his purchaser under the standard contract of sale of housing accommodation.

32. *Syarikat Lean Hup (Liew Brothers) Sdn Bhd v Cheow Chong Thai* (1988) 3 MLJ 221 and *Voon Keng & 61 Ors v Syarikat Muzwina Development Sdn Bhd* (1991) 3 CLJ 1904, HC.

33. See the amendments made by the 1994 Regulations. See SY Kok’s articles: ‘Does Delivery of Vacant Possession include the Energizing of Water and Electricity Supplies?’ (1993) 4 CLJ ix and ‘Its Sequel’ (1994) 4 CLJ xxiii.

34. Housing Developers (Control & Licensing)(Amendment) Regulations 1996: PU(A) 358/96, came into force on August 1, 1996. As for the meaning of a ‘calendar’ month, see *Jeow Fong Mei v Chong Mee Yoke* (1996) 1 MLJ 387, 391F; *CA and Tan Chee Hoe & Anor v United Malayan Banking Corporation* (1996) 2 CLJ 1102, HC.

Such are the mechanics of housing development.³⁵ These construction works or stages of development may also be separated into the pre-contract period and the post-contract period. Planning and sales are performed during the pre-contract period. Construction works such as earthworks, road and drainage and other infrastructure works are also carried out during the pre-contract period as well as flowing over to the post-contract period. The initial construction of the building, be it the laying of the foundation and the structural framework of the house and/or flat may occur well before the contract is signed with the purchaser. However, under normal circumstances, construction of the bulk of building works occurs during the post-contract period only because what is normally under sale is not a completed or built-up unit but rather a unit which is under construction or about to be constructed. So too is the transfer of the qualified or strata title in favour of the purchaser and the obtaining from the appropriate authority of an unconditional and not a temporary certificate of fitness for occupation. That, in a nutshell, is what is meant by the 'business of housing development'.

Legal framework pertaining to protection of house purchasers and ownership

Housing development in Peninsular Malaysia is conducted differently from other countries in the sense that in Malaysia the houses are not completed units when they are offered for sale by the local developers. In other countries, only completed houses which have been properly certified fit for human habitation will be put up for sale to the public. In such circumstances, there is no danger of abandonment of the construction of the houses. Even if a foreign developer should fail to complete the housing project, the potential purchasers will not be exposed to any danger because there will be no sale and no purchase unless the construction of the houses and the relevant infrastructural works have been completed.

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35. Touching on the mechanics of development, the Federal Court had this to say: 'Having first ascertained that the development he had in mind was in accordance with the town-planning for the area, he had then to apply for conversion of the category of use to which the land could be put. Also for this purpose, the land was more conveniently to be sub-divided into 7 lots, on four of which the hotel could be built and on the other three, the shophouses. There would have to be a further subdivision for the construction of access roads and back lanes. He would therefore have to obtain subdivision of the land and he would also have to surrender the lots for roads, etc. All these constitute what may be called the mechanics of development.' Per Chang Min Tat FJ in *Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd* (1979) 1 MLJ 135, at 149I, FC.

However, in Malaysia, only partially constructed houses or houses which have yet to be constructed are put up for sale by housing developers. Potential perils loom when purchasers are required to pay to the developers the purchase prices by progressive instalments against the various completion stages of the progress of construction of the houses and infrastructural works.³⁶ This danger is especially imminent if developers are fly-by-night operators or have bad track records. Thus, purchasers could be cheated if housing projects should ever be abandoned or bogus developers should abscond with the deposits. It appears, therefore, that it would be inescapable for each and every purchaser in Malaysia to run the gauntlet of being cheated from day one when he pays to the developer the booking fee or the 10 per cent deposit sum to the day when an unconditional certificate of fitness for occupation or an individual qualified or strata title in respect of the housing accommodation has been issued by the relevant authority and the title deed has been duly transferred to and registered in the name of the purchaser, whichever is the later. Such is the length of time when the legal rights³⁷ of the purchaser need statutory protection against errant developers.

There are at least two possible areas where the legal or contractual rights of a purchaser, in respect of the housing unit purchased, would require statutory protection. The first stage is the pre-contract stage where a booking fee or a deposit sum has been paid but the sale and purchase agreement which has been standardised by Parliament has yet to be signed. Next is the contract and post-contract stages where the standard sale and purchase agreement would have been signed by the relevant contractual parties and the construction of the housing accommodation should be progressing, hopefully to completion within the prescribed time frame of

36. In the earlier days, progressive instalments were payable at the commencement and not at the completion of each and every stage of construction of the housing accommodation. In *Ching Yik Development Sdn Bhd v Setapak Heights Development Sdn Bhd* (1996) 3 MLJ 675, CA; the Court of Appeal held that the purchaser's obligation to pay the purchase price and the vendor's obligation to give a good and marketable title to the property under the sale are forms of fundamental terms of the contract of sale.

37. Such legal rights which arise from the executed sale and purchase agreements are merely contractual in nature. They are nothing more than 'choses in action' and should not be equated to 'interests in land': see SY Kok's article: 'A Review of Loan Agreements and Deeds of Assignment under the Malaysian Torrens System' (1994) 2 CLJ xxxv. This article was referred to with approval by the Special Commissioners of Income Tax in *DGIR v DDHOB* (1996) 1 BLJ 125 at 132a. See also SY Kok's other articles: 'Equity in Malaysian Land Law' (1994) 3 MLJ clvii & ccxii; (1996) April MSLJ 66-127 and 'A Review of the Court of Appeal Case of Luggage Distributors (M) Sdn Bhd' (1995) 2 MLJ cxxv.

24 or 36 calendar months, as the case may be. This is followed with the issuance of the certificate of fitness for occupation and the issuance of the qualified or strata title which needs to be transferred to and registered in the name of the purchaser concerned.

Pre-contract stage: Booking 'pro forma'

What then is the nature of the rights of a purchaser which may arise during the pre-contract stage that would require statutory protection under the Act? In the pre-legislation era prior to the 1960s, developers used to adopt a detailed booking 'pro forma' for intending purchasers to execute. This booking pro forma would set out the terms of sale which includes the purchase price; the particulars of the parent land title; the temporary identity of the subdivisional lot which forms the subject matter of the sale; and the various stages of payment of the purchase price.

In most cases, the booking pro forma would end with the commonly used phrase 'subject to contract'³⁸ as well as a provision for the forfeiture of the deposit sum if a formal contract of sale of the housing accommodation is not executed by the purchaser within 14 days from the date of the booking pro forma. There is no option at all for the purchaser to refuse to sign the formal contract because any failure to do so within the specified period of 14 days will consequently lead to the forfeiture of the deposit sum and the cancellation of the booking. The only option open to the purchaser is at the time when payment of the booking fee is due – he may then decide to sign or not to sign the booking pro forma and subsequently make the initial down payment. He is not even given any time to conduct a land office search on the parent land title to determine, at the very least, whether the developer is the registered proprietor of the proposed project land.³⁹

38. See *Daiman Development Sdn Bhd v Mathew Lui Chin Teck & Anor* (1981) 1 MLJ 56, PC; *Lim Keng Siong & Anor v Yeo Ah Tee* (1983) 2 MLJ 38, FC; *Kam Mah Theatre Sdn Bhd v Tan Lay Soon* (1994) 1 MLJ 108, SC; *Ayer Hitam Tin Dredging Malaysia Bhd v YC Chin Enterprises Sdn Bhd* (1994) 2 MLJ 754, SC and *Abdul Rahim bin Syed Mohd v Ramakrishnan Kandasamy (Wan Ahmad Azlan bin Wan Majid & Anor, Interveners) and another action* (1996) 3 MLJ 385, HC. See also *New Selangor Plantations Sdn Bhd v Talam Management Services Sdn Bhd* (1996) 4 CLJ 94, HC; *Charles Grenier Sdn Bhd v Lau Wing Hong* (1996) 3 MLJ 327; (1997) 1 CLJ 625, FC and *Malayan Flour Mills Bhd v Saw Eng Chee (Administrator of the estate of Saw Cheng Chor, deceased) & Anor* (1997) 1 MLJ 763, HC.

39. The vendor's contractual obligation to deliver a good and marketable title to the property constitutes one of the fundamental terms in a contract for the sale of land: *Ching Yik Development Sdn Bhd v Setapak Heights Development Sdn Bhd* (1996) 3 MLJ 675, CA.

The then commonly used booking pro forma was commented on by the Privy Council in the case of *Daiman Development Sdn Bhd v Mathew Lui Chin Teck & Anor*.⁴⁰ In this appeal case, the booking pro forma was signed by the respondent/purchaser on October 1, 1972. This meant that the sale transaction was governed by the old Housing Developers (Control and Licensing) Rules, 1970 which did not, as yet, standardise the contract of sale of housing accommodation. The purchaser signed a booking pro forma and a booking fee of \$700 was then paid notwithstanding that the subdivision of the housing project land and the building plans had not, as yet, been approved by the local authorities. Almost three years later, the appellant/developer notified the purchaser that the subdivisional as well as the amended building plans had been duly approved and that construction of the single-storey semi-detached house would soon commence. The appellant/developer then requested the purchaser to pay an additional sum of \$2,810 which, together with the sum of \$700 already paid, would provide a deposit of 10 per cent of the increased purchase price of \$35,100 instead of the original agreed price of \$26,000. The purchaser rejected the unilateral increase in price and tendered to the appellant/developer a further sum of \$1,900 only which, together with the said sum of \$700, would provide the requisite 10 per cent deposit on the original price of \$26,000. The appellant/developer rejected the purchaser's payment and insisted that it was not bound to sell the subdivisional lot and house to the purchaser for the sum of \$26,000 though it was prepared to effect a sale at the new price of \$35,100. By its statement of defence, the appellant/developer, while admitting to having agreed to sell to the purchaser the described property at the original price of \$26,000 alleged that, *inter alia*, it was understood between the parties that the booking previously made by the respondent was 'subject to contract' and that no formal contract had subsequently been signed.

The Privy Council opined that the legal issue 'turns exclusively... upon the true construction of this document (the booking pro forma) read against the background of the Housing Developers (Control and Licensing) Rules 1970.'⁴¹ Sir Garfield Barwick, delivering the leading judgment of the Judicial Committee of the Privy Council, said:

The appellant (developer) in making his first submission virtually interpolated the words 'subject to contract' between the words 'hereby' and 'agree' or after the word 'agree' in the opening paragraph of the pro forma. The words are notably not there. The appellant however relied upon the

40. (1981) 1 MLJ 56, PC.

41. *Ibid*, at page 57E, PC.

employment of the expression 'subject to' in the opening paragraph of the pro forma and perhaps more particularly upon its use in the latter part of Clause 1. The appellant claimed that the employment of these expressions attracted to the pro forma the full effect given to the words 'subject to contract' in the decided cases.

The question whether parties have entered into contractual relationships with each other essentially depends upon the proper understanding of the expressions they have employed in communicating with each other considered against the background of the circumstances in which they have been negotiating, including in those circumstances the provisions of any applicable law. Where they have expressed themselves in writing the proper construction of the writing against that background will answer the question. The purpose of the construction is to determine whether the parties intend presently to be bound to each other or whether, no matter how complete their arrangements might appear to be, they do not so intend until the occurrence of such further event, including the signature of some further document or the making of some further arrangement. The question is one as to expressed intention and is not to be answered by the presence or absence of any particular form of words. But, in general, employment of the formula 'subject to contract' as a condition of their arrangement will preclude the present assumption by the parties of contractual obligations.

Thus, in the old days, a booking pro forma was one of the standard documents in common use in the housing industry.⁴² To an errant developer, a booking pro forma would form a binding contract if it suited the developer to treat it as such to gain a contractual right to forfeit the deposit sum already paid by a defaulting purchaser who might subsequently fail to sign a contract of sale of housing accommodation when so requested. On the other hand, that booking pro forma might be treated merely as an agreement to agree at a future date or event if this situation could suit the needs of the developer.⁴³ This form of high-handed action which has been practised by obnoxious developers time and time again is most undesirable.

42. 'The (1970) rules treat the description "booking fee" as an expression in common use in the area of housing development and sale. They limit the amount of money which a purchaser of housing accommodation, including land, may be required to pay as a booking fee (rule 10(1) and (2));' per Sir Garfield Barwick in *Daiman Development Sdn Bhd v Mathew Lui Chin Teck* (1981) 1 MLJ 56 at page 59, PC.

43. See the facts in *Daiman Development Sdn Bhd v Mathew Lui Chin Teck & Anor* (1981) 1 MLJ 56, PC., which have been set out in paragraph 5.06, supra.

From the *Daiman* case, some salient principles of housing law may be extracted. First, in view of the presence of the provisions contained in rule 12(1) of the 1970 Rules, every sale transaction of housing accommodation made between July 15, 1970 and June 1, 1982 by a licensed housing developer must contain at least the bare minimum contractual provisions prescribed in the 1970 Rules. Second, such contractual provisions will become additional terms and conditions of sale of housing accommodation if, firstly, a pro forma document has been executed by the developer and the purchaser prior to the signing of the sale and purchase agreement and, secondly, at the time of executing the pro forma and payment of the booking fee, the consensus of the contracting parties is presently to be bound to each other no matter how incomplete their arrangements might appear to be. This question of consensus is best gauged by the expressed intention of the parties in the pro forma and should not be answered by determining the presence or absence of any particular form of words. Third, the onus is on the housing developer to provide for such minimum terms and conditions in the contract of sale of housing accommodation, the failure of which will expose the defaulting developer to statutory penalties. The rules impose no penalties on a purchaser for the non-observation of any housing rule or regulation.

However, the old practice of collecting booking sums upfront was somewhat curtailed in 1970 when the Housing Developers (Control and Licensing) Rules, 1970 came into force on July 15, 1970. Thenceforth, not more than 2.5 per cent of the purchase price or RM1,000, whichever is the lower, may be collected from any purchaser by any licensed developer. Rule 10 of the 1970 Rules had stipulated that:

- (1) A purchaser of housing accommodation including the land shall not be required to pay a booking fee of a sum exceeding 2.5 per cent of the purchase price of such housing accommodation including the land.
- (2) Notwithstanding paragraph (1) of this Rule, no purchaser of a housing accommodation including the land shall be required to pay a booking fee of a sum exceeding RM1,000.
- (3) For purposes of this Rule the term 'booking fee' shall include any payment by whatever name called which payment gives the purchaser an option or right to purchase the housing accommodation including the land.

Unscrupulous developers used to abscond with the purchasers' monies amounting to 10 per cent of the purchase price or more. With the introduction of Rule 10 in 1970, not more than RM1,000 or 2.5 per cent of the purchase price, whichever shall be the lower, may be collected by any licensed housing developer. Such a statutory restriction is intended to

discourage potential bogus developers from absconding after collecting numerous sums of booking fees from purchasers. However, with the introduction of the Housing Developers (Control and Licensing) Regulations 1982, the collection of booking fees became a thing of the past. Regulation 6 of 1982 has explicitly enacted that '(n)o housing developer shall collect any payment by whatever name called except as prescribed by contract of sale under regulation 12'. Regulation 12 stipulates that:

- (1) Every contract of sale for the sale and purchase of a housing accommodation together with the subdivisinal portion of land appurtenant thereto shall be in the form prescribed in Schedule E.
- (2) No amendment to any such contract of sale shall be made except on the ground of hardship or necessity and with the prior approval in writing of the Controller.

On April 1, 1982, a standard contract of sale of a housing accommodation in form and substance such as that contained in Schedule E was introduced for the first time by the then (renamed) Minister of Housing and Local Government, Dato' Neo Yee Pan. The old practice of collecting an initial booking fee upfront was done away with by Clause 4(1) of the newly introduced standard contract of sale which stipulated that the purchase price or the balance shall be paid by instalments only at the time and in the manner as prescribed in the Third Schedule. Item 1 of the Third Schedule has expressly stipulated that the deposit sum of 10 per cent of the purchase price needs to be paid by the purchaser to a licensed developer only at the time of signing of the standard contract of sale of a unit of housing accommodation and not earlier.

Hence, with the statutory prohibition of collecting booking fees in whatever amount and under whatsoever name upfront before an agreement for sale has been executed by the parties concerned, the previous practice of collecting booking fees has since diminished and has become almost obsolete. This is a good form of statutory protection designed to protect purchasers from being fleeced by bogus or errant developers. Unfortunately, this practice recently surfaced again. In 1994, and again in 1995, the Minister of Housing and Local Government warned all developers against the prohibited practice of collecting booking fees of varying amounts of monies unless the standard contract of sale had first been signed by the parties concerned.

Rule 12, along with the other rules of 1982, were repealed and replaced by the Housing Developers (Control and Licensing) Regulations 1989 which took effect on April 1, 1989. However, much of the content in the former rule 12 was retained and adopted in the current regulation 11, with further elaboration. The current expanded regulation 11 governing the use of a standard contract of sale of a unit of housing accommodation states:

- (1) Every contract of sale for the sale and purchase of a housing accommodation together with the subdivisinal portion of land appurtenant thereto shall be in the form prescribed in Schedule G and where the contract of sale is for the sale and purchase of a housing accommodation in a subdivided building, it shall be in the form prescribed in Schedule H.
- (2) No housing developer shall collect any payment by whatever name called except as prescribed by the contract of sale.
- (3) Where the Controller is satisfied that owing to special circumstances or hardship or necessity compliance with any of the provisions in the contract of sale is impracticable or unnecessary, he may, by a certificate in writing, waive or modify such provisions:
Provided that no such waiver or modification shall be approved if such application is made after the expiry of the time stipulated for the handing over of vacant possession under the contract of sale or after the validity of any extension of time, if any, granted by the Controller.

The new regulation 11(1) of 1989 thus separates the sale of landed properties such as dwelling terrace houses, semi-detached houses and bungalows from the sale of high-rise housing accommodations such as flats, apartments and condominiums. This division leads to the introduction of two separate standard contracts of sale in the form of Schedules G and H. The Schedule G contract replaces the 1982 Schedule E contract of sale. The new Schedule H contract governs the sale of housing accommodation to be built within a multi-storey building that has been earmarked for subdivision into strata parcels at a later date.⁴⁴ The absolute prohibition against the collection of booking fees under any guise before an agreement has been signed is still rigidly enforced by officers from the Ministry.⁴⁵ The Schedule G or H contract of sale has been designed by the 1989 Regulations to contain the minimum statutory terms and conditions of sale. Such mandatory clauses have been aimed at protecting a class of persons who are known as bona fide purchasers of immovable properties for valuable consideration. None of the prescribed clauses may be varied or amended to the detriment of the interests of any of such purchasers. The court will not countenance any attempt to evade the legislation either directly or indirectly if the evasion is to do violence to the

44. See the Strata Titles Act, 1985 (Act 318) which came into force on June 1, 1985.

45. See regulation 11(2) of the 1989 Regulations.

letter and spirit of the Housing Developers (Control & Licensing) Regulations, 1989 or any of its preceding rules.⁴⁶

However, it may be observed that some discretionary powers have been vested in the Controller of Housing under the new regulation 11(3) of 1989. In current instances unheard of before, the Controller may now waive any of the provisions in the standard contract of sale if the Controller should decide, at his sole discretion, that compliance with that particular provision would be impracticable or unnecessary due to special circumstances or hardship or out of sheer necessity. The root words 'special circumstances', 'hardship' or 'necessity' need to be construed for the benefit of the developer and not the purchaser. However, the Controller does not have the power to dispense with all the statutory provisions in the standard contract of sale; he may only waive or modify one or some of such standard provisions, subject to the presence of the element of 'special circumstances', 'hardship' or 'necessity' and no others. The element of 'special circumstances' is rather subjective. Perhaps it may cover circumstances such as acute shortage in the supply of building materials or perhaps labour shortage as it did happen in Melaka on July 8 and 9, 1995 when foreign construction workers stayed away from construction sites. However the elements of 'hardship' and 'necessity' are closely linked to the sale of housing accommodation transactions which may have taken place just before the 1989 Regulations came into effect on April 1, 1989. An example of hardship could be an instance whereby the developer has, just prior to April 1, 1989, contracted with its purchasers to construct and complete apartments or condominiums within 48 calendar months and overnight discovers that the construction period has been shortened to 36 calendar months. Great injustice will prevail if the 1989 provisions as contained in Clause 22(1) and Clause 24(1) of the Schedule H agreement which govern the completion of the strata parcel of apartment or condominium and the common facilities within 36 calendar months are not waived or modified in favour of the developer who is so affected by the changing law. Under such circumstances, the Controller may, if he so decides, waive the application of the provisions contained in the aforesaid Clauses 22(1) and 24(1). He may do so only by a certificate in writing which has to be given to the applicant/developer.⁴⁷

46. In *Syarikat Chang Cheng (M) Sdn Bhd v Pembangunan Orkid Desa Sdn Bhd* (1996) 1 MLJ 799, HC, the High Court held, at page 804B-D, that any terms and conditions which purport to get round the Housing Developers (Control & Licensing) Act, 1966 and the related rules so as to remove the protection of home buyers may not be inserted. See also *Keng Soon Finance Bhd v MK Retnam Holdings Sdn Bhd (Bhagat Singh s/o Surian Singh & Ors, Interveners)* (1996) 2 MLJ 431; (1996) 4 CLJ 52, HC.

47. Regulation 11(3) of the 1989 Regulations.

However, the proviso to regulation 11(3) prohibits the Controller from granting any waiver or modification of one or some but not all of the provisions in the standard contract of sale if the aggrieved developer's application for waiver or modification is made out of time; namely, after and not before the expiry of the time stipulated in the standard contract of sale for the delivery of vacant possession of the completed unit of housing accommodation or beyond the extended time which is granted by the Controller in respect of the time stipulated for the handing over of vacant possession. This time constraint imposed by the 1989 Regulations on any application for an extension of the construction period is to ensure that no frivolous application is made by the developer concerned just to avoid the liability to pay damages for late delivery.⁴⁸ If an aggrieved developer fails to obtain the required waiver or modification, then that particular developer may, within 14 days after having been notified of the adverse decision of the Controller, appeal to the Minister of Housing and Local Government against such a decision. Any decision made by the Minister in respect of the appeal shall be final and shall not be questioned in any court of law.

Protection of other rights of the purchaser

Besides the statutory protection accorded to the purchaser who is no longer obliged to pay a booking fee the Act, via the essential minimum terms and conditions put into the standard contract of sale, confers additional protection to other contractual rights of the purchaser during the post-contract stage. Such other essential provisions which must be stipulated in any contract of sale of housing accommodation, including the land appurtenant thereto, for the sole purpose of protecting purchasers have been discussed by the Privy Council in the case of *Daiman Development Sdn Bhd v Mathew Lui Chin Teck & Anor*.⁴⁹ Sir Garfield Barwick, when commenting on the Housing Developers (Control and Licensing) Rules 1970, said:

Rule 12 requires every contract of sale of housing accommodation, including the land, to provide within its terms and conditions for a number of specified matters. A brief abstract of these matters is necessary to indicate their nature and extent.

48. The method of computing time, in particular, the *terminus ad quem* for the assessment of damages in respect of non-delivery of a non-constructed house in an abandoned housing project has been thoroughly analysed by KC Vohrah J in *Syarikat Chang Cheng (M) Sdn Bhd v Pembangunan Orkid Desa Sdn Bhd* (1996) 1 MLJ 799, HC.

49. (1981) 1 MLJ 56, PC.

1. Warranties of title and absence of encumbrances.
12(1)(a), (b) and (c)
2. A statement of price and the manner of its payment.
12(1)(d) and (e)
3. A description of the land, its subdivisional location and provision for adjustment of price if there be a divergence between the description of the contract of sale and the description in the instrument (document) of title.
12(1)(f) and (g)
4. Date of delivery of vacant possession with indemnity to the purchaser in the event of delay in such delivery.
...
- 12(1)(h) and (i)
6. Undertaking by the housing developer to erect the housing accommodation for the purchaser in good and workmanlike manner in accordance with the agreed plans and specifications.
...
- 12(1)(j) and (k)
8. Licensed housing developer at his own cost and expense to fix connections to the housing accommodation with electricity, water and sewerage mains.
12(1)(l)
9. Licensed developer to procure the issue of the relevant Certificate of Fitness for Occupation from the appropriate authority and at his own cost and expense to comply with the requirements of the appropriate authority in the procurement of such certificate which is to be produced to the purchaser.
12(1)(n)
10. Licensed developer to take all necessary steps to obtain issue of separate document of title to the land upon which the housing accommodation is erected for the purchaser and, subject to payment of the purchase monies and observation of the terms and conditions of the contract of sale, forthwith execute a valid and registrable transfer of the land together with housing accommodation to the purchaser or his nominee.
12(1)(p)
11. Licensed developer at his own cost and expense to undertake to remedy any defect, shrinkage or other fault in the housing accommodation which may become apparent within six months from the date of delivery of vacant possession.
12(1)(q)

12. Statement of the party responsible for the payment of outgoings and of the manner of making such payments.

Sir Garfield Barwick of the Privy Council continued:

The rules impose no penalties on a purchaser who enters into a contract which does not conform to the requirements of the rules. Clearly rule 12 does not exclude the possibility of the contract of sale containing terms and conditions other than such as are designed to effectuate the requirements of the rules. Rule 12 requires a contract to contain within its terms the stipulated provisions. It is observable that rule 12 does cover much of the relationship of vendor and purchaser in relation to the purchase and is mandatory so far as the appellant (developer) is concerned.

From the above judicial observation on rule 12 of the 1970 Rules, it is quite clear that any licensed housing developer who sells more than four units of housing accommodation in the 1970s and early 1980s must adopt in his sale and purchase agreement all the provisions set forth in rule 12. This compliance is mandatory as far as the developer is concerned. These provisions have been incorporated into the Schedule E contract of sale in 1982 and elaborated upon in 1989 in the Schedules G and H contracts of sale of housing accommodation. But it must be observed that the omission of any of the compulsory provisions from the contract of sale does not invalidate the sale. The omission merely exposes an errant developer to prosecution in the criminal courts by summons. In other words, the developer cannot, under the pretext of an omission, avoid any sale. This principle is aimed at safeguarding the rights of the purchaser.

Salient features of the standard contract of sale

Subject matter of the sale

The first salient point in any statutorily prescribed contract of sale touches on the sale element itself. As stated by the Privy Council, '(t)he rules (of 1970) treat the description "booking fee" as an expression in common use in the area of housing development and sale.'⁵⁰ The housing accommodation, together with the land appurtenant thereto, whether it is a landed property or a high-rise strata parcel, forms the

50. *Daiman Development Sdn Bhd v Mathew Lui Chin Teck* (1981) 1 MLJ 56 at 59B, PC; per Sir Garfield Barwick. (Emphasis added).

subject matter of the purchase.⁵¹ This particular subject matter was also commented on by the Privy Council in *Daiman Development Sdn Bhd v Mathew Lui Chin Teck*⁵² where Sir Garfield Barwick said:

Warranty that the housing accommodation conforms with all relevant laws in force with indemnity to the purchaser against fines, penalties or losses incurred under any such law: Licensed housing developer at his own expense to construct in accordance with requirements of the appropriate authority roads, driveways, etc, serving the housing accommodation *the subject of the purchase*. (Emphasis added.)

Sales of housing accommodation, together with the land, form the lifeline of the housing industry. Without sales, there may not be any housing industry. If the sales catalyst was not sustained, financially-weak developers would collapse – as was experienced in the recessionary years of the 1970s and the severe recession in the mid-1980s. Consequently, housing projects have actually been abandoned across the country.⁵³ Only the stronger developers have survived the recession. The element of sale has in fact been embedded in the definition of the term ‘housing development’⁵⁴ by section 3 of the Act. In 1966, this term was defined as:

‘housing development’ means the business of developing or providing monies for developing or *purchasing*, or of partly developing and partly providing monies for *purchasing*, more than four units of housing accommodations which will be or are erected by such development. (Emphasis added.)

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51. In *Abdul Rahim bin Syed Mohd v Ramakrishnan Kannasamy* (w/o Ahmad Azlan bin Wan Majid & Anor, Interveners) and another action (1996) 3 MLJ 385; (1996) 3 CLJ 393; the High Court, at page 395 opined: ‘...it must also be observed that a transaction for the sale of property in Malaysia cannot usually be completed within a short period of time. This is especially so if *the land, the subject matter of the sale*, is subject to existing encumbrances.’
 52. (1981) 1 MLJ 56, PC.
 53. For cases which deal with abandoned housing projects, see *Keng Soon Finance Bhd v MK Holdings Sdn Bhd* (*Bhagat Singh s/o Surian Singh & Ors, Interveners*) (1996) 2 MLJ 431; (1996) 4 CLJ 52, HC; *Syarikat Chang Cheng (M) Sdn Bhd v Pembangunan Orkid Desa Sdn Bhd* (1996) 1 MLJ 799, HC and *Soo Hong & Leong Kew Moi & Ors v United Malayan Banking Corporation Bhd & Anor* (1997) 1 MLJ 690, CA.
 54. The term ‘housing development’ has been analysed and discussed at length by SY Kok in his forthcoming book *Law Governing the Housing Industry* (scheduled for publication end 1997).

The word ‘develop’, which appeared in the 1966 definition, was then defined as:

to construct or cause to be constructed, and includes the carrying on of any building operations for the purpose of constructing, housing accommodations in, on, over or under any land *with the view of selling* the same or the land which would be appurtenance to such housing accommodations. (Emphasis added.)

The root word and phrase in this 1966 definition, namely ‘purchasing’ and ‘with the view of selling’, refer to sale and purchase transactions of housing accommodation together with the land appurtenant to such housing accommodation. Therefore, it will be nonsensical interpretation of the term ‘housing development’ if one is to opine that the basic catalyst of sales, which forms the core business of the housing industry, is not an essential ingredient in the definition of the term ‘housing development’⁵⁵ or to think that financial institutions which grant housing loans are developers.

Housing accommodation under construction

The Housing Rules of the 1970s and the Housing Regulations of the 1980s, which attempt to develop a healthy and systematic development of the housing industry, do provide for the development or construction of units of housing accommodations from their footing works or foundation stage to the practical completion stage. The Third Schedule of Payment of the Purchase Price which limits the quantum of each stage or progressive payment of the purchase price to be made by the purchaser to the developer against the production of the relevant certificates of completion of the various stages of construction works lends support to this observation. The construction period of 24 or 36 calendar months prescribed by the standard contract of sale also lends weight to this conclusion. In fact, the definition of ‘housing development’ in Section 3 of the Act also talks about the construction of the housing accommodation.⁵⁶ In

55. For a detailed analysis of the meaning of housing development in the current 1988 Revised Act, see Chapter 3 of SY Kok’s forthcoming book *Law Governing the Housing Industry*.

56. For some of the local cases which deal with the sales of houses which are under various stages of construction, see *SEA Housing Sdn Bhd v Lee Poh Choo* (1982) 2 MLJ 31, FC.; *Rajeswari v Kin Nam Realty Development Sdn Bhd* (1983) 1 MLJ 88, HC.; *Khan Daw Yau v Kin Nam Realty Development Sdn Bhd* (1984) 1 MLJ 256, FC.; *City Investment Sdn Bhd v Koperasi Serbaguna Cuepacs Tanggungan Bhd* (1988) 1 MLJ 69, PC.; *Syarikat Lean Hup (Liew Brothers) Sdn Bhd v Cheow Chong Thai* (1988) 3 MLJ 221 and *Voon Keng & 61 Ors v Syarikat Muzwina Development Sdn Bhd* (1991) 3 CLJ 1904, HC.

other words, what is being sold under the standard contract of sale of housing accommodation is not a completed unit of house or flat (except for completed, leftover unsold units), but a house or flat which is still under construction or is about to be constructed by the housing developer.⁵⁷

Payment of the purchase price

The payment of the purchase price for a unit of housing accommodation, together with the land appurtenant thereto, is one of the fundamental terms of the standard contract of sale.⁵⁸ Every stage or progressive payment is controlled by legislation. This is to ensure that no licensed developer may impose unreasonable or onerous terms of payment upon any unsuspecting purchaser. Clause 4(1) in the standard Schedule G or Schedule H contract⁵⁹ stipulates that '(t)he purchase price shall be paid by the Purchaser to the Vendor by instalments and at the time and in the manner as prescribed in the Third Schedule hereto'. Sub-clause (2) states that '(e)very notice referred to in the Third Schedule requesting for payment shall be supported by a certificate signed by the Vendor's Architect or Engineer in charge of the housing development and every such certificate so signed shall be proof of the fact that the works therein referred to have been completed.' The Third Schedule sets out in detail not only the various stages of payment of the purchase price and the respective time to effect such payments to the housing developer but also, to borrow the phrase used by the Privy Council, 'limit(s) the amount of money which a purchaser of housing accommodation, including land, may be required to pay'⁶⁰ at each completed stage of construction.

Sub-clause (2) of clause 4 protects the purchaser in the sense that any architect or engineer, although engaged by the developer, is accountable to the purchaser in an action in tort for professional negligence if that particular professional, acting without due care or perhaps in collusion with the developer, negligently or mistakenly certifies the completion of the relevant stages of construction of the unit of housing accommodation.

57. Compare with the subsequent sales of the developer's completed but remaining unsold units of housing accommodation.

58. *Ching Yik Development Sdn Bhd v Setapak Heights Development Sdn Bhd* (1996) 3 MLJ 675, CA.

59. The standard Schedule G or Schedule H contract of sale of housing accommodation was introduced in 1989 via regulation 11(1) of the Housing Developers (Control and Licensing) Regulations 1989.

60. See footnote 42, *supra*.

Secondly, notwithstanding the non-existence of any privity of contract between the professionals and the original purchasers, an action may lie in tort if the professional is found to be negligent in the structural design or in the supervision of the construction which leads to the collapse of the housing accommodation or any part or parts thereof.⁶¹

On the other hand, Parliament in its wisdom has forbidden any errant or difficult purchaser to withhold any stage or progressive payment under the camouflaged pretence that the construction works referred to in the relevant certificates of completion have not been actually completed or have been poorly constructed. This prohibition is achieved by simply adopting the root phrase: 'every such certificate so signed shall be proof of the fact that the works therein referred to have been completed' in clause 4(2) of the standard contract of sale. Without those root words, a suspicious purchaser will be able to challenge the developer at every step of the construction process for alleged defective works or use of inferior building materials. He may thus hinder the progress of construction of the housing accommodation. Furthermore, it may be observed that a purchaser is not entitled, while the housing accommodation is still under construction, to require the developer to rectify any defect which may appear in any part of the partially-constructed housing accommodation. After all, he is not allowed to enter the construction site while construction works are ongoing. The purchaser may only do so when the unit has been completed and delivered or is deemed to have been delivered to him, provided always that such defects complained of do appear during the 18 calendar months' defect liability period.⁶²

Schedule of payment of purchase price

The Third Schedule or the Schedule of Payment of the Purchase Price has been referred to in clause 4(1) of the standard contract of sale of housing accommodation. This Third Schedule is prescribed by statute and, therefore, cannot be varied at random by the developer. It ensures that the quantum of each progressive payment is pegged at a maximum amount and

61. *Allan Bryan v Judith Anne Maloney* (1995) 2 CLJ 503. In this Australian case, the majority judgment of the High Court held that a professional builder was liable for damage to the house which was purchased by a subsequent purchaser. The defect, which occurred subsequent to the completion of the sub-sale, was due to inadequacy of the footings of the house which could not subsequently withstand the seasonal changes in the clay soil. Compare to *Teh Khem On & Anor v Yeoh & Wu Development Sdn Bhd & 3 Ors* (1995) 2 AMR 1558, HC.

62. Clause 23 of the Schedule G Agreement and clause 26 of the Schedule H Agreement.

that no developer shall be able to take advantage of any ignorant purchaser by collecting from him any progressive payment over and above the maximum quantum restricted by the Third Schedule. Should any unjust collection occur, the developer is obligated to refund the surplus payment to the purchaser. If any refund is delayed, the errant developer will, in addition to the possibility of being prosecuted, be liable to the purchaser for late interest payment in respect of any unjust enrichment. The Third Schedule was first introduced in 1969 via rule 8 of the Housing Developers (Sale of Housing Accommodation) Rules, 1969 which provides:

- (1) Subject to sub-rule (2) the purchase price for any housing accommodation if paid by instalments shall be paid as prescribed by the Schedule.
- (2) Notwithstanding the provisions of sub-rule (1) the housing developer and the purchaser may (under a contract of sale) vary the terms and rates of instalments prescribed in the Schedule if the terms and rates under the contract of sale are no less favourable to the purchaser than those prescribed by the Schedule.

It may be observed that in the earlier days, the time for payment for each of the progressive instalments as well as the quantum for each progressive instalment could be negotiated between the developer and the purchaser concerned provided that none of the negotiated terms of payment would be detrimental or be at a disadvantage to the purchaser. In other words, if a developer is keen to secure a sale instead of losing a potential buyer, the developer may allow the potential purchaser to pay a lesser amount for each progressive instalment and the repayment period may even be spread over a longer period of time than prescribed by the old Rules. However, this particular rule 8 of the 1969 Rules has since been repealed. Currently, all payments must be collected strictly in accordance with the provisions contained in the Third Schedule. No developer is entitled to receive any stage or progressive payment of the purchase price earlier than stated in the Third Schedule if that corresponding stage of construction has not, as yet, been constructed. Since the 1989 Regulations have made no provisions which are similar to the repealed rule 8(2) of the 1969 Rules, impliedly, no developer can collect or receive any additional payment other than that justified by the progress of construction of the housing accommodation that is under sale. In other words, any premature collection of stage payment is absolutely prohibited.

Lately some errant licensed developers, employing the sales gimmick of discounting the purchase price, have collected upfront the

whole sum of the discounted purchase price from purchasers before construction works have even commenced. This is a very unhealthy practice because of the possibility that purchasers might end up being cheated of their payments. In such an event, the loss of the whole purchase price will be far greater than the normal 10 per cent deposit sum. The authorities should constantly conduct spot checks on the receipts issued by such developers and their account books to prevent such dangerous practices from ever happening. Such wrongful collections could, if left unchecked, cause greater hardships and sorrows than those caused by bogus developers in the 1950s and 1960s.

To summarise, even though purchasers may be willing to pay upfront the whole or part of the purchase price, a licensed housing developer is barred by Parliament from collecting more than the maximum progressive payments stipulated in the Third Schedule.⁶³ Contravention of any of the provisions of the Third Schedule, such as the collection of the 10 per cent deposit sum upfront before the execution of the contract of sale, will be tantamount to an offence against the Act and should be prosecuted. It is very clear under the law that, before the contract of sale of housing accommodation together with the land appurtenant thereto has been standardised by Parliament on June 1, 1982 in the form of Schedule E, the 1969 Rules as well as the 1970 Rules did not impose on a purchaser any penalties for entering into a contract which did not conform to the requirements of the old rules. On the other hand, it was mandatory for any developer in the 1970s and right up to June 1, 1982 to ensure that the contract of sale of housing accommodation did contain within its four corners the stipulated provisions prescribed by statute before the same could be signed by the various purchasers. It is noticeable, of course, that rule 12 of the 1970 Rules did control and regulate much but not all of the relationship of a developer and his purchaser in respect of the sale and purchase of a unit of housing accommodation. Therefore, the possibility was there for the

63. In *Daiman Development Sdn Bhd v Mathew Lui Chin Teck* (1981) 1 MLJ 56, Sir Garfield Barwick, at page 60 B-C, remarked: 'The rules impose no penalties on a purchaser who enters into a contract which does not conform to the requirements of the rules. Clearly rule 12 does not exclude the possibility of the contract of sale containing terms and conditions other than such as are designed to effectuate the requirements of the rules. Rule 12 requires a contract to contain within its terms the stipulated provisions. It is observable that rule 12 does cover much of the relationship of vendor and purchaser in relation to the purchase and is mandatory so far as the appellant (developer) is concerned.'

developer to add some extra terms and conditions to the contract of sale but the additional provisions must not be against the stated aims and objectives of the Act nor be adverse or less favourable to the purchaser. The test to be applied on the acceptance of any additional term is whether the contractual provision is in favour of or is against the interest of the purchaser. After all, the provisions of the Act and its related rules have been designed mainly to protect weak purchasers.

When the contract of sale of housing accommodation was finally introduced to the housing industry on June 1, 1982 in the form of the Schedule E agreement via regulation 12(1) of the Housing Developers (Control and Licensing) Regulations 1982,⁶⁴ the past usage of or the possibility of introducing additional provisions to the contract of sale had been neutralised and was done with. From June 1, 1982 to the date when the Housing Developers (Control and Licensing) Regulations 1989 were introduced on April 1, 1989 and from then onwards to the present day, the sale of any housing accommodation by a licensed housing developer must be in the standard contract of sale in the form of Schedule G or, as the case may be, Schedule H agreement. All the terms and conditions in the statutory prescribed contract of sale must be adopted in toto. However, as discussed earlier, the standard terms and conditions may be varied if and only if the aggrieved developer has obtained from the Controller of Housing the latter's prior written approval to amend any of such terms or conditions under the statutorily restricted grounds of hardship or necessity.⁶⁵

Terms of payment in the Third Schedule

The current 1989 provisions which govern the terms of payment of the purchase price for any unit of housing accommodation are contained in the Third Schedule of the contract of sale.⁶⁶ This statutorily prescribed Schedule of Payment provides as follows:

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- 64. The 1982 Regulations via regulation 12 stipulate: '12 (1) Every contract of sale for the sale and purchase of a housing accommodation together with the subdivisonal portion of land appurtenant thereto shall be in the form prescribed in Schedule E. (2) No amendment to any such contract of sale shall be made except on the ground of hardship or necessity and with the prior approval in writing of the Controller.'
 - 65. On the question of appeal from an adverse decision of the Controller of Housing, see a discussion of this point in paragraph 5.16, *ante*.
 - 66. See Clause 4(1) of the standard contract of sale of housing accommodation.

Third Schedule: Clause 4 (1)
Schedule of Payment of Purchase Price

Instalments Payable	Percentage
1. Immediately upon the signing of this Agreement	10
2. Within fourteen (14) days after receipt by the Purchaser of the Vendor's written notice of the completion of:	
(a) the foundation and footing works of the said Building	10
(b) the reinforced concrete framework of the said Building	15
(c) the walls of the said Building with door and window frames placed in position	10
(d) the roofing, electrical wiring, plumbing (without fittings), gas piping (if any) and internal telephone trunking and cabling (if any) to the said Building	10
(e) the internal and external plastering of the said Building	10
(f) the roads, drains and sewerage works serving the said Building	15
3. On handing over of vacant possession with connection of water and electricity supply to the said Building ⁶⁷	15
4. Upon handing over of vacant possession as in item (3) and to be held by the Vendor's solicitor as stakeholder for payment to the Vendor as follows:	5
(a) 2.5 per cent at the expiry of six months after handing over of vacant possession	
(b) 2.5 per cent at the expiry of 12 months after handing over of vacant possession	
TOTAL	100

67. With the recent amendment made to the standard provisions which govern the time and manner of delivery of vacant possession of the practical completed house on August 1, 1994 via the Housing Developers (Control and Licensing) (Amendment) Regulations 1994, this item should, consequently, be amended as well to read: 'On handing over of vacant possession (to which) water and electricity supply (are ready for connection) to the said Building'. This amendment, according to Pretam Singh, Deputy Public Prosecutor of the Ministry of Housing and Local Government, was made in compliance with the conclusion reached by SY Kok in his articles: 'Does Delivery of Vacant Possession include the Energizing of Water and Electricity Supplies?' (1993) 4 CLJ ix and 'Its Sequel' (1994) 4 CLJ xxiii. Similar conclusion was also arrived at by the Court of Appeal in *Salmah bte Sulaiman & Anor (Administratrices of the estate of Ahmad bin Ibrahim, deceased) v Metroplex Development Sdn Bhd* (1997) 1 MLJ 369, CA. Kok's articles were used by the developer's counsel in the lower court but they were not cited before the Court of Appeal.

From the Third Schedule, it may be observed that item 1 relates to the post-contractual stage whereby a purchaser is obliged to pay only a maximum 10 per cent deposit sum after the standard contract of sale has been signed by all the parties concerned – the purchaser, the developer and, wherever applicable, the landowner.⁶⁸ However, item 2 refers to the construction stage. This item, including its sub-paragraphs (a) to (f), sets out most of the stages of construction works of the housing accommodation in chronological order, albeit payment may not necessarily be made in that particular order. For example, while the internal and external plastering works of the said housing accommodation may be ongoing, yet the roads and drains and sewerage works serving the housing accommodation might have been completed well ahead of the developer's work schedule. Therefore, payment for the latter completed works must first be made. It would, of course, be stretching the imagination if a purchaser is requested to pay for the completion of the roof under item 2(d) of the Third Schedule when the reinforced concrete has not, as yet, been poured into the footing or framework of the said housing accommodation. Whoever so certifies such completion of non-existing works shall be liable for professional negligence⁶⁹ as well as for offending the provisions contained in Clause 4(1) and (2) in the standard contract and in the Third Schedule.

Land acquisition for housing, infrastructure and amenities

Due to the rapid development and the recent industrialisation in Peninsular Malaysia, suitable land for development has become scarce. The inevitable event

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68. The 1989 Regulations (regulation 10) expressly prohibit any licensed housing developer from contracting with a purchaser for the sale of any unit of housing accommodation if the developer is not the registered proprietor of the housing project land unless the developer ensures that the proprietor of the particular piece of land is also made a party to such a contract of sale and the latter agrees to the sale of the land for the purposes specified in such contract of sale. This is a positive improvement over the old rules because the registered landowner will not be able to avoid the sale to the purchaser should the developer default in its obligations with the landowner.
69. *Allan Bryan v Judith Anne Malony* (1995) 2 CLJ 503. Compare also *Teh Khem On & Anor v Yeoh & Wu Development Sdn Bhd & 3 Ors* (1995) 2 AMR 1558, HC. See also K Amirthalingam's article: 'Liability In Negligence For Purely Economic Loss Caused By Defective Buildings: Recent Decisions From The United Kingdom, New Zealand, Canada And Australia' (1996) 3 MLJ ci. In *Anthony Ting Chio Pang v Wong Bing Seng* (1997) 2 CLJ 831, the High Court in Sibu held that the failure to conduct a proper and adequate land title search will render the solicitor concerned liable to his client for professional negligence.

has to happen. Various pieces of alienated land of varying shapes and sizes located in different districts and states have been and will continue to be acquired compulsorily to meet the demand for more housing and industrial land.

Legal ownership in alienated land in Peninsular Malaysia is guaranteed by the state.⁷⁰ When an individual or a corporate body has been duly registered on any register document of title to alienated land, that registration data, which forms a part of public records, would be tantamount to conclusive evidence that, *inter alia*, the registered title to the alienated land described therein is vested in that particular individual or corporate body.⁷¹ Other data on the register document of title, such as the various conditions of title, restrictions in interest and other provisions, are also conclusive.⁷² What will not be conclusive evidence is data which appears on the corresponding issue document of title. Such data is not state guaranteed. The reason for this principle of Torrens law is clear. While all register documents of title are in the possession and under the strict control of the state's land registry or land offices, issue documents of title are given out by the state authority to the various approved 'alienees' or registered proprietors. If any such issue documents of title should fall into the wrong hands, fraud could possibly be committed by doctoring or altering any such recorded data, including the name of the registered proprietor.

As a registered proprietor, the individual or corporate body is entitled to the possession of the alienated land as well as to enjoy the incidents of tenure of such land. However, the proprietor's unfettered right to deal with the alienated land as he pleases⁷³ will be severely curtailed if such land or any part or parts thereof are acquired by the state or the government.

In Peninsular Malaysia, ownership of private property by an individual or a corporate body is guaranteed by Article 13 of the Federal Constitution which enacts:

70. The question of what would constitute an act of alienation of state land was discussed by Hashim Yeop A Sani J (as he then was) in *Dr Ti Teow Siew & Ors v Pendaftar Geran-Geran Tanah Negeri Selangor* (1982) 1 MLJ 38, HC. See also *Teh Beev K Maruthamuthu* (1977) 2 MLJ 7, FC; *Goh Keng How v Raja Zainal Abidin bin Raja Hussin & Anor* (1995) 3 MLJ 6, 13C-G, HC and SY Kok's paper: 'Alienation of State Land' (June, 1993).

71. This cardinal principle of the conclusiveness of all register documents of title which is central in all Torrens statutes is enshrined in section 89(a) of the National Land Code, 1965 (Act 56 of 1965).

72. Section 89(b) of the National Land Code, 1965.

73. *Eng Mee Yong v Letchumanan* (1980) AC 331 at 336F; (1979) 2MLJ 212 at 215D; PC.

- (1) No person shall be deprived of property save in accordance with the law;
- (2) No law shall provide for the compulsory acquisition or use of property without adequate compensation.

Looking at Article 13 as a whole and Article 13(2) in particular, the right of the individual or corporate body to private property is not absolute. Such a right is qualified and is guaranteed by the Federal Constitution only up to a certain limit. Where the interest of the public⁷⁴ becomes paramount, the right to private property can and may be superseded and abridged by the land acquisition process. Thus, compulsory acquisition of private property is tantamount to an interference with the constitutional guaranteed right of the individual or corporate body to own alienated land. It also deprives the proprietor of possession of his land. This particular right of the state to appropriate private property to public use is quite unknown to the common law. However, it is not unusual to enact statutory provisions for the state to acquire alienated land. This is part and parcel of the sovereignty of the state.

Article 13 was, in fact, reviewed by the court in *Kulasingam & Anor v Commissioner of Lands, Federal Territory*.⁷⁵ Hashim Yeop A Sani J (as he then was) said:

74. The term 'public purpose' has been interpreted by the Supreme Court of India in *Bajirao Kote v State of Maharashtra* (1995) 2 SCC 442 as follows: 'Public purpose is not capable of precise definition. Each case has to be considered in the light of the purpose for which acquisition is sought for. It is to serve the general interest of the community as opposed to the particular interest of the individual. Public purpose, broadly speaking would include the purpose in which the general interest of the society as opposed to the particular interest of the individual is directly and vitally concerned. Generally, the executive would be the best judge to determine whether or not the impugned purpose is a public purpose. Yet, it is not beyond the purview of judicial scrutiny.' (Emphasis added).

Compare the view taken by Hashim Yeop A Sani J (as he then was) in *Kulasingam & Anor v Commissioner of Lands, Federal Territory* (1982) 1 MLJ 204 where, at page 208H, his Lordship observed: 'The expression "public purpose" is incapable of a precise definition. No one in fact has attempted to define it successfully. What all the text books have done is to suggest the tests to be applied in determining whether a purpose is a public purpose. Various tests have been suggested. But in my view it is still best to employ a simple commonsense test, that is, to see whether the purpose serves the general interest of the community.'

75. (1982) 1 MLJ 204, FC.

Article 13(1) in my opinion ensures the sanctity of private property. That clause guarantees the right of any person not to be deprived of his property save in accordance with law which simply means that no one can be deprived of his property merely on the orders of the Executive but that he may be deprived of his property only in accordance with law.

The distinction between ‘deprivation’ and ‘acquisition’ was then analysed at length when he reasoned out his extremely sound judgment:

To get our perspective right it is necessary to begin with that in considering Article 13 of our Constitution regard must be had to the distinction between the provision of clause (1) and clause (2) of that Article. Clause (1) speaks of ‘deprivation’ and clause (2) speaks of ‘compulsory acquisition or use’. The corresponding provision in the Indian Constitution although not identically worded is Article 31. Before the Constitution (Amendment) Act of 1955 which amended the Indian provision there was no clear distinction between ‘deprivation’ and ‘acquisition’. Before the amendment the decisions of the Indian Courts produced at best a state of uncertainties on the meaning of Article 31 of the Indian Constitution.

It was then made clear that compensation would not be payable in any case coming under clause (1) of Article 31 not being a case of acquisition or requisitioning. Thus Basu on Commentary on the Constitution on India, 5th Edn at page 190 says: ‘At the same time, the amendment of 1955 made it clear that clauses (1) and (2) dealt with two different subjects and that “acquisition” and “requisitioning” did not come within Clause (1). It followed therefore that Clause (1) dealt with cases of deprivation of property otherwise than by acquisition and requisitioning.’

The drafters of the Merdeka Constitution in 1957 in which Article 13 first appeared must have considered this distinction between ‘deprivation’ and ‘acquisition’ in the Indian Constitution then and they separated the guarantees in clauses (1) and (2) of the Article which in fact cover two separate constitutional protections. The word ‘law’ followed by the words ‘shall provide’ in clause (2) can only mean enacted law. What can clearly be drawn from clause (2) of Article 13 of our Constitution expressly and by necessary implication are the following constitutional propositions:

- (1) Private property can be compulsorily acquired or used (by the State);
- (2) Private property cannot be so acquired or used except on payment of adequate compensation; and
- (3) Private property cannot be so acquired or used except by authority of an enacted law.

The study of Article 13 is not complete without considering also the character and content of clause (2) of Article 13 and the Land Acquisition Act, 1960 which flows from that clause. As stated earlier, Article 13 as a whole preserves the sanctity of private property but clause (2) of that Article allows certain inroads into that general right. A justification for the inroads and the rationale in clause (2) is to be found in the doctrine of *salus populi suprema lex* – the interests of the public are paramount, and that private interests may in some circumstances be subordinated to the higher interests of the public, when the State thinks it is proper to do so. ‘The exercise of such power (power of compulsory acquisition of private property by the State) has been recognized in the jurisprudence of all civilized countries as conditioned by public necessity and payment of compensation’ so observed by Patanjali Sastri CJ, in *State of Bihar v Kameshwar Singh*.⁷⁶ In *Charanjit Lal v Union of India*,⁷⁷ BK Mukherjea J, observed as follows: ‘It is a right inherent in every sovereign to take and appropriate private property belonging to individual citizens for public use. This right, which is described as eminent domain, in American law, is like the power of taxation, an offspring of political necessity and it is supposed to be based upon an implied reservation by Government that property acquired by its citizens under its protection may be taken or its use controlled for public benefit irrespective of the wishes of the owner.’

The Land Acquisition Act, 1960 is a consolidation of previous enactments on compulsory acquisition of land. All these statutes were based on the Indian precedents. The Indian Lands Act 1894 did not provide for any pre-acquisition hearing until the amendment made to the Act in 1923 which added the new section 5A. Thus under the Indian Act before the 1923 amendment the wishes of the owners of the land acquired were wholly irrelevant as the Act did not contain any provision for any objection on the part of the owner to the acquisition itself. This is exactly the case of our Land Acquisition Act, 1960. Objections are only limited to the amount of compensation and matters connected therewith. On a proper reading of Article 13(2) of our Constitution therefore it is my view that a pre-acquisition hearing is not required by the Constitution either expressly or by implication. What is required is a provision for adequate compensation. The Constitution is the supreme law of the land and where the Constitution itself does not provide for a right the court cannot by itself incorporate the right into the Constitution.

76. (1952) AIR 252, SC.

77. (1951) AIR 41, SC.

The Land Acquisition Act, 1960 is, by itself, a statute which consolidates all the previous enactments on compulsory acquisition of land. This Act has been designed along the lines of the Indian precedents and it contains two main topics – the acquisition of private property and the payment of compensation. The all-encompassing provision of the 1960s lies within section 3 which enacted as follows:

The State Authority may acquire any land which is needed:

- (a) for any public purpose; and
- (b) by any person or corporation undertaking a work which in the opinion of the State Authority is of public utility; or
- (c) for the purpose of mining or for residential, agricultural, commercial or industrial purposes.

The ‘public purpose’⁷⁸ provision in paragraph (a) of section 3 is a much wider provision than the ‘public utility’ provision in the subsequent paragraph (b). Provision (a) deals with the acquisition of private property by the state authority for a public purpose. The latter provision relates to the acquisition of private property which is required by an individual or a corporate body (such as a housing developer) for the construction of public utility works. The construction of such public utilities could include access linkage roads or drainage schemes, telephone and cable trunking, as well as linkage works for water, gas and electricity supplies. In this instance, the land acquisition is carried out by the state authority; albeit the construction of the public utility works on the land or portion of the land so acquired will be performed by the individual or the corporate body. It must be noted that only the state authority has the statutory power to acquire private property. The individual or the corporate body does not.

The purposive provision in section 3(b) was widened further in 1991 when it was amended by the Land Acquisition (Amendment) Act which came into force on September 13, 1991. The replacement provisions reads:

By any person or corporation for any purpose which in the opinion of the State Authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public.

It may thus be observed that the former section 3(b) had restricted the power of the state authority to acquire alienated land for an individual or a corporate body for a very limited purpose of constructing utility works of a public nature. The new section 3(b) has broadened the purposes or needs to include the

78. For a judicial interpretation of the expression ‘public purpose’, see footnote 74, *supra*.

acquisition of any piece or pieces of alienated land which might be required by any individual or corporate body for the 'economic development' of Malaysia.⁷⁹ This new provision is more than sufficient for the state authority to acquire any alienated land or any part or parts thereof for the individual or corporate body to develop the acquired land or to construct practically any structure, including the construction of roads and drainage as well as housing facilities and amenities either for the economic development of Malaysia or for the general well-being of the public or any class of the public. Here again, the state authority and not the individual or corporate body who has been referred to in section 3(b) may acquire the private property.

To ensure that no aggrieved registered proprietor who has been deprived of ownership and possession of his land can succeed in challenging the validity of any subsequent disposal or use of or dealing with (such as transferring, leasing or charging) the acquired land by any individual, corporate body or the government on whose behalf the land was acquired under section 3(b), section 68A was also introduced by the Land Acquisition (Amendment) Act, 1991 to plug this possible loophole. This additional provision enacts as follows:

Where any land has been acquired under this Act, whether before or after the commencement of this section, no subsequent disposal or use of, or dealing with, the land, whether by the State Authority or by the Government, person or corporation on whose behalf the land was acquired, shall invalidate the acquisition of the land.

A case in point involves the compulsory acquisition of a rubber estate in the vicinity of Bukit Kiara, Kuala Lumpur, for the development of a Muslim cemetery. However, the acquired land was subsequently sold to a foreign company to be developed into a golf course. The foreign company then disposed of the land to a Malaysian company via the transfer of shares in the foreign company. This disposal may not be successfully challenged by the original aggrieved proprietor by virtue of section 68A which has retrospective effect. The only redress open to the aggrieved proprietor is to challenge the quantum of compensation⁸⁰ awarded. He cannot even possibly succeed in challenging the purpose of the acquisition because section 8(3) has provided that:

79. *Honan Plantations Sdn Bhd v Kerajaan Negeri Johor & Ors* (1996) 4 CLJ 373, HC.

80. It is not within the scope of this paper to discuss the second topic of land acquisition which deals with the question of adequate compensation. However, for further reading, see Salleh Buang: 'Compulsory Land Acquisition' and Jain & Grace Xavier's article: 'Compulsory Acquisition of Land in Malaysia (Pt I)' (1996) 2 MLJ xxix and Pt II (1996) 2 MLJ xlix.

A declaration in Form D shall be conclusive evidence that all the scheduled land referred to therein is needed for the purpose specified therein.⁸¹

The Land Acquisition Act, via section 37, makes provisions to enable a landowner to object to an award of compensation made in his favour upon the acquisition of his alienated land. While the right to make an objection is given by section 37 of the Act, the manner of making an objection to the compensation awarded is governed by section 38. In *Zainal Abidin Yaakub v Pentadbir Tanah Daerah Melaka Tengah*,⁸² the High Court held, *inter alia*, that:

A landowner must first comply with the conditions in section 37(1) of the Act before he can make an objection as authorised by section 38 of the Act. Failure to comply with the conditions would mean that the Collector would not be able to refer the objection to the Court and even if he does so, the Court will not have the jurisdiction to entertain the objection.

By virtue of section 30(b) of the Act, any person who has received any payment of any amount awarded otherwise than under protest shall not be entitled to require that his claim be referred to the Court under section 37 of the Act. This section is mandatory in nature and goes to the root of a person's entitlement to make an objection to an award. It is therefore clear that once payment has been accepted otherwise than under protest, then the prohibition contained in section 30(b) of the Act will be activated and in consequence thereof, such a landowner will not be entitled to change his mind and require that his claim be referred to the Court under section 38 of the Act. In the event, the question of enlargement of time to make an objection does not arise for the simple reason that the right to object does not exist.

Per curiam:

The rationale behind section 30(b) of the Act is that once a person has received an award without protest, he is estopped from protesting later

81. For the circumstances when the courts can treat a declaration in Form D as a nullity, see the judgment of the Privy Council in *Syed Omar bin Abdul Rahman Taha Alsagoff & Anor v The Government of the State of Johore* (1979) 1 MLJ 49, PC. See also *Yew Lean Finance Development (M) Sdn Bhd v Director of Lands & Mines, Penang* (1977) 2 MLJ 45, OCJ.

82. (1997) 1 CLJ Supp 89, 90f-i, HC

based on the doctrine of estoppel. A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage. That is to approbate and reprobate the transaction.

Legal framework to expedite issuance of certificates of fitness and strata titles

This section examines the existing legal framework which may cause some delay in the issuance of certificates of fitness for occupation as well as strata titles although the two subject matters are not interrelated. In the course of analysis of the legal framework, suggestions for speedier issuance of such certificates and strata titles are proposed for the appropriate authority to consider.

Certificate of fitness for occupation

Certificates of fitness for occupation are quite different from certificates of completion. The former deals with the issue of whether or not a newly constructed housing accommodation is safe for human habitation. The latter concerns with the completion of each stage of construction of the housing accommodation as specified in Item 2 of the Third Schedule of Payment.⁸³ Such stage certificates of completion will culminate in the issuance of a certificate of 'practical' completion by the developer's project architect or engineer when the housing accommodation has been constructed but has yet to be examined by the local authority and certified fit for occupation. At this practical completion stage, the physical construction works of the housing accommodation have been completed but the purchaser is not entitled to occupy the new house or flat as yet.⁸⁴

The reasons for this temporary inhibition are clear. First, clause 21 of the standard contract of sale prescribed by regulation 11 of the Housing Developers (Control and Licensing) Regulations, 1989 expressly prohibits

83. Clause 4(2) of the standardised contract of sale in the form of Schedule G or Schedule H stipulates: 'Every notice referred to in the Third Schedule requesting for payment shall be supported by a certificate signed by the Vendor's Architect or Engineer in charge of the housing development and every such certificate so signed shall be proof of the fact that the works therein referred to have been completed.'

84. See a discussion on this point in SY Kok's articles which have been listed in footnote 67, *supra*.

any occupation of the new housing accommodation during this practical completion stage. This clause stipulates that:

- (1) Upon the issuance of a Certificate (of practical completion) by the Vendor's (developer's) Architect certifying that the construction of the said Building has been duly completed and water and electricity supply ('has been connected'/'are ready for connection')⁸⁵ to the said Building and the Vendor has applied for the issuance of the Certificate of Fitness for Occupation from the Appropriate Authority and the Purchaser having paid all monies payable under clause 4(1) in accordance with the Third Schedule and all other monies due under this Agreement and the Purchaser having performed and observed all the terms and covenants on his part under this Agreement the Vendor shall let the Purchaser into possession of the said Property:

Provided that such possession shall not give the Purchaser the right to occupy and the Purchaser shall not occupy the said Property until such time as the Certificate of Fitness for Occupation for the said Building is issued.

- (2) Upon the expiry of 14 days from the date of a notice from the Vendor requesting the Purchaser to take possession of the said Property whether or not the Purchaser has actually entered into possession or occupation of the said Property, the Purchaser shall be deemed to have taken delivery of vacant possession.

Secondly, any new housing accommodation cannot be occupied unless several departments in the local authority have conducted various checks to ensure that the building is structurally sound and the electrical wiring has been properly installed and is relatively safe for use. Checks are also required to ensure that the housing developer has constructed the infrastructural works in accordance with approved plans before unconditional certificates of fitness for occupation are issued by the local authority. No project architect or engineer is authorised by law to issue such a

85. The interpretation of the old phrase 'has been connected' has caused so much confusion among ill-advised purchasers that, on August 1, 1994, this phrase was amended by the Housing Developers (Control and Licensing) (Amendment) Regulations 1994 to read as: 'are ready for connection'. This amendment is in line with this writer's interpretation in his articles: 'Does Delivery of Vacant Possession include the Energizing of Water and Electricity Supplies?' (1993) 4 CLJ ix and 'Its Sequel' (1994) 4 CLJ xxiii: see footnote 67, *supra*. See also *Salmah Bte Sulaiman & Anor (Administratrices of the estate of Ahmad bin Ibrahim, deceased) v Metroplex Development Sdn Bhd* (1997) 1 MLJ 369, CA.

certificate of fitness, whether conditional or unconditional. Furthermore, no certificate of fitness may be issued by the local authority unless and until the newly completed housing accommodation has been inspected and favourable reports prepared by the inspectors from various departments such as waterworks, health, public works, drainage and irrigation, fire services, National Electricity Board and the local council.

This practical completion stage, therefore, serves two main purposes:

- Firstly, it acts as a yardstick for measuring the last day of the construction period; namely, for determining, via the deeming provisions contained in clause 21(2), whether or not the date of handing over vacant possession has exceeded the 24 or 36 calendar months' period and consequently, triggering off the developer's liability to pay liquidated damages at the rate of 10 per cent on the purchase price; and
- Secondly, it discharges the developer from liability for any loss if the water and electricity fittings (such as water taps and pipes and electrical power points, switches, MCB boxes and meters) should be stolen from the completed housing accommodation after the date when vacant possession has either been taken over by the purchaser concerned or has been deemed by clause 21(2) to have been handed over to the purchaser.⁸⁶

It is ridiculous for ill-advised purchasers, at the practical completion stage, to demand from developers the installation of meters and the activation of water and electricity supplies. This controversial issue surfaced again in *Salmah bte Sulaiman & Anor (Administratrices of the estate of Ahmad bin Ibrahim, deceased) v Metroplex Development Sdn Bhd*.⁸⁷ In this 1997 case, the appellants/purchasers were the administratrices of the estate of the deceased who, during his lifetime, had purchased a house in Ampang on April 4, 1981. Vacant possession was agreed to be delivered by the respondent/defendant, a licensed housing developer, on October 3, 1982. After a delay of more than five months commencing from October 3, 1982 the house keys were delivered on March 31, 1983. Water and electricity supplies were activated on January 25, 1985. The

86. The highly relevant provisions contained in clause 21(2) of the standard contract of sale were not even submitted by learned counsel for the court's consideration in *Syarikat Lean Hup* case and *Voon Keng & 61 Ors* case. Consequently, it is submitted with respect, that the learned judges could not be faulted for delivering such one-sided judgments. Compare those cases with the Court of Appeal case of *Salmah bte Sulaiman & Anor (Administratrices of the estate of Ahmad bin Ibrahim, deceased) v Metroplex Development Sdn Bhd* (1997) 1 MLJ 369, CA.

87. (1997) 1 MLJ 369, CA.

legal issue before the Court of Appeal was whether the errant developer was liable for late delivery of the house from October 4, 1982 to January 25, 1985 as was alleged by the appellants/purchasers or for a much shorter period of up to March 31, 1983 as was contended quite naturally by counsel for the respondent/defendant. The question for the court to determine was whether or not, at the time of delivery of vacant possession which took place just shortly after practical completion, the water and electricity meters must be installed to ensure smooth supplies of water and electricity to the housing accommodation.

The sessions court judge decided that damages for late delivery were to be calculated from October 3, 1982 to March 31, 1983 notwithstanding that water and electricity supplies could only be installed on January 25, 1985. Impliedly, the judge held the view that at the time of delivery of vacant possession, it was not the duty of the developer to connect the water and electricity meters and ensure their supplies therein. The judgments in the *Syarikat Lean Hup* case and the *Voon Keng & 61 Ors* case were apparently not followed by the sessions court. The appellants/purchasers appealed to the High Court. In dismissing the appeal, Siti Norma Yaacob J (as she then was) opined.⁸⁸

As at March 31, 1983, when vacant possession was delivered by the respondent, the notice was accompanied by the architect's certificate of completion which is prima facie evidence that the construction of the house has been completed and that the respondent had connected the external water and electricity mains to the internal electricity and water mains. There is no evidence to show otherwise although as at March 31, 1983, the house was not yet supplied with water and electricity. As the supply of such amenities is not the responsibility of the respondent (developer), I consider that delivery of vacant possession had been validly effected on March 31, 1983, for as at that date, the respondent had fulfilled all their statutory and contractual obligations both under the Rules and under the agreement. The fact that water and electricity were supplied very much later is due very much to the delay of the relevant authorities, for which the respondent cannot be faulted and for which they had been exempted by clause 18 of the agreement. On that finding, I have no reason to disturb the decision of the sessions court and I had accordingly dismissed the appellants' appeal with costs.

88. (1994) 3 AMR 2514 at 2517, HC

On appeal to the Court of Appeal, the court departed from a string of conflicting decisions, including the opposite judgment of the Federal Court in the *Syarikat Lean Hup* case and held that the obligation of the respondent/developer after the practical completion stage but prior to the issuance of the relevant certificate of fitness for occupation was only to connect the water and electricity mains to the internal water and electricity mains without the necessity to activate them. Thus, it was not the duty of the respondent/developer to supply the flow of water and electricity at the stage when vacant possession is delivered or is deemed to have been delivered. During the appeal, the appellants/purchasers contended that under clause 18 of the purchase agreement, vacant possession of the house could only be delivered when there was flow of water and electricity into the house and that electricity was supplied to the house only in February 1985 and water was supplied in January 1985. But this submission, attractive as it might be and most appealing to all ill-advised purchasers, did not go down well with the Court of Appeal. Zakaria Yatim JCA, in a very sound judgment, said:⁸⁹

It is now necessary to examine the relevant provision of the law and the relevant clause in the agreement. Rule 12(I)(1) of the Housing Developers (Control and Licensing) Rules 1970 ('the rule') states as follows: '(1) Provisions binding on the licensed housing developer that he shall at his own costs and expenses cause the connection of electricity, water and sewerage mains of the Appropriate Authority or public authority with the internal electricity, water and sewerage mains of the housing accommodation erected for the purchaser.'

We agree with Siti Norma Yaakob J that the rule speaks of connection of the electrical and water mains and that the respondent's (developer's) obligation was only to connect the electricity and water mains to the internal electricity and water mains and not to supply the flow of water and electricity.

The Court of Appeal then examined the contractual provisions in clause 18 and opined that the clause was consistent with rule 12(I)(1) and continued:⁹⁰

The clause explicitly provides that the developer shall not be responsible or liable for any delay on the part of the relevant authorities to supply water and electricity. We agree that vacant possession was delivered to the appellants on 31 March 1983.

89. (1997) 1 MLJ 369 at 372D, CA.

90. Ibid, at 372I.

In our view, the rule and clause 18 of the agreement clearly state that the duty of the developer is only to connect the electricity and water mains to the internal mains. The supply of water and electricity are the responsibility of the relevant authorities.

The delay in the issuance of certificates of fitness for occupation by the local authority has been the bane of the housing industry. Delay in inspecting the house after the practical completion stage by the various departments will consequently cause delay in the installation of water and electricity meters. Such a delay will undoubtedly result in more delay in the issuance of certificates of fitness and purchasers will, undoubtedly, be unable to occupy their new houses or flats.⁹¹ It is to be hoped that this situation will improve and eventually certificates of fitness for occupation could be issued within 30 days from the date of practical completion. One suggestion is to empower the Controller of Housing with new regulations to utilise the Housing Development Account of any errant developer to meet the cost of any rectification works required by the local authority instead of having the local authority withholding the issuance of certificates of fitness until the rectification works have been carried out.

Lastly, something must be mentioned about the shortage of water or electricity meters. Without the availability of such meters, there will be no flow of water and electricity to the newly constructed house or flat. Such shortages can render the housing accommodation unfit for human habitation and disgruntled purchasers can end up blaming the developer for the delay in occupying the housing accommodation. However, when this occurs, the blame should fall on the local authority who failed to ensure the adequate stock of such meters after approving the development of housing projects. Until the arrival of the meters, perhaps the water and electrical terminals could be joined temporarily by water pipes and electrical wires so as to enable innocent purchasers to occupy their homes.

91. On the question of 'delay' by public servants, the Federal Court had this to say: '...that promptness in approval enables purchasers to acquire property and homes at more or less current prices, that delay in approval, on the other hand, apart from causing dissatisfaction and breeding corruption, leads to delay in completion of projects and forces purchasers to pay prices swollen over time by inflation and hinders national development.' Per Suffian LP, delivering the judgment of the Federal Court in *Pengarah Tanah Dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd* (1979) 1 MLJ 135 at 146F, FC.

Issuance of qualified and final strata titles

The delay in the issuance of strata titles is a major issue of high-rise development. The delay results partly because of human factors and partly because of existing strata laws. Section 16 of the Strata Titles Act, 1985,⁹² together with section 14 thereof, provide the machinery for the preparation, registration and issuance of strata titles. However, the time for applying for strata titles is governed by different provisions such as section 8 of the Strata Titles Act. This section has to be read in conjunction with sections 6, 7, 9, 10, 12 and 13. Section 6 sets out the basic conditions to be met before any high-rise building could be subdivided into strata parcels, accessory parcels and common property and for the ultimate issuance of strata titles thereto.⁹³ Section 7 identifies the person or corporate body who may or may not apply for strata titles in respect of a multi-storey building which qualifies for subdivision and will be subdivided by the state Director of Lands and Mines. Section 9 lists out the various items and conditions which must be complied or met with by the applicant before the application for subdivision of the multi-storey building may be considered by the Director of Lands and Mines. Section 10 ensures that every application is made in the statutory prescribed form and annexed with the required enclosures, including the approved building plans and the applicant's proposed strata plan comprising a location plan and a floor plan certified by a land surveyor.

However, the duration required for the issuance of strata titles is governed to a certain extent by section 8 of the Strata Titles Act as follows:

- (1) The proprietor of any alienated land on which there is a completed building capable of being subdivided under section 6 shall, within the period specified in subsection (2), apply in accordance with section 10 for the subdivision of the building if at any time he has sold or agreed to sell any parcel in such building to any person.

The first principle of strata law to emerge from this subsection is that no registered proprietor of any alienated land is required to apply for strata titles if he has not sold any strata parcel which is situated in his multi-storey building. But he may voluntarily do so without even securing a sale or if he has leased all

92. Act 318 of 1985, came into force on June 1, 1985.

93. Section 14 of the STA provides: 'Upon receiving from the Director of Survey the documents referred to in paragraph (e) of subsection (1) of section 13, and upon being informed by the Land Administrator that the fees for preparation and registration of strata titles have been paid, the Director shall direct the Registrar to open a book of the strata register in accordance with the provisions of section 15 and prepare, register and issue strata titles in accordance with the provisions of section 16.'

or some of the strata parcels. However, from the moment that a sale of a strata parcel has taken place, the multi-storey building within which the strata parcel is situated must then be subdivided. This requirement ensures that a strata title will be issued and subsequently transferred to the purchaser concerned. Any sale of a strata parcel will, therefore, entail a compulsory application to the relevant Land Administrator⁹⁴ for the multi-storey building to be subdivided and for the subsequent issuance of strata titles.

Unfortunately, the delay is caused by section 8(1) which talks of a 'completed' multi-storey building and also by clause 22(1) in the standard contract of sale in Schedule H of the Housing Developers (Control and Licensing) Regulations, 1989 which explicitly allows any developer to complete the construction of a strata parcel during a span of 36 calendar months from the date of the contract of sale. Thereafter, the developer has an average period of six months to submit his application for subdivision and the issuance of strata titles.⁹⁵ Upon receipt of the developer's application, the Land Administrator needs time to process the application⁹⁶ before forwarding it to the Director of Lands and Mines for approval or rejection.⁹⁷ The Director is the sole authority vested with the statutory power to approve or reject such an application. The Land Administrator, being a processing authority in this respect, has no similar power either to approve or reject the application.

However, the approval of an application for subdivision of any high-rise building by the Director of Lands and Mines does not mean the end of a long process for the issuance of strata titles. There are further steps to be complied with. For instance, under the existing strata law, the Director must, after approving the application, transmit to the Director of Survey the approved application and the accompanying documents.⁹⁸ At the same

94. See section 10(1) and Form 1 of the STA, 1985.

95. See section 8(2)(a) or, as the case may be, section 8(2)(b) of the STA, 1985.

96. Generally, section 10 requires the Land Administrator to ensure that the application is made in Form 1, the prescribed application fees have been paid and the prescribed accompanying documents such as the building plans, the location and storey plans etcetera are in order before transmitting them to the director for the latter's consideration together with his recommendations for approval or rejection.

97. Section 10(10) of the STA, 1985. The statutory powers of the Director of Lands and Mines in relation to an application for subdivision and issuance of strata titles lie in section 12 which enacts: 'On receiving any application made under section 10, the Director shall (a) approve the subdivision if it appears to him that the conditions specified in section 9 are satisfied; and (b) in any other case, reject the application.'

98. Section 12(2)(a) of the STA, 1985.

time, the Director must notify the Land Administrator of the approval and direct him to collect from the proprietor fees as notified by the Director of Survey under subsection (9) of section 10 and fees for the preparation and registration of strata titles.⁹⁹

From then on, the Director of Survey will take over the orchestration of the titles issuance. Under section 13(1) of the Strata Titles Act, 1985 the Director of Survey has to prepare a 'certified' strata plan to be based from the applicant's 'proposed' strata plan which comprises of the location and floor plans and with such modifications as the Director of Survey may consider necessary.¹⁰⁰ It is surprising to note that if modifications have been made by the Director of Survey, he is not obliged to forward a copy of the modified strata plan to the applicant. The former only needs to send a copy of the 'certified' strata plan to the Registrar of Titles under paragraph (c) of section 13(1) and copies to the Director under paragraph (e). Would this lack of communication mean that the successful applicant can construct the high-rise building in accordance with the approved building plans minus the modifications, if any? Notwithstanding this observation, the time required to prepare the 'certified' strata plan could take a minimum period of three months before the Registrar of Titles could organise the titles issuance under sections 14, 15 and 16 of the Strata Titles Act, 1985. The opening of a 'book of the strata register' and the preparation, registration and issuance of the individual strata titles may take six months. All in all, a total minimum period of perhaps 54 months will be needed before the relevant strata titles will see the light of day.

To shorten the statutory time before strata titles could be issued, this writer has, in 1991, mooted the idea of 'qualified strata titles' and 'final strata titles'¹⁰¹ at a national conference on the housing industry organised by the Institute of Strategic and International Studies (ISIS) Malaysia. Instead of waiting for 36 calendar months for the high-rise building to be constructed, before an application for subdivision of the building and the issuance of strata titles can be processed, it was suggested that the application should be allowed to be made upstream in unison with the construction of the building. On processing and approval of the application, 'qualified strata titles' must be issued

99. Section 12(2)(b) of the STA, 1985.

100. Section 13(1)(a) of the STA, 1985.

101. See SY Kok's article: 'A Review of Loan Agreements and Deeds of Assignment under the Malaysian Torrens System' (1994) 2 CLJ xxxv at xlv.

within three months thereafter notwithstanding that the relevant building is still under construction in accordance with the approved building plans. This will cut down a lot of unnecessary time currently prescribed by statute for the long process of issuance of strata titles.

When the multi-storey building has been constructed in strict compliance with the approved building plans and an unconditional certificate of fitness for occupation has been issued by the local authority, the Director of Lands and Mines may then instruct the Registrar of Titles to replace the 'qualified strata titles' with permanent 'final strata titles'. In this manner, the time required to issue strata titles can be drastically cut down. With the earlier availability of strata titles, there will be no further necessity for the current use of deeds of assignment absolute instead of the proper use of deeds of assignment by way of a first charge or, as the case may be, by way of a second charge, etc.¹⁰²

Perhaps it may be appropriate at this juncture to comment on the 'sinking fund' associated with high-rise development. Section 46 of the Strata Titles Act, 1985 which has termed such a fund as 'special account' stipulates that:

The management corporation shall maintain a special account in which shall be paid such portion of the contribution to the management fund as may be from time to time determined by special resolution for the purposes of meeting its actual or expected liabilities in respect of the following matters:

- (a) for painting or repainting any part of the common property which is a building or other structure;
- (b) for the acquisition of any movable property for use in relation with the common property;
- (c) for the renewal or replacement of any fixtures or fittings comprised in any common property and any movable property vested in the body corporate; and
- (d) for any other expenditure not being expenditure incurred under subsection (5) of section 43 to meet a liability for maintenance or for settling any defaults in payment by a proprietor.'

102. See SY Kok's review of the current improper adoption of the deeds of assignment absolute to secure loans in his article: 'A Review of Loan Agreements and Deeds of Assignment under the Malaysian Torrens System' (1994) 2 CLJ xxxv. See also the wrong interpretation of a footnote in this article by the Tax Commissioners in *DGIR v DDHOB* (1996) 1 BLJ 125 at 132a.

This section states that the proprietors of strata parcels must contribute to the management fund which has to be set up by the management corporation. The fund can only be used for all or any of the purposes set forth in paragraphs (a) to (d). Hefty repair or replacement bills have to be paid in the event of severe leakage in swimming pools or serious breakdowns of service lifts which happen to occur outside the defect liability period of 18 calendar months. To have sufficient funds to rectify such costly eventualities, it may perhaps be necessary to amend the standard contract of sale to include an additional liability where purchasers should be required to contribute monthly sums towards the management fund commencing one calendar month following the date of issuance of an unconditional certificate of fitness for occupation in respect of the high-rise building instead of waiting for the book of strata register to be opened before making such contributions as is now practised. Furthermore, any subsequent purchasers of the remaining unsold units must be made liable to contribute to the 'sinking fund' for the same duration of time to ensure that all contributions are fair and equitable.

Legal framework for housing finance

Freedom of contract

Apart from enacting certain limited provisions which regulate the post-registration relationship between chargors and registered chargees,¹⁰³ Parliament has recognised and preserved the sanctity of freedom to contract so well-entrenched in the English common law – that parties are free to contract as they may see fit.¹⁰⁴ This question of freedom of contract was discussed in 1883 by the House of Lords in an old English case of *The Manchester, Sheffield and Lincolnshire Railway Company v H W Brown*.¹⁰⁵ It was also raised in *Printing and Numerical Registering Company v Sampson*,¹⁰⁶ where the Master of the Rolls, Sir G Jessel, observed:

103. See the National Land Code 1965, Part Sixteen on 'Charges and Liens'.

104. *Suisse Atlantique Societe D'Armement Maritime SA v NV Rotterdamsche Kolen Centrale* (1967) AC 361 at 399D, HL(E). Referred to in *Wong Lang Hung v National Employees' Mutual General Insurance Associated Ltd* (1972) 2 MLJ 191, OCJ; *The Attorney-General of Singapore v Wong Wai Cheng* (1980) 1 MLJ 131, CA.; and *Talam Leasing Sdn Bhd v Batu Wong Koon Sdn Bhd & 6 Ors* (1988) 1 CLJ 702, HC.

105. (1883) 8 App. Cas. 703, HL(E).

106. (1875) LR 19 Eq. 462 at 465.

It must not be forgotten that you are not to extend arbitrarily those rules which say that a given contract is void as being against public policy, because if there is one thing which more than another public policy requires it is that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts when entered into freely and voluntarily¹⁰⁷ shall be held sacred and shall be enforced by Courts of justice. Therefore, you have this paramount public policy to consider – that you are not lightly to interfere with this freedom of contract.

Similar judicial sentiments have been expressed in the local courts. In a Supreme Court case of *Seet Chuan Seng & Anor v Tee Yih Jia Foods Manufacturing Pte Ltd*,¹⁰⁸ Eusoff Chin SCJ, when delivering a dissenting judgment, said:

It is not the function of the court to make the contract for the contracting parties. It is also not the function of the court to improve the contract which the parties have negotiated and made for themselves, however desirable the improvement might be. In *Trollope & Colls Ltd. v North West Metropolitan Regional Hospital Board*,¹⁰⁹ the House of Lords held that an unexpressed term could only be implied if the court found that the parties must have intended that term to form part of their contract. Lord Pearson in that case said, at p 268:

‘The court’s function is to interpret and apply the contract which the parties have made for themselves. If the express terms are perfectly clear and free from ambiguity, there is no choice to be made between different possible meanings: the clear terms must be applied even if the court thinks some other terms would have been more suitable. An unexpressed term can be implied if and only if the court finds that the parties must have intended that term to form part of their contract: it is not enough for the court to find that such a term would have been adopted by the parties as reasonable men if it had been suggested to them: it must have been a term that went without saying, a term necessary to give business efficiency to the

107. The question of whether or not a contract has been entered into freely and voluntarily was dealt with by Lord Bramwell in *The Manchester, Sheffield and Lincolnshire Railway Company v H W Brown* (1883) 8 App Cas 703 at 719, HL(E).

108. (1994) 2 MLJ 771 at 788, SC.

109. (1973) 2 All ER 260; (1973) 1 WLR 601, HL(E).

contract, a term which, although tacit, formed part of the contract which the parties made for themselves.’

A similar view was expressed by the Court of Appeal in the case of *Charles Grenier Sdn Bhd v Lau Wing Hong*¹¹⁰ where Gopal Sri Ram JCA said:

The law leans in favour of upholding bargains and not in striking them down willy-nilly, and its declared policy finds expression in the speech of *Lord Wright in Hillas & Co v Arcos Ltd* (1932) All ER Rep 494 where he said:

‘Businessmen often record the most important agreements in crude and summary fashion; modes of expression sufficient and clear to them in the course of their business may appear to those unfamiliar with the business far from complete or precise. It is, accordingly, the duty of the court to construe such documents fairly and broadly, without being too astute or subtle in finding defects; but, on the contrary, the court should seek to apply the old maxim of English law, *verba ita sunt intelligenda ut res magis valeat quam pereat*.¹¹¹ That maxim, however, does not mean that the court is to make a contract for the parties, or to go outside the words they have used, except in so far as there are appropriate implications of law, as, for instance, the implication of what is just and reasonable to be ascertained by the court as matter of machinery where the contractual intention is clear but the contract is silent on some detail.’

This principle applies not only to documents drafted by laymen, but also to those prepared by lawyers (see *Australian Broadcasting Commission v Australasian Performing Right Association Ltd* (1973) 129 CLR 99).

Instruments of Torrens charge

Registration of instrument of Torrens charge

Apart from the freedom of contract, the legal framework for housing finance is confined to instruments of charge in instances where alienated lands issued with individual land titles are offered as securities for

110. (1996) 3 MLJ 327, 335E-I; (1997) 1 CLJ 625, 633g-634b; CA.

111. This maxim means that words are to be understood so that the object may be carried out and not fail.

the repayment of housing loans or banking facilities.¹¹² Prior to the registration of the instruments of charge by the Registrar of Titles or, as the case may be, by the Land Administrator,¹¹³ such instruments are founded on contract.¹¹⁴ They will bind only the parties to the instruments of dealing in land under the doctrine of privity of contract. Strangers to such instruments are not bound.

However, when properly created instruments of charge have been duly registered by the relevant registration authorities, they become Torrens charges. By virtue of such registration, the registered charges also bind the world at large. They are then known as registered encumbrances since they are carved out of the respective registered land titles.¹¹⁵ Only registered proprietors can encumber their alienated land; strangers may not because the latter would lack the legal capacities to do so. Neither may the state authority encumber state land. On the nature of registered encumbrances, Lord Diplock, in a Privy Council case of *Damodaran v Choe Kuan Him*,¹¹⁶ had this to say:

Interests in land, short of proprietorship, which are capable of being registered are leases, charges and easements. If registered they would amount to encumbrances within the meaning of a covenant against encumbrances; but unless registered they do not derogate from the unencumbered title of the registered proprietor of the land.

112. In cases where the landed properties or strata parcels have not, as yet, been issued with the respective qualified or strata titles by the Registrar of Titles, the use of loan agreements and deeds of assignment absolute as security documents has been rampant over the years: see SY Kok's criticism of the usage of deeds of assignment absolute in his article: 'A Review of Loan Agreements and Deeds of Assignment under the Malaysian Torrens System' (1994) 2 CLJ xxxv

113. Alienated land which is held under Mukim titles come within the jurisdiction of the Land Administrator.

114. In *Loke Yew v Port Swettenham Rubber Co Ltd* (1913) AC 491, Lord Moulton of the Privy Council, when commenting on the former section 4 of the Registration of Titles Regulation, 1891 (which is similar to the current section 206(1)(b) of the National Land Code, 1965) said: '... no instrument (of dealing in land) is effective to convey any estate in land unless it is registered, and therefore the effect of the instrument rested in contract until registration.'

115. See SY Kok's article: 'The Concept of Encumbrances under the Modified Malaysian Torrens System' (1995) 1 CLJ clxiii.

116. (1980) AC 497 at 503B-C, PC.

Therefore, under the Torrens law, registration is the cornerstone of its system.¹¹⁷ The state's magical act of registration separates pre-registration land law concepts from post-registration concepts.¹¹⁸ In particular, it sets apart 'registrable interest'¹¹⁹ in land from 'registered interest' in land.¹²⁰ While section 241(1) of the National Land Code, 1965 reaffirms one of the incidents of ownership of alienated land – namely, the power of charging one's land – yet section 241(2) restricts the purposes of creating Torrens charges to those which have been specified therein, including the charging of land as security for the repayment of housing loans. Furthermore, statutory provisions have been enacted to ensure that instruments of charge are prepared under the prescribed Form 16A or Form 16B, as the case may be. An instrument of charge in the prescribed form, in order to be effective to bind not only the contractual parties thereto but also strangers and the world at large, must first of all be registered in the land registry or land office.¹²¹ In the recent case of *Keng Soon Finance Bhd v MK Retnam Holdings Sdn Bhd (Bhagat Singh s/o Surian Singh & Ors, Interveners)*¹²² the High Court, after concluding that a registered charge created by an unlicensed housing developer is not only void *ab initio* but is also

117. *Dr Ti Teow Siew & Ors v Pendaftar Geran-Geran Tanah Negeri Selangor* (1982) 1 MLJ 38 at 39A, HC.

118. In *Abdul Rahim bin Syed Mohd v Ramakrishnan Kandasamy (Wan Ahmad Azlan bin Wan Majid & Anor, Interveners) and another action* (1996) 3 MLJ 385, 397F, the High Court opined that '(i)t is also often overlooked that though the Torrens system is applicable in Malaysia, the National Land Code 1965 – the principal legislation applicable in Malaysia relating to land matters – only deals with the post-contract position pertaining to the sale of land.' However, it is unclear whether the root words 'post-contract position' refers to the intermediate stage when instruments of dealings in land have been executed by the registered proprietors concerned but for one reason or another, they have not, as yet, been presented for registration or refers to, in most likelihood, to the registration stage of the local conveyancing practice.

119. This localised concept of 'registrable interest' in alienated land has not been defined nor analysed by the courts, academic experts specialising in land law or textbook writers. However, SY Kok has analysed and defined this terminology in his articles: 'Equity in Malaysian Land Law' (1994) 3 MLJ clvii & ccxii; (1996) April MSIJ 66-127 and 'A Review of the Court of Appeal Case of Luggage Distributors (M) Sdn Bhd' (1995) 2 MLJ cxxv.

120. See SY Kok's articles which have been referred to in footnote 120, *supra*.

121. Section 243 of the NLC, 1965 states as follows: 'Every charge created under this Act shall take effect upon registration so as to render the land or lease in question liable as security in accordance with the provisions thereof, express or implied.'

122. (1996) 2 MLJ 431, 452D-F; (1996) 4 CLJ 52, 72c-f; HC.

illegal for infringing the Housing Developers (Control and Licensing) Rules 1970, tendered an *inchoate ratio decidendi* when the court said:

The plaintiff (Keng Soon Finance Bhd), as intended chargee, could not receive such a security because it had:

- (a) no developer's licence to provide money for housing development; and
- (b) no powers to provide finance for such an unlicensed business of the housing development by the unlicensed housing developer.

Consequently, the purported charge was a nullity and was incapable of being registered to create any security over the land's 59 lots.

While paragraph (a) in the aforesaid *ratio decidendi* of the *Keng Soon Finance Bhd* case does not appear to be coherent, likewise paragraph (b) in the judgment does not seem to be any clearer. Does it mean that no chargee may accept a valid charge if the developer/chargor happens to be unlicensed in his business of housing development? Conversely, does the court intend to mean that the non-issuance of a developer's licence under the provisions of the Housing Developers (Control and Licensing) Act, 1966 will bar the unlicensed developer/registered proprietor from creating a charge over his/its alienated land? If the question is in the affirmative, then this implied principle of land law is merely judge-made because, it is respectfully submitted, there are no provisions in the National Land Code, 1965 which will curb the registered proprietor's incident of ownership, including the right to create Torrens charges over his alienated land, in this particular manner as suggested by the court.

Creation of Torrens charge in accordance with existing laws

The creation of a Torrens charge, apart from the mandatory requirement of its registration under Torrens law, must be prepared in the prescribed statutory form and duly executed and attested.¹²³ In addition, the creation must not infringe any other existing law.¹²⁴ The registered proprietor's power to create Torrens charges over his alienated land may be prohibited

123. In *Harta Empat Sdn Bhd v Koperasi Rakyat Berhad* (1997) 2 CLJ 94 99d-101a; (1997) 2 AMR 1521 1525-1527; the Court of Appeal went through meticulously sections 241(1), 241(3), 242, 243, 292(1), 301(c) of the NLC which govern the creation of a Torrens charge.

124. S 241(3) of the NLC enacts as follows: '241(3) The said powers (to create charges) shall be exercisable in any particular case subject to (a) any prohibition or limitation imposed by this Act or any other written law for the time being in force; (b) any restriction in interest to which the land in question is for the time being subject; and (c) in relation to leases, the provisions thereof, express or implied.'

or limited by any other written law for the time being in force.¹²⁵ The creation of a Torrens charge has been aptly discussed by the Court of Appeal in the case of *Harta Empat Sdn Bhd v Koperasi Rakyat Berhad*.¹²⁶ In this appeal case, NH Chan JCA, after referring to the relevant sections in the National Land Code, 1965 explained:¹²⁷

This means that a charge is subject to 'any prohibition... imposed by... any... written law for the time being in force' (section 241(3)(a)) and is effected by an instrument in Form 16A (section 242(1)) which will take effect upon registration (section 243) so as to render the immovable property charged liable as security for the repayment of money (section 241(1)).

The charge is registered by presentation of the Form 16A instrument to the Registrar (section 292(1)(c)) only if the charge instrument is fit for registration (section 301) which is to say 'that the dealing which it effects is not contrary to any prohibition... imposed by... any... written law for the time being in force' (section 301 condition (c)).

Put shortly, a charge is subject to 'any prohibition... imposed by... any... written law for the time being in force' (section 241(3)(a)). The charge takes effect upon registration (section 243). Registration of the charge is obtained by presenting it to the Registrar (section 292(1)(c)) but only if the charge is fit for registration (section 301), and the charge is fit for registration if condition (c) of section 301 is satisfied, that is to say, 'that the dealing which it effects is not contrary to any prohibition... imposed by... any... written law for the time being in force' (section 301 condition (c)).

Creation of a charge prohibited by a restriction-in-interest

Restraints on the inherent powers of the registered proprietor to charge his alienated land as security for the repayment of a loan or banking facilities by the provisions of the National Land Code, 1965 will normally assume the statutory form of a 'restriction-in-interest'. Such a restriction-in-interest will, if applicable, be endorsed on the 'register' as well as the 'issue'

125. In *Keng Soon Finance Bhd v MK Retnam Holdings Sdn Bhd (Bhagat Singh s/o Surian Singh & Ors, Interveners)* (1996) 2 MLJ 431, 454E-455H; (1996) 4 CLJ 52, 74h-76d; the High Court undertook a painstaking task by reviewing some of the past authorities on Torrens charges the creation of which had infringed other existing laws.

126. (1997) 2 CLJ 94; (1997) 2 AMR 1521; CA.

127. *Ibid*, at pages 100g-101a; pages 1526-1527. The relevant sections which have been reviewed by the Court of Appeal appear in footnote 124, *supra*.

document of title in relation to the land concerned at the time when the state land is alienated to the approved alienee.¹²⁸ This restriction will usually take the common form of: 'This land shall not be transferred or charged unless with the prior written approval of the Ruler-in-Council'. If a land title happens to be endorsed with such a restriction-in-interest, the registered proprietor may, under section 124(b) of the National Land Code, 1965 apply to the state authority for the rescission of the restriction-in-interest. If the application is rejected or while an approval is still pending, any creation of a charge over the land so affected by the restriction-in-interest will be void *ab initio*.

In the High Court case of *United Malayan Banking Corporation Bhd v Syarikat Perumahan Luas Sdn Bhd (No 2)*,¹²⁹ the registered proprietor/chargor, by originating summons, applied to the court to set aside an order for sale of a certain piece of land in Penang. The chargor alleged that the registered charge was void because when it was registered on December 16, 1983 the registration was in breach of an express restriction-in-interest which was endorsed on the issue document of title to the land under section 120 of the National Land Code, prohibiting the charging thereof without the written sanction of the state authority. Approval was not given until some four years later. It was also contended by the chargor that the registered charge was defeasible because the registration thereof was obtained by means of an insufficient or void instrument of dealing in land whose creation offended the restriction-in-interest. This contention was favoured by the High Court and, consequently, the order for sale was set aside. The High Court reasoned as follows:

In these circumstances, the charge having been registered in breach of an explicit statutory prohibition imposed on the title to the charged land pursuant to the provisions of section 120 of the Code, the title or interest of the chargee is defeasible since registration thereof had been obtained by means of an insufficient or void instrument (section 340(2)(b)) and also because the Registrar of Titles, in registering the charge, had acted *ultra vires* the powers conferred upon him: section 340(2)(c). The defence of estoppel accordingly fails since there cannot be an estoppel to evade the plain provisions of a statute: *Jagabandhu v Radha Krishna* ILR 36 Cal 920,

128. See generally section 76(e) of the NLC. See also sections 104 and 120.

129. (1988) 3 MLJ 352, HC

particularly when as here, the non-compliance goes to the root of the thing. In other words, if the terms of a statute are absolute and do not admit of any relaxation or exemption, anything done in contravention thereof will be ultra vires and no person can be estopped from putting forward the contention that what was done was illegal or void: *University of Delhi v Ashok Kumar Chopra* AIR 1968 Delhi 131.

In another High Court case of *Goo Hee Sing v Will Raja & Anor*,¹³⁰ the first defendant/vendor entered into a purported deed of sale of a piece of land to the plaintiff/purchaser. The said land had a restriction-in-interest which restricted the incidents of ownership in that the land cannot be sold, pledged, charged or transferred in any manner without the permission of the state authority. There was no reference whatsoever to the said restriction in the sale document. The plaintiff/purchaser entered a caveat against the said land. The requisite consent from the state executive council was not applied for, let alone obtained. The land was not transferred to the plaintiff/purchaser, thus triggering an action being instituted against the first defendant/vendor and an application to court for an extension of the life-span of the caveat pending the conclusion of the suit. The only issue before the court was whether in the face of the restriction-in-interest and in the absence of obtaining the requisite consent, the caveat could or could not be sustained on the register document of title. In dismissing the application for the extension of the caveat, Mahadev Shankar J, succinctly said:

To put it in a nutshell, on September 29, 1989, the plaintiff (purchaser) should have been able to claim title to the said land, or a right to such title by virtue of the deed of sale aforesaid. Alternatively, he should be a person who could validly claim a right to such title.

The point however is that the claim must be to title or a *right thereto in praesenti*, and not to some contingent title or *right thereto in futuro*.

This... raises a question of paramount importance to the administration of land law in Malaysia, whenever the title contains a restriction in interest of the present kind. Because the prohibition in dealing with the land is total, nothing can happen without the consent of the *pihak kuasa negeri*.

Consequently, it must follow that a prospective purchaser, *chargee*, or lessee of such land can have no caveatable interest in such land until the consent of the *pihak kuasa negeri* has first been irrevocably obtained.

130. (1993) 3 MLJ 610, HC. See also *Timur Permai Holdings Sdn Bhd v Soon Seng Plywood & Timber Sdn Bhd* (1996) 3 CLJ 470, HC.

Notwithstanding the comment of Judith Sihombing in her learned treatise on the National Land Code at p 43 'that, even the most ephemeral of claims to interests can be caveated...' I am impelled to this conclusion because the applicant (purchaser) has not been able to demonstrate that an application for approval had already been made and that the *pihak kuasa negeri* was bound to grant that approval as a matter of course within a reasonable period of time.

So until the grey areas surrounding the circumstances of the granting or withholding of consent to deal with land subject to such restrictions in interest are clarified, I regret to state that there is therefore only one decision that is possible in this case. The application for the maintenance of this caveat must be dismissed.

A restriction-in-interest will generally run with the alienated land to which it relates.¹³¹ That is to say, the imposed restriction-in-interest will bind the land and its registered proprietor and all those who shall come upon the land and deal with the registered proprietor.¹³² In common law, this will tantamount to a covenant which touches and concerns the alienated land.¹³³ Section 105(1) specifies that every restriction-in-interest imposed under section 76(e) shall take effect from the date of alienation of the state land to the approved alienee except where it is otherwise provided by the National Land Code, 1965 or the context otherwise requires. However, what seems to be unclear to some quarters is the exact 'date of alienation'. Does this date coincide with the date of the state executive council's approval of an application for state land or does it coincide with the date of registration of the register document of title to the land whose alienation has been approved by the state executive council?

The answer could be found in section 78(3). Its meaning has been determined by the High Court in the case of *Dr Ti Teow Siew v Pendaftar Geran-Geran Tanah Negeri Selangor*.¹³⁴ In this case, a piece of

131. Section 105(1) and (2) of the NLC.

132. Section 104 enacts as follows: 'Every condition or restriction in interest shall run with the land to which it relates, and shall bind the proprietor thereof for the time being and every person or body having or claiming any interest in the land, howsoever derived.'

133. For a further reading on covenants touching and concerning the land, see the excellent works of Cheshire & Burn's, *Modern Law of Real Property* (13th edition) 430-431.

134. (1982) 1 MLJ 38, HC.

leasehold land was imposed with a restriction-in-interest which expressed that 'the land hereby leased shall not be transferred or leased for a period of 15 years without the consent of the Ruler in Council'. The 15 years' period would expire on August 17, 1979 if the 15 years of restriction were to commence from the date of the state executive council's approval of the alienation of the state land. However, if the 15 years were to commence from the subsequent date of registration of the register document of title, the expiry date for the restriction-in-interest would fall on November 8, 1982. Under the belief that the former date was correct, the proprietor executed an instrument of transfer of the leasehold land on May 5, 1980 without applying to the Ruler in Council for the latter's consent. The instrument of transfer of the land was rejected for registration by the Registrar of Titles, Selangor for infringing the provisions contained in the restriction-in-interest. The High Court, in upholding the decision of the Registrar of Title's opinion that the instrument of transfer was effected prematurely unless the Ruler in Council's written consent has first been obtained, said:¹³⁵

It is registration that gives and extinguishes title under the National Land Code. Registration is the cornerstone of the Torrens system. According to section 105 of the National Land Code, restriction-in-interest starts to run from the date of alienation.

... the word 'alienation' is crucial for the proper interpretation of section 105. Section 78(3) of the Code determines when an alienation of State land shall take effect and it is clear from that subsection that alienation takes effect upon registration. Section 78(3) of the Code reads as follows:

'(3) The alienation of State land shall take effect upon the registration of a register document of title thereto pursuant to the provisions referred to in subsection (1) or (2), as the case may be; and, notwithstanding that its alienation has been approved by the State Authority, the land shall remain State land until that time.'

Any restriction-in-interest, once imposed, shall run and will continue with its running with the alienated land until and unless such land has been reverted to the state authority under any of the circumstances listed in section

135. *Dr Ti Teow Siew & Ors v Pendaftar Geran-Geran Tanah Negeri Selangor* (1982) 1 MLJ 38, 39A; HC.

46(1).¹³⁶ The duration of any restriction-in-interest may also cease if the land to which it relates is acquired under the provisions of the Land Acquisition Act, 1960 or if it has been rescinded upon a successful application having been made by the registered proprietor to the state authority for its rescission under section 124(1)(b) of the National Land Code, 1965. At times, the state authority may impose a fixed duration of time for a restriction-in-interest to operate. In such an instance, the restriction-in-interest will affect and continue to bind the alienated land to which it relates until its fixed life-span has come to an end by effluxion of time.¹³⁷ But while a restriction-in-interest remains valid and effective, any attempt to deal with the land in contravention of the particular restriction will render that particular instrument of dealing in land null and void and registration thereof will not obtain indefeasibility. Thus, in the *Dr Ti Teow Siew* case, the instrument of transfer of land was considered to be a nullity while in the *Syarikat Perumahan Luas* case, the instrument of charge was deemed to be void *ab initio* – being created in direct conflict with the respective restrictions-in-interest imposed.

Understandably, restrictions-in-interest have been imposed by the state authority to ensure that the approved alienees will not be able to dispose of their alienated lands so easily. This administrative policy is in line with the government's intention of promoting a property-owning democracy.¹³⁸ This policy

136. Section 46(1) stipulates: '(1) Without prejudice to the provisions of any other written law for the time being in force, alienated land shall revert to and vest in the State Authority in the following circumstances:

- (a) upon the expiry of the term (if any) specified in the document of title thereto;
 - (b) upon the publication in the Gazette of a notice under section 130 (that is to say, a notice published on the making of an order of forfeiture by the Land Administrator on the grounds of non-payment of rent or breach of condition);
 - (c) in the circumstances mentioned in section 351 and 352 (which relate respectively to the death of a proprietor without successors, and the abandonment of title by proprietors); and
 - (d) upon the surrender thereof in accordance with the provisions of Part Twelve;
- and any part of alienated land affected by encroachment by the sea or any river shall revert to and vest in the State Authority in accordance with section 49.'

137. *Dr Ti Teow Siew v Pendaftar Geran-Geran Tanah Negeri Selangor* (1982) 1 MLJ 38, HC.

138. See the judicial remarks on 'property-owning democracy' which were made by Suffian LP in the Federal Court case of *Pengarah Tanah Dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd* (1979) 1 MLJ 135, FC. The relevant passage from Tun Suffian's judgment has been cited earlier in this chapter.

ensures that property owners will not be able to sell freely their immovable properties in the property market for quick profits. But the side-effects are far-reaching. On many occasions, land officers have been slow in responding to applications for consent to transfer or charge the alienated land by affected proprietors. Applications for consent are frequently delayed from being tabled at the monthly state executive council meetings for deliberations and decisions. A classic example of such long delays in granting the requisite consent is the *Syarikat Perumahan Luas* case where the written consent to charge was finally given after a delay of more than four years. Perhaps it is timely for land policy makers to recommend to each state government a uniform imposition to the effect that registered proprietors should at least not be restrained from charging their respective pieces of alienated land; albeit the restraints on transferring such land may remain but for a limited period of time. Moreover, a restriction-in-interest should, ideally, cease to bind the land any longer when the state authority has granted its consent to transfer or charge, as the case may be. These recommendations will not only safeguard the existing land policy ensuring that land ownership should not change hands so readily but, in the meantime, would also allow the proprietor leeway to charge his land as security to raise funds.

Creation of a charge prohibited by other existing laws

The creation of a Torrens charge must not offend, apart from the restriction-in-interest provisions in the National Land Code, 1965,¹³⁹ any other written laws for the time being in force.¹⁴⁰ Such other written laws include, but are not limited to, the Bankruptcy Act of 1967, the Companies Act 1965, the Housing Developers (Control and Licensing) Regulations 1989, the National Land Code 1965 (Part 33(A) on foreign ownership) and the Malay Reservation Enactment of the various states of Peninsular Malaysia.

Creation of a charge prohibited by the Bankruptcy Act, 1967. Any person judged to be a bankrupt under the provisions of the Bankruptcy Act 1967¹⁴¹ no longer has the legal capacity to deal with his moveable and immovable property.¹⁴² This is to prevent the bankrupt from making certain prefe-

139. See section 241(3) which has been reproduced in footnote 125, *supra*.

140. Sections 241(3)(a) and 301(c) of the National Land Code, 1965.

141. Section 24 of the Bankruptcy Act, 1967.

142. Sections 27 and 55 and 56 of the Bankruptcy Act, 1967. See also the definition of 'property' in section 2 of the Act.

rences or settlements with certain creditors much to the disadvantage of others. Thus, any instrument of dealing in respect of the bankrupt's land, including any instrument of transfer or charge in respect thereof which has been duly executed by the adjudged bankrupt will be void *ab initio*. No dishonest person or body who knowingly deals with the adjudged bankrupt may hide behind the cloak of registration and claim indefeasibility of his newly acquired registered title or, as the case may be, a registered encumbrance (registered charge).¹⁴³ Since the execution of the instrument of transfer or charge by the bankrupt is void from the very beginning, the registration of that void instrument of dealing in the bankrupt's land will not render the registered title or, as the case may be, the registered encumbrance indefeasible under the cardinal principle of indefeasibility of title to land and registered encumbrances against land.¹⁴⁴ The only exception to this basic principle of bankruptcy law lies in section 54 of the Bankruptcy Act, 1967 which protects and will not nullify any bona fide transactions made with a bankrupt for valuable consideration and without notice at all of the bankruptcy.

Creation of a charge prohibited by the Companies Act, 1965. Section 133 of the Companies Act, 1965 deals with loans made or to be made by a company to its director. Section 133(1), by itself, imposes a blanket prohibition on loans by a company (other than an exempt private company) to a director of the company, and on the giving of a guarantee or the provision of security by the company in connection with a loan made to its director by another person.¹⁴⁵ However, the prohibition in section 133(1) of the Companies Act will not apply if it is 'done to provide such a director with funds to meet expenditure incurred or to be incurred by him for the purposes of the company' as provided by section 131(1)(a) of the Companies Act. It has been said that this section

143. What amounts to an encumbrance and how encumbrances are created differently have been discussed by SY Kok in his article: 'The Concept of Encumbrances under the Modified Malaysian Torrens System' (1995) 1 CLJ clxiii.

144. Section 340(2)(b) of the National Land Code, 1965. For a discussion on the Torrens doctrine of indefeasibility as well as 'deferred indefeasibility' and 'immediate indefeasibility', see SY Kok's article: 'The Malaysian Torrens Concept of Indefeasibility of Title to and Registered Interest in Land' (1995) 1 MSLJ 71. See also the decision of the Court of Appeal in *Boonsom Boonyanit v Adorna Properties Sdn Bhd* (1997) 2 MLJ 62; (1997) 2 AMR 1813, CA.

145. For the statutory exceptions to this principle of company law, see the provisions contained in section 133(2) of the Companies Act, 1965.

has been designed for the protection of the company, its shareholders and creditors from unlawful dissipation of the company's assets for the wrongful benefit of its directors and their associates.¹⁴⁶

In a recent Court of Appeal case of *Harta Empat Sdn Bhd v Koperasi Rakyat Bhd*,¹⁴⁷ the respondent, being a co-operative society, had granted a loan to a director of Harta Empat, the plaintiff/appellant company. Harta Empat had, in actual fact, wanted to borrow directly from the respondent but section 30(1) of the Co-operative Societies Act, 1948 allowed the respondent to grant loans only to certain classes of persons and Harta Empat did not fall within any of such classes of person. To circumvent the rigours of section 30, a circuitous route was devised whereby the director would and did become a member of the co-operative society to qualify for loans and Harta Empat would then create a three-party charge against its land in favour of the co-operative society to secure the repayment of a loan to be granted to the director. The relevant Torrens charge was duly registered. Harta Empat subsequently sought a declaration that the charge over its land was null and void as it breached section 133 of the Companies Act, 1965. A consequential order was also sought to cancel the registration of the said charge. The trial judge held that the charge was valid on the basis that the director had borrowed the money not so much for himself but for Harta Empat. Harta Empat subsequently appealed.

The Court of Appeal then held that the charge so created was invalid for infringing the provisions of section 133(1) of the Companies Act, 1965. The Court of Appeal concluded that:¹⁴⁸

(U)nder the National Land Code the immovable property in the instant case could be charged but the charge was subject to any prohibition imposed by written law. Section 133(1) of the Companies Act forbade the appellant company (Harta Empat) from providing the security for the loan made to its director by the respondent. The prohibition in section 133(1) had rendered the charge unfit for registration under section 301, condition (c) of the National Land Code. The charge is therefore invalid.

146. *Co-operative Central Bank Ltd v Feyen Development Sdn Bhd* (1995) 3 MLJ 313; (1995) 3 AMR 2751, FC.

147. (1997) 2 CLJ 94; (1997) 2 AMR 1521, CA. See also the Federal Court case of *Realvest Properties Sdn Bhd v Co-operative Central Bank Ltd* (in receivership) (1996) 2 MLJ 461 which deals with a loan granted by the co-operative society to its member.

148. *Ibid*, at 103f; 19:1530.

While deliberating the submissions made by the counsel for the litigants and prepondering the applicable law, the Court of Appeal distinguished the judgment of the Federal Court in an earlier case of *Co-operative Central Bank Ltd (In receivership) v Feyen Development Sdn Bhd*¹⁴⁹ by holding the considered view that:¹⁵⁰

The question whether section 133(1) of the Companies Act 1965 operates to invalidate a security provided by a company for a loan made to a director of the company by another person in contravention of the subsection or whether it merely prohibits the giving of such security on pain of incurring criminal liability is no longer justifiable, at least in this country, since the decision of the Federal Court in *Co-operative Central Bank Ltd v Feyen* (1995) 3 AMR 47:2751; (1996) SCR 75; (1995) 3 MLJ 313.

Section 133(1) forbids, subject to exceptions, a company making a loan to a director of the company. It also forbids the giving of a guarantee or the provision of security by the company in connection with another lender's loan to a director of the company.

The subsection by itself does not invalidate the forbidden transactions, so that the company may incur civil liability for entering into them; see *Feyen*. However, before the company can be made liable, the transaction itself must be a valid and enforceable one. In the instant case, we are concerned with a charge under the National Land Code so that the question that arises is whether the provisions of the National Land Code operate to invalidate the charge.

Feyen did not refer to the provisions of the National Land Code when it considered the question of the validity of the two charge transactions in the case, nor did it discuss them. Therefore, any opinion expressed by *Feyen* on the validity of a charge must necessarily be obiter. See, especially, this passage ((1995) 3 AMR at 2773; lines 5-12; (1996) 1 SCR at 94; (1995) 3 MLJ at 330).

To summarise, *our conclusion is that accepting that the charge transaction did breach section 133(1) of the Act, no civil consequences flowed therefrom, that is to say no voidness or enforceability attached to the loan or the charge transactions, regard being had to the context and purpose of section*

149. (1995) 3 MLJ 313; (1995) 3 AMR 2751, FC.

150. (1997) 2 AMR 1521 at 45:1523 - 28:1524.

131(1), and especially the principle underlying section 133(5), as explained above, which regrettably the learned judge failed to take into account or to give proper weight to, with the result that his judgment cannot stand. (Emphasis added.)

However, it was reported in *New Sunday Times* on June 1, 1997 that the Federal Court, when dismissing an application by Feyen Development Sdn Bhd for a clarification and rectification on the Federal Court's decision made on September 28, 1995 against the company, which ordered the charged properties of Feyen to be auctioned following the failure to repay the loan to the Co-operative Central Bank Ltd by Feyen's director, admonished the Court of Appeal for the latter's remarks on the *Feyen* case while the Court of Appeal was determining the issues that were raised before it in the *Harta Empat* case. The Federal Court then ruled that the Court of Appeal's decision in the *Harta Empat* case could not stand in the light of the current decision of the Federal Court in *Feyen Development Sdn Bhd v Co-operative Central Bank Ltd*.¹⁵¹ It was reported in *New Sunday Times* that the Federal Court had not only dealt with sections 241(3)(a) and 301(c) of the National Land Code, 1965 but had also considered that such sections were irrelevant to the issues in the *Feyen* case. The Federal Court then said:

It follows that our judgment in Feyen/CCB on the point at issue was not given *per incuriam*. On the contrary, it was the judgment of the Court of Appeal in *Harta Empat* which was given *per incuriam*, for it entirely overlooked the provisions of section 133(5) of the Companies Act which would have been fatal to its reasoning.

Creation of a charge prohibited by the Housing Developers (Control and Licensing) Regulations, 1989. Clause 2 of the standard sale and purchase agreement in the form of Schedule G or Schedule H¹⁵²

151. The judgment of the Federal Court was delivered on May 31, 1997. Under the doctrine of *stare decisis et non quita movere*, previous judicial decisions, especially an authoritative precedent, must be followed. However, a persuasive precedent (based, eg, on *obiter dicta*) need not be followed. See also *Che Wan Development Sdn Bhd v Co-operative Central Bank Bhd* (1990) 2 MLJ 365, HC, which decision was considered as *per incuriam* by Mohamed Dzaiddin J (as he then was) in *The Co-operative Central Bank Bhd v Syarikat Bukit Tinggi & 18 Ors* (1991) 1 CLJ 590, at p 593C-E, HC. From the *Syarikat Bukit Tinggi* case, it must be noted that the provisions of the Companies Act, 1965 do not apply to nor do such provisions govern co-operative societies: section 57 of the Co-operative Societies Act, 1948.

152. Such standardised contracts are prescribed by regulation 11(1) of the Housing Developers (Control and Licensing) Regulations, 1989.

forbids, without proper approval, the registered proprietor and the housing developer from encumbering the housing project land whenever five units or more of housing accommodation have been sold by the housing developer with the consensus of the registered proprietor (if applicable). In other words, the project land may not be charged for bridging loans or any other loans unless the prior written approval of the purchasers have been obtained before the charge may be validly registered. Conversely, if a charge is required to secure a bridging loan or working capital, the registered proprietor may create a charge freely without offending the housing regulations if not more than four units of housing accommodation have been sold at the time of registration of the charge. Clause 2, therefore, is enacted to ensure that when construction of the housing accommodation has been completed and such a completed unit is ready to be handed over to the purchaser, the same shall be free from all registered encumbrances.¹⁵³ Thereafter, the housing developer is not entitled to encumber the project land any longer at the expense and to the detriment of the purchaser.

Thus, in *Keng Soon Finance Bhd v MK Retnam Holdings Sdn Bhd (Bhagat Singh s/o Surian Singh & Ors, Interveners)*,¹⁵⁴ an attempt was made by an unlicensed housing developer to impose on all its purchasers a blanket approval¹⁵⁵ whereby the developer would be allowed to charge the housing land after the sales of housing accommodation had been made with the purchasers. The charge subsequently created pursuant to the blanket approval was held by the High Court to have infringed the prohibitive provisions of rule 12(1) of the Housing Developers (Control and Licensing) Rules, 1970 because such an attempted blanket approval to charge the land would violate the letter and spirit of the 1970 Rules as well as the maxim, '*quando aliquid prohibiter fieri, prohibetur ex directo et per obliquum*'.¹⁵⁶ In this

153. Clause 2 of the standard contract of sale stipulates: 'The Proprietor and the Vendor shall not immediately after the date of execution of this Agreement subject the said Land to any encumbrances without the prior approval of the Purchaser and the Proprietor and the Vendor hereby undertakes that the said Property shall be free from encumbrances immediately prior to the handing over of vacant possession of the said Building to the Purchaser.'

154. (1996) 2 MLJ 431; (1996) 4 CLJ 52, HC.

155. *Ibid*, at 453A; at 73c.

156. This maxim simply means that 'whenever a thing is prohibited, it is prohibited whether done directly or indirectly'.

case, Retnam Holdings were the registered proprietor of a few pieces of land in Perak. In 1978, it sold a plot of land with a house to Bhagat Singh. Pursuant to clauses 3 and 4 of the agreement which were drafted in an attempt to comply with the 1970 Rules then applicable, the parties agreed that Retnam Holdings 'may subject the land sold to the purchaser to encumbrances at any time after the signing of this agreement', provided that the land 'shall be free from any encumbrance immediately prior to the handing over of vacant possession of the building to the purchaser'. Thereafter, a charge over the lands was created by Retnam Holdings in favour of Keng Soon as security for a bridging loan. Retnam Holdings then defaulted. Consequently, Keng Soon commenced action in the High Court for an order that the charged lands be sold by public auction. The court eventually held that the charge was void *ab initio* for having infringed the 1970 Rules.

In the course of reviewing several relevant authorities, the High Court said:¹⁵⁷

A court will not enforce a contract 'which is expressly or impliedly prohibited by statute' (*St John Shipping Corp v Joseph Rank Ltd* (1957) 1 QB 267 per Devlin J at p 283). Such a contract 'is unenforceable whether the parties mean to break the law or not': *ibid*. Thus, whilst section 5(1) of the HDA 1966 does not expressly provide that any contract entered into in contravention of the Act is illegal, it is the duty of the court to investigate the substance of the legislation to ascertain whether or not the contract is expressly prohibited: *Re Mahmoud and Ispahani* (1921) 2 KB 716. When the court ascertains that the contract has been prohibited by the Act, then the result is that such a contract (in this case, charge)¹⁵⁸ is void and unenforceable: see section 24 of the Contracts Act 1950.

The Supreme Court in *Chung Khiaw Bank Ltd v Hotel Rasa Sayang Sdn Bhd & Anor* (1990) 1 MLJ 356, held:

157. *Keng Soon Finance Bhd v MK Retnam Holdings Sdn Bhd (Bhagat Singh s/o Surian Singh & Ors, Interveners)* (1996) 2 MLJ 431, 449H-451A; (1996) 4 CLJ, 69g-71a, HC.

158. Before any instrument of dealing in land (such as a charge) is presented for registration in the land registry/land office, that executed instrument is a form of contract which binds the parties thereto but not, as yet, the world at large. In the Privy Council case of *Loke Yew v Port Swettenham Rubber Co Ltd* (1913) AC 491, Lord Moulton at page 500 said: '... no instrument (of dealing in land) is effective to convey any estate in land unless it is registered, and therefore the effect of the instrument rested in contract until registration.'

Thus, in our view, it may be stated as a general principle that a contract the making of which is prohibited by statute expressly or by implication, shall be void and unenforceable unless the statute itself saves the contract or there are contrary intentions which can reasonably be read from the language of the statute itself. A contract will also be void and unenforceable, and perhaps illegal, if it infringes public policy. A contract to commit a common law or statutory crime will be illegal if it is entered into with the intention of committing the wrong. The rule has been applied when the design or object is to defraud a third party, in this case, the purchasers of the housing accommodation. In such a case, the question of intention is not so important as the contract would be illegal *ex-facie* because of the contravention of the statute. The court takes judicial notice of the fact and refuses to enforce the contract, even though its illegality has not been pleaded by the defendant (Retnam Holdings). The fact that the HDA 1966 is a legislation with the primary intention of protecting the consumer makes the contract clearly one which 'on its face' is illegal: *Archbalds (Freightage) Ltd v S Spanglett Ltd* (1961) 1QB 374.

The illegality in this case is of the kind for which the HDR 1970 (in particular rule 17) and HDA 1966 (in particular, section 18) attract criminal sanctions and as such the plaintiff's (Keng Soon) position is that of *particeps criminis*. In such a case, the court will not interpose actively in favour of a party who is particeps criminis in an illegal or fraudulent transaction: *Beresford v Royal Insurance Co Ltd* (1938) AC 586 at p596. The plaintiff's claim here (is) clearly beyond the fact of law because it has participated in the illegal transaction (*Gordon v Chief Commissioner of Metropolitan Police* (1910) 2 KB 1080 at p1090 per Buckley LJ).

The plaintiff (Keng Soon) was aiding and abetting or assisting the unlicensed housing developer. Lord Oliver in his judgment at p 302B-C said: 'Moreover, an unlicensed developer who is carrying on business unlawfully certainly could not claim to be in a better position than a licensed developer. If this is right, then it would follow that the charge, in the absence of express approval by individual purchasers, was created by the first respondent (Retnam Holdings) without the authority of the purchasers, of whose interests, quite clearly, the appellant had express notice before the charge was entered into.'

The lesson to be learnt from the *Keng Soon* case with *Bhagat Singh & Others as Interveners* is that the insertion of a general clause in the contract of sale of housing accommodation which purportedly gives the housing developer a blanket approval to charge the project land after several contracts of sale have

been entered into would be quite insufficient to meet the requirements of rule 12 of the Housing Developers (Control and Licensing) Rules, 1970. Perhaps this stringent requirement could be considered to have been complied with whenever and wherever the affected purchasers could give their approval individually in separate letters in their own hand writing. For those purchasers who are illiterate, perhaps sworn statutory declarations by commissioners for oaths who could verify that the written approvals to charge have been given individually by each of the respective illiterate purchasers on his own free will and judgment would be sufficient to meet such requirement of the 1970 Rules.

It may be seen that similar judicial sentiments had been expressed by K C Vohrah J in another High Court case of *Syarikat Chang Cheng (M) Sdn Bhd v Pembangunan Orkid Desa Sdn Bhd*:¹⁵⁹

... as far as the deviation from the express provisions of the Rules is concerned, the then Federal Court, in *SEA Housing Corp Sdn Bhd v Lee Poh Choo* (1982) 2 MLJ 31 noting that Parliament found it necessary to regulate the sale of houses and protect buyers by enacting the Act, ruled that only terms and conditions designed to comply with the requirements of the Rules may be inserted in a contract of sale and that terms and conditions which purport to get round the Act and Rules so as to remove the protection of home buyers may not be so inserted.

Creation of a charge prohibited by foreign purchasers under Part 33 (A) of the National Land Code. Part 33(A) of the National Land Code, 1965 was first introduced on March 25, 1985, thereafter withdrawn during the recessionary year of 1987 and subsequently re-introduced in 1993 and expanded in February, 1996.¹⁶⁰ The statutory provisions are designed to curb foreign ownership of land in Peninsular Malaysia. Industrial land does not come within the ambit of such provisions.¹⁶¹ Commenting on the aims and objectives of such restrictive provisions governing foreign ownership in alienated land, this writer has pointed out:¹⁶²

159. (1996) 1 MLJ 799, HC. This case deals with the sale of a shophouse by a housing developer. The subject matter of the sale should not, therefore, come within the purview of the Housing Developers (Control Licensing) Rules, 1970.

160. For an analysis of the statutory provisions, see S Y Kok's article: 'Restrictions on Foreign Ownership in Registered or Alienated Land and Levy of RM100,000.00' (1997) 3 MLJ i.

161. See section 433B(5) and the proviso to section 433E(1) of the National Land Code, 1965.

162. See the article referred to in footnote 161, *supra*.

Looking at the marginal notes to Part 33(A) as a whole, it is obvious that the main objective of this Part is to restrict foreign ownership of registered or alienated land as well as registered interest in such land which are situated in Peninsular Malaysia. The fringe benefit to be derived from such a statutory restraint on foreign ownership could be the curbing of property speculation to a certain extent and the desired lowering of prices by market forces. But the latter aim is quite difficult to achieve as prices of property kept on soaring year by year.

Section 433B(1) focuses on the 'acquisition' of agricultural land or building land by foreigners or foreign companies while section 433E(1) looks at the non-registrable 'conveyance' or 'disposal' of such land in favour of foreigners or foreign companies.¹⁶³ Whether agricultural land or building land is acquired by or disposed to non-citizen or foreign companies, it is inescapable that the requisite approval of the state authority must first be obtained. As regards any foreign acquisition covered by section 433B but made in contravention thereof, the invalidating provisions contained in section 433C will ensure that such non-approved transactions shall be null and void. Similar disqualifying provisions have been enacted in section 433E(5) to trap and nullify any conveyance or disposal which contravenes section 433E(1) of the National Land Code, 1965. Thus, if any acquisition made by a non-citizen or a foreign company or if any conveyance or disposal made in favour of a foreigner or a foreign company contravenes any of the foreign ownership provisions, that foreigner or foreign company will not be able to achieve ownership in the land concerned. Consequently, he or it will lack the legal capacity of a registered owner to create any valid charge over the land concerned.

The foreign ownership provisions do not bar a nominee of a non-citizen or a foreign company from acquiring alienated land in Peninsular Malaysia if that nominee is a citizen or a local incorporated company. In a Johore case of *Tay Tho Bok & Anorv Segar Oil Palm Estate Sdn Bhd*,¹⁶⁴ the plaintiffs, on May 16, 1988, purchased 11 pieces of land totalling 65.325 acres from the defendant, Segar Oil Palm, at an agreed price of RM457,275. The purchasers were a Singaporean and a Taiwanese. After paying a 10 per cent deposit of RM45,727.50 and signing the

163. For a discussion on the scope of and differences between section 433B(1) and section 433E(1), see SY Kok's article which has been referred to in footnote 161, *supra*.

164. (1996) 3 MLJ 181, HC.

agreement, the purchasers discovered that 4.08 acres were acquired for use by the Public Utilities Board of Singapore for water pipelines and 13.6 acres for transmission cables by Tenaga Nasional Bhd. Consequently, the purchasers argued that the price ought to be at a lesser sum of RM333,515 for a reduced acreage of 47.645 acres and the adjusted balance of the purchase price should be RM287,787.50. Segar Oil Palm rejected the purchasers' argument. They also reminded the purchasers that if the latter did not complete the purchase by the completion date, the deposit would be forfeited as agreed. On the completion date, the purchasers forwarded a cheque amounting to RM287,787.50 only which was promptly rejected by Segar Oil Palm which then terminated the contract of sale and forfeited the deposit. In the High Court, the plaintiffs/purchasers asked, *inter alia*, for (i) rectification of the agreement, so that the total purchase price was RM333,515; (ii) specific performance of the rectified agreement; and (iii) damages for having to accept the transfer of the land with previously undisclosed structures. The High Court, in granting the purchasers' requests for specific performance and damages said:

In the instant case, it is my view that it is just and equitable under the circumstances for me to only order specific performance of the said agreement without any rectification.

Incidentally, counsel for the defendant (Segar Oil Palm) had argued that the court could not order specific performance on the ground that the company the plaintiffs would be using to hold the said land is a foreign company pursuant to section 433E(4) of the Code as discussed earlier. With respect, I cannot see why this should be raised. Clause 17 of the said agreement allowed the plaintiffs to transfer the said land to their nominees and it reads: 'The purchasers shall be entitled to register the said land wholly or partly in their names and/or in the name of their company, Yin Chong Leong Agricultural Chemical Sdn Bhd, and/or in favour of any other nominees.'

Thus, if it is at all correct to say that section 433E(4) of the Code would prevent the plaintiffs personally or Yin Chong Leong Agricultural Chemical Sdn Bhd to hold the said land, there is nothing to prevent the plaintiffs pursuant to clause 17 of the said agreement to transfer the said land to any of their nominees that would fall outside the contemplation of the said section 433E(4).

Creation of a charge prohibited by the Malay Reservations Enactment. In Peninsular Malaysia, each state government has its own Malay Reservations Enactment.¹⁶⁵ The purpose of such a short piece of legislation normally containing about 20 sections is to protect and preserve the ownership in land of a class of persons, namely, the Malays. The term 'Malay' has been defined in the Federated Malay State Enactment (Cap 142) as 'a person belonging to any Malayan race who habitually speaks the Malay language or any Malayan language and professes the Moslem religion'. By a rule of thumb, a non-Malay does not come under the statutory definition of a 'Malay' and, therefore, should lack the legal capacity to receive a transfer, charge or lease of Malay reserved land.¹⁶⁶ This statutory definition was expanded in 1936 by Enactment No 51 to include a Malay company 'if and so long as every member is a Malay and the transfer of shares therein is restricted by the Articles of Association thereof to Malays'.

One of the ways to protect this class of persons is to ensure that the ownership in the land which has been declared and gazetted as 'Malay Reservation' will always remain with the Malays. However, if any piece of land owned by a non-Malay happens to have been brought within a Malay reservation, its non-Malay owner may deal with that land with another non-Malay without offending the provisions of the Malay Reservations Enactment. But if, in the future, such a piece of land is transferred to and registered in the name of a Malay, then that piece of land, being gazetted as Malay reserve land, can no longer be dealt with in favour of a non-Malay other than a Malay or one of the categories of persons or bodies corporate designated in the Second Schedule to the Enactment.¹⁶⁷

Generally, each Malay Reservations Enactment provides restrictive provisions to preserve the ownership of Malay reserve land or Malay

165. The various Malay Reservation Enactments of the different states have been compiled by S Ramaswamy in *Malay Reservation Enactments in Peninsular Malaysia* (1994), International Law Book Services.

166. In *Ho Giok Chay v Nik Aishah* (1961) 27 MLJ 49, OCJ, three charges over Malay reserve land in favour of a Chinese were held by the High Court in Kota Bharu to be null and void. Consequently, the purported non-Malay chargee was not entitled to reimburse himself out of the land, that is, to compel payment of the amount due by sale of the land itself. See Chapter 13, David Wong: *Tenure and Land Dealings in the Malay States* (1975), Singapore University Press.

167. See section 17(2) of the Malay Reservations Enactment (FMS Cap 142).

holding¹⁶⁸ within the Malay race. In the FMS Malay Reservations Enactment, Cap 142, this restriction takes the form of section 8(1) which reads: '(8) Restriction as to transfers, charges and leases. (i) Subject to the provisions of sub-section (ii) and of sections 16 and 17 no Malay holding shall be transferred, charged or otherwise disposed of to any person not being a Malay, and no memorandum of transfer, charge or lease in contravention of this section shall be capable of registration in any Land Office or Registry of Titles.'

What then is the scope of section 8(1)? Does one interpret section 8(1) by adopting the literal construction or does one use the purposive approach? Since the Malay Reservations Enactments have been designed to protect a class of persons just like the Housing Developers (Control and Licensing) Regulations, 1989 have been enacted to protect a class of house buyers, perhaps the observations on the canons of interpretation of such statutes which have been pronounced by the courts could cast some light on the matter.

Much learning on the subject of interpretation of statutes may perhaps be acquired from the judgment of Edgar Joseph Jr J (as he then was) in *United Malayan Banking Corporation Bhd v Syarikat Perumahan Luas Sdn Bhd* (No 2)¹⁶⁹ where he observed:

... what is the effect of registration of the charge in breach of the restriction-in-interest imposed pursuant to the provisions of section 124(1)(b) of the (National Land) Code?

In considering this question, I have kept in the forefront of my mind, on the one hand, the well-known canon of construction enunciated by the Federal Court in *Chin Choy & Ors v Collector of Stamp Duties*:¹⁷⁰

168. The term 'Malay holding' has been defined in section 2 to mean:

- (a) any registered interest of a Malay as proprietor or co-proprietor in any alienated land included in a Malay Reservation duly declared and gazetted under the provisions of this Enactment: Provided that no such interest shall be deemed to be a Malay holding until there shall have been registered against the register document of title for such land a requisition in the Form A in the First Schedule as provided in section 6;
- (b) any registered interest of a Malay as proprietor or co-proprietor in any alienated land included in a Malay Reservation duly declared and gazetted under the provisions of the Malay Reservations Enactment, 1913.

169. (1988) 3 MLJ 352, HC.

170. (1979) 1 MLJ 69, FC.

‘... that the meaning and intentions of a statute must be collected from the plain and unambiguous expression used there in rather than from any notions which may be entertained by the court as to what is just and expedient.

However unjust, arbitrary or inconvenient the meaning conveyed may be, it must receive its full effect. When once the meaning is plain, it is not the province of a court to scan its wisdom or its policy. Its duty is not to make the law reasonable, but to expound it as it stands, according to the real sense of the words.’

and, on the other hand, the rule that statutes which enroach on the rights of a subject, whether as regards person or property are subject to a strict construction in the same way as penal statutes. It is also a settled rule that such statutes should be construed, if possible, so as to respect such rights (*Walsh v Secretary of State for India* (1863) 10 HL Cas 367; 11 ER 1068, per Lord Westbury; *Hough v Windus* (1883-1884) 12 QBD 224, per Bowen LJ) and, if there is any ambiguity, the construction which is in favour of the freedom of the individual should be adopted (*JE David v SPA De Silva* (1934) AC 106 and *O’Connor v Isaacs* (1956) 2 QB 288).

Bearing such judicial wisdom in mind, the restrictive provisions contained in section 8(1) of the FMS Enactment, Cap 142, may be aptly interpreted as statutory provisions which do not allow any non-Malays to acquire any Malay holding or a registered interest therein (for example, a registered lease or a registered charge).¹⁷¹ Consequently, any instrument of transfer, charge or lease of a Malay holding or Malay reserved land shall be void and shall be barred by statute from registration in any land registry or land office, as the case may be. Conversely, section 8(i) does not prohibit any dealing in Malay reserve land made in favour of a Malay. In other words, this subsection focuses on the identity of the recipient or acquirer of a Malay holding or an interest therein rather than the method or manner of dealing in such land. Thus, if the recipient or acquirer is prim and proper, then the instrument of dealing will be registrable and will not be void if the instrument is prepared and executed in accordance with the provisions of the National Land Code, 1965. After all, the respective Malay Reservation Enactments do not have any detailed provisions¹⁷² which

171. See also sections 10 and 17(1) of the FMS Enactment, Cap 142.

172. See section 16 which deals with auction sales of Malay holdings by registered encumbrancer under any law in force for the time being and section 17 which controls and limits the charging or leasing of Malay holdings to a restricted category of chargees or lessees.

will determine what subject matter may or may not be transferred other than stating in a negative manner that Malay holdings or Malay reserved lands and registered interests therein will be restrained from being transferred to non-Malays. In the absence of such provisions, one has to fall back on section 214 of the National Land Code, 1965.¹⁷³ But should there be any conflict between the provisions of the FMS Enactment and those of the National Land Code, 1965 the provisions of the FMS Malay Reservations Enactment shall prevail. This is so because section 21 of the Enactment states that: 'If in any case any conflict shall arise between the provisions of this Enactment and the provisions of the Land Code (FMS Land Code, 1926 (Cap 138)), or of the Civil Procedure Code, or of the Powers of Attorney Enactment, the provisions of this Enactment shall prevail.'

Thus, reading section 214 of the National Land Code, 1965 with the provisions of the FMS Malay Reservations Enactment, Cap 142, it may be validly observed that a registered charge over Malay reserved land may be transferred in favour of a Malay or a Malay company.¹⁷⁴ Likewise, if a person or body who has been entered in the Second Schedule of the Enactment can receive a charge over a Malay holding or Malay reserve land, there is no provision in the Malay Reservations Enactment which prohibits the designated person or body from accepting a transfer of a registered charge over a Malay holding. In fact, section 214(1)(d) does expressly allow for this sort of transfer of a registered encumbrance. However, in the light of section 8(1) of the Enactment, it is submitted that the nullifying provisions contained in section 19 of the Enactment¹⁷⁵ will not

173. Section 214 of the National Land Code, 1965 enacts as follows:

- '(1) Subject to sub-section (2), the following shall be capable of transfer under this Act:
 - (a) the whole, but not a part only, of any alienated land;
 - (b) the whole, but not a part only, of any undivided share in alienated land;
 - (c) any (registered) lease of alienated land;
 - (d) any (registered) charge; and
 - (e) any tenancy exempt from registration.
- (2) The powers conferred by sub-section (1) shall be exercisable in any particular case subject to:
 - (a) any prohibition or limitation imposed by this Act or any other written law for the time being in force;...

174. Section 214(1)(d) of the NLC.

175. Section 19(1) of the FMS Enactment, Cap 142 states: '19(1) All dealings or disposals whatsoever and all attempts to deal in or dispose of any Malay holding contrary to the provisions of this Enactment shall be null and void...'

render the transfer of a registered charge null and void if, but only if, the recipient or transferee is himself a Malay or a Malay company. It will be nonsensical to say on the one hand that it is all right for a designated transferee under the Second Schedule to accept a transfer over a Malay holding under section 241(1)(a) of the National Land Code and, on the other hand, to say that that designated transferee cannot accept a transfer of a registered charge over a Malay holding under section 214(1)(d). This would amount to a solecism of the law. So long as the transferee or recipient of a Malay holding or a registered interest therein is a Malay or a Malay company or is a designated person in the Second Schedule, the Malay Reservations Enactment shall be deemed to have been complied with and the transfer thereof, whether of a Malay holding or a registered charge, will not thus infringe the Enactment. When interpreting the restrictive provisions of sections 8(1) and 19(1) of the Enactment, due consideration must be given to sections 214(1) of the National Land Code, 1965.

Order for sale of charged land (A final order: cannot be varied or set aside).

Upon the registration of an instrument of charge, additional implied provisions will be imposed on chargors.¹⁷⁶ These implied statutory covenants are additional to the express provisions contained in the charge annexure that must be observed and performed by the chargor. Failure to comply with or perform such covenants may lead to a breach for which a statutory notice of default in the prescribed form must be served on the defaulting chargor.¹⁷⁷ If the defaulting chargor shall fail or omit to rectify the breach in the manner and within the time as specified in the served notice, the National Land Code, 1965 will then arm the aggrieved chargee with the power to apply for an order of sale.¹⁷⁸ In *Citibank NA v Jong Tze*

176. Sections 249 to 252 in Chapter 2 of Part Sixteen of the NLC.

177. See section 255 of the NLC. Some of the Malaysian cases on this legal issue of statutory notice are *VAM Hussain v BP Malaysia Sdn Bhd* (1970) 2 MLJ 69, FC; *Mary Michael v United Malayan Banking Corporation Bhd* (1971) 1 MLJ 172, FC; *Jacob v Oversea-Chinese Banking Corporation, Ipoh* (1974) 2 MLJ 161, FC; *Central Malaysian Finance Bhd v Loke Kok Lai* (1975) 1 MLJ 160, OCJ; *Syarikat Kewangan Melayu Raya v Malayan Banking Bhd* (1986) 2 MLJ 253, PC; *Malaysian International Merchant Bankers Bhd v Dhanao Sdn Bhd* (1988) 1 MLJ 257, SC; *Public Bank Bhd v Chan Siok Lie & Ors* (1989) 2 MLJ 305, HC; *Nira Sdn Bhd v Malayan Banking Bhd* (1990) 1 MLJ 110, SC; *Co-operative Central Bank Ltd. v Meng Kuang Properties Bhd* (1991) 2 MLJ 283, HC; *Citibank NA v Jong Tze Khiok & Anor* (1993) 3 MLJ 449, SC; and *OCBC Bank (Malaysia) Berhad v Siong Holdings Sdn Bhd* (1997) 2 AMR 2024, 2031, HC.

178. See a well-written article on judicial sale by Loh Siew Cheang and Aggie PL Chew in 'A Legal Impossibility: Arming Chargees with private Power of Sale' (1990) 1 MLJ xxxvi.

Khiok & Anor,¹⁷⁹ the Supreme Court held the view that, under section 148(1) of the Sarawak Land Code (Cap 81), it is the default and not the demand for payment under the registered charge that will trigger off the right of the chargee to issue the notice in writing. Such notice is not intended for the purpose of demanding payment of the amount due but to notify the chargor that the chargee would resort to section 148(2)(c) for an order of sale of the charged land unless such default is remedied. The demand under clause 1 of the charge annexure is, therefore, not a condition precedent to an action under section 148 of the Sarawak Land Code. On the contrary, it is the default on the part of the chargor to make the payment on demand that constituted a condition precedent to an application under section 148(2)(c) of the Sarawak Land Code.

However, if an overdraft facility has been granted to a chargor with an express condition that the overdraft would only be repayable after the expiry of an agreed period of four years, and the chargee recalled the overdraft prematurely on the ground that the chargor had not serviced the interest monthly, the court will not lightly accede to the chargee's request for an order for sale of the charged property.¹⁸⁰ In any forced sale of charged land, the National Land Code, 1965 does distinguish registry land from mukim land. Where the defaulting chargor's land is held under a registry title, only the High Court will have the jurisdiction to grant an order for sale.¹⁸¹ Any forced sale of mukim land which is held under a land office title will be left to the Land Administrator of that particular mukim to deal with in accordance with the elaborate set of rules set out for strict compliance by the chargee.¹⁸²

In *Scotch Leasing Sdn Bhd (In receivership) v Chee Pok Choy & Ors*,¹⁸³ the appellant/chargee of a piece of mukim land held under a land office title applied wrongly to the High Court for an order for sale of the mukim land charged by the respondents/registered co-proprietors in its favour. The originating summons was heard inter parties in chambers, and an order of sale was incorrectly made by the judge ('the first order'). This first order was subsequently drawn up and perfected, and no appeal was filed by either

179. (1993) 3 MLJ 449, SC.

180. *Bank Bumiputra Malaysia Bhd Kuala Terengganu v Mae Perakayan Sdn Bhd & Ors* (1993) 2 MLJ 76, SC.

181. Section 256(1), read with the interpretation provisions in section 5 of the NLC.

182. Section 260 to 265. The procedural rules which govern the sale of registry land are set out in section 256 to 259.

183. (1997) 2 MLJ 105, SC.

party against the first order. About nine months later, the defaulting co-proprietors filed a summons in chambers in the same court for an order that the first order be set aside, and a point on the lack of jurisdiction was raised for the first time that the High Court had no jurisdiction to make such an order over mukim land and that the order should come from the land administrator. The judge, after weighing the submissions of both counsel, ordered that the first order be set aside ('the second order'). The appellant/chargee appealed. In allowing the appeal, the Supreme Court said:

Before us, it was argued for the chargee, relying in particular, on a judgment of the Supreme Court in *MUI Bank Bhd v Cheam Kim Yu (Beh Sai Ming, Intervener)*¹⁸⁴ to the effect that an order of sale of charged land was a final order unless appealed against and once it was made, drawn up and perfected, the learned judge was functus officio and therefore had no power to set aside the order of sale. Thus, going by the judgment, the learned judge in the court below had no power to hear and make the second order.

It was argued on behalf of the chargors that the learned judge had power to set aside the first order even though it was perfected, and another judgment of the Supreme Court in *Muniandy a/l Thamba Kaundan & Anor v D & C Bank & Anor*¹⁸⁵ was cited in support.

The ratio of *MUI Bank* is more familiar and well-settled, and it is in fact supported by a number of authorities, including *Hock Hua Bank Bhd v Sahari bin Murid*,¹⁸⁶ *Overseas-Chinese Banking Ltd v Sindoma Realty Sdn Bhd and other applications*,¹⁸⁷ *Syarikat Marak Jaya Sdn Bhd v Syarikat Masinda Sdn Bhd*¹⁸⁸ and a host of others.

We look into *Muniandy*. There, an order of sale of charged land was also involved and the chargor applied to set it aside for which *MUI Bank's* case was cited in opposition. The Supreme Court found that *MUI Bank's* ratio was subject to certain exceptions, and one of the exceptions applied, ie that the Supreme Court found the order of sale therein to be a nullity for non-service of notice of adjourned hearing on the chargors, as the order of sale was an *ex parte* order made in the

184. (1992) 2 MLJ 642, SC.

185. (1996) 1 MLJ 374, SC.

186. (1981) 1 MLJ 143, FC.

187. (1989) 1 MLJ 377, HC.

188. (1991) 2 MLJ 417, HC.

absence of the chargors, where the application for it was heard *ex parte*. The Supreme Court held (at pp 381-382) that the judge in such circumstances of non-service was not *functus officio* and he could set the order aside in the exercise of its inherent jurisdiction on the ground that it was a nullity, and on the further ground that it was a breach of the rule of natural justice of being deprived of an opportunity of being heard.

With great respect, we are in agreement with both decisions of the Supreme Court, and we may add there is no conflict between them, and that the exercise of inherent jurisdiction in *Muniandy* is perhaps an alternative to O28 r 4(1) of the Rules of the High Court ('the RHC') which seems to provide for the situation arising in *Muniandy*...

In the instant appeal, there is no question of any order made *ex parte*, for the order of sale was made after hearing counsel for both parties. The general rule about the non-revocability of a perfected order, subject to exceptions contained in the RHC, etc is still a formidable obstacle to the chargors herein unless the point of jurisdiction could be allowed to be raised at the stage when it was so raised.

On the point that the High Court had no jurisdiction to make an order of sale in the case of land held under a land office title, the point seems to be well founded: see *United Asian Bank Bhd v Elgi Marka Sdn Bhd*¹⁸⁹ and *Tan Teng Pan v Wong Fook Shang*.¹⁹⁰ This point of jurisdiction can be raised on appeal, of course, and it goes without saying *a fortiori* it can be raised in a court of first instance. This point was raised before us, and it was in fact also raised before the learned judge in the court below. However, in the circumstances of this case as set out below, one cannot yet say *cadit quaestio*.

In so far it was raised before the learned judge, it was not raised before the first order was made on September 3, 1991. The first order of sale, in fact, has never been appealed against.

It was raised in a subsequent summons in the same case as an after-thought, filed on June 8, 1992, thus offending the general rule stated in *MUI Bank's* case, and also not coming within the exception to such general rule as in *Muniandy*.

189. (1995) 1 MLJ 301, HC.

190. (1973) 1 MLJ 31, HC.

We do not think it could be so raised and acted on by the judge. It could have, of course, been raised on appeal if an appeal was filed against the first order.

Before such an appeal was filed and before the said order of sale was perfected, it could be also reviewed by the court in exercise of its inherent jurisdiction: see *Re Harrison's Settlement*¹⁹¹ and *Syarikat Marak Jaya*.

To allow the learned judge in the court below to reopen the matter nine months after it was decided by himself (and for that matter, any other judge), a court would have to allow, equally, another judge exercising a co-ordinate jurisdiction to set aside on the same jurisdiction point after, say, 20 years, in the same case, for food for a goose is also food for a gander. This would bring absolute chaos to our judicial system which does not carry on in such fanciful way as contended by learned counsel for the chargors.

Such chaotic condition is prevented by several things.

First, a jurisdiction point is no less an issue than other issues in civil litigation. If not raised at the hearing in the court of first instance or on appeal, it cannot be raised thereafter, for the doctrine of *res judicata* sets in.

A similar view that once an order for sale has been made by the court, it is a final order and consequently may not be varied or set aside subsequently was expressed by Visu Sinnadurai J in an earlier case of *United Malayan Corp Bhd v Chong Bun Sun and another application*:¹⁹²

Considering the true nature of the statutory remedy of the chargee to apply for an order for sale under section 257 of the NLC, this court is of the view that once an order for sale has been made by the court by way of a public auction under section 257 of the NLC, the court does not have the power to make a subsequent order to vary or set aside the earlier order, and to make a new order for the charged property to be sold by way of private treaty.

The remedy of an order for sale against a defaulting chargor is a very special kind of statutory right conferred on the aggrieved chargee by section 256 of the National Land Code, 1965 for registry land and section 260 for mukim land. This special statutory right is for the sole benefit of the chargee, and is quite independent of any other causes of action which the chargee may have against the defaulting chargor under the provisions of the

191. (1955) 1 All ER 185. For the application of the doctrine of *res judicata*, see *Sithambaran Chettyar v Chong Fatt* (1939) 8 MLJ (FMSR) 298, HC and *Kandiah Peter v Public Bank Bhd* (1994) 1 MLJ 119, SC.

192. (1994) 2 MLJ 221, HC.

registered instrument of charge or under any other law. This right was once described by the learned Wan Yahya SCJ in *M & J Frozen Food Sdn Bhd v Siland Sdn Bhd & Anor*¹⁹³ in the following manner:

The order for sale confers on the chargee only the statutory right to a judicial sale. A sale under sections 256 or 260 of the NLC is a judicial sale ordered by the court on the application of the chargee.

This judicial approach was adopted by Visu Sinnadurai J in his well-researched judgment in *United Malayan Banking Corp Bhd v Chong Bun Sun & another application*¹⁹⁴ where this point of law was emphasised:

The point that needs emphasis is that the remedy of the chargee under the NLC is a special remedy. The action brought by the chargee, and the adjudication of it by the courts, are different to that when other causes of action are instituted by the chargee. The Supreme Court in the recent decision of *Kandiah Peter v Public Bank Bhd*¹⁹⁵ had the occasion to make the following comments (at p 122):

‘A chargee who makes an application for an order for sale in foreclosure proceedings under section 256 of the Code does not commence an action. He merely enforces his rights as a chargee by exercising his statutory remedy against the chargor in default. The chargee, therefore, does not sue for a debt. It is also clear that his claim for an order for sale is not based upon a covenant but under the registered charge. The order for sale when made under section 256 of the Code is not a judgment or a decree. The court hearing the application for foreclosure does not make, and in any event ought not to make, any adjudication upon any substantive issue.’

Considering the other actions which an aggrieved chargee may take, Visa Sinnadurai J continued:

The chargee may, if he so chooses, besides resorting to this statutory right, pursue any other cause of action against the chargor for the money lent to the chargor. He may sue for a debt, or on a guarantee (if any), or on the contract. As to whether a chargee may institute an action on the guarantee and also commence foreclosure proceedings, see the Supreme Court

193. (1994) 1 MLJ 294, 309B, SC.

194. (1994) 2 MLJ 221, HC.

195. (1994) 1 MLJ 119; (1994) 1 SCR 218, SC.

decisions in *Lesco Development Corp Sdn Bhd v Malaysia Building Society Bhd*¹⁹⁶ and *Bank Bumiputra Malaysia Bhd v Esah bte Abdul Ghani*.¹⁹⁷

The difference between a foreclosure action brought by a chargee for an order for sale, and a civil suit based on a guarantee has been considered in a number of cases. For example, in *Hongkong & Shanghai Banking Corp Ltd v Wan Mohd bin Wan Ngah*,¹⁹⁸ Lamin J observed as follows (at p 121):

‘The guarantee is just another security independent of the charge carrying with it its own terms and conditions to bind the guarantor and failure to comply with any of them will constitute a breach which will form the basis for the issuance of a writ.’

His Lordship further observed (at p 122):

‘In the cases cited above where the loan was secured by two collateral security, namely, a charge and a guarantee, our courts generally have taken the view that it is not required to realize the security under the charge before enforcing the guarantee.’

Similarly in *Co-operative Central Bank Bhd v Belaka Suria Sdn Bhd*,¹⁹⁹ Lim Beng Choon J observed (at p 47):

‘...apart from its common law right to sue the borrower, guarantors, and chargor for the recovery of the debt, the plaintiff (the chargee bank) is also given the statutory right to sell the charged property by order of the court pursuant to section 256(2) of the NLC.’

To re-emphasise this point, his Lordship added (at p 47):

‘In principal, therefore, a chargee has the right to institute an action for recovery of the debt and also the right to assert a power of sale on the encumbered property; the two actions are not the same.’

One situation in which a chargee may pursue more than one remedy is when the charged property sold at the public auction realizes less than the amount owing to the chargee. In such a case, the chargee will then attempt to institute a separate action for the recovery of the balance of the sum owing.

196. (1988) 2 MLJ 184, SC.

197. (1986) 1 MLJ 16, SC.

198. (1991) 3 MLJ 119, HC.

199. (1991) 3 MLJ 43, HC.

Defence of 'cause to the contrary'

Section 256 deals with an application to the court for an order for sale of charged property which may be made by an aggrieved chargee when exercising his special statutory right. Section 256 states:

- (1) This section applies to land held under:
 - (a) Registry title;
 - (b) the form of qualified title corresponding to Registry title; or
 - (c) subsidiary title,
 and to the whole of any undivided share in, or any lease of, any such land.
- (2) Any application for an order for sale under this Chapter by a chargee of any such land or lease shall be made to the Court in accordance with the provisions in that behalf of any law for the time being in force relating to civil procedure.
- (3) On any such application, the Court shall order the sale of the land or lease to which the charge relates unless it is satisfied of the existence of *cause to the contrary*' (emphasis added).²⁰⁰

The root phrase 'made to the Court' in section 256(2) will compel an aggrieved chargee to file his application for an order for sale to the High Court and nowhere else. Furthermore, the next root phrase 'in accordance with the provisions... of any law... relating to civil procedure' which too appears in this subsection will require the aggrieved chargee to comply with the procedural rules set out in Order 83 of the Rules of the High Court, 1980 and not Order 31.²⁰¹ In *United Malayan Banking Corp Bhd v Chong Bun Sun and another application*,²⁰² one of the legal issues to be determined by the court was whether, in a charge action (foreclosure proceedings) under section 256 of the National Land Code, 1965, the aggrieved chargee must comply with the procedural rules set out in Order 31 or Order 83 of the Rules of the High Court, 1980. In holding the judicial view that Order 83 should be adopted, the High Court explained:²⁰³

200. As far as mukim land is concerned, the 'cause to the contrary' provision is enacted in section 263(1) of the NLC.

201. Compare the High Court case of *KK Kumaran v TS Sambanthamurthi* (1996) 3 MLJ 309 which ordered the sale of unencumbered land belonging to co-owners by public auction under 031 with another High Court case of *United Malayan Banking Corp Bhd v Chong Bun Sun and another application* (1994) 2 MLJ 221, HC which deals with the mandatory order of sale under section 256 by way of an application to the High Court via 083 of the RHC. See also *Low Lee Lian v Ban Hin Lee Bank Bhd* (1997) 1 MLJ 77, 88D; (1997) 2 CLJ 36, 51b; FC.

202. (1994) 2 MLJ 221, 227B-F, HC

203. *Ibid*, at p 227B-F, HC.

The NLC provides that on the default by a chargor, a chargee may obtain an order for the sale of the charged land: section 253(1). If the chargee intends to pursue this remedy, the chargee, under the provisions of the NLC, must comply with certain requirements as spelt out by the NLC. Only when all such requirements have been complied with, can an application for an order for sale be made to the courts: see generally the recent Supreme Court decision in *Citibank NA v Jong Tze Khiok & Anor*,²⁰⁴ as to some of these procedures which need to be complied with by the chargee under the Sarawak Land Code (Cap 81), and the earlier Supreme Court decision in *Nira Sdn Bhd v Malayan Banking Bhd*.²⁰⁵

The chargee also needs to comply with the requirements of O83 of the Rules of the High Court 1980 ('the RHC'): see the recent judgment of Shanker J in *Citibank NA v Ibrahim bin Othman*.²⁰⁶ The requirement that the chargee must comply with the procedural rules (the relevant provisions of the RHC) is also spelt out in section 256(2) of the NLC...

Section 256(3) provides that on any such application, and if satisfied, that there is no cause to the contrary, the court shall order the sale of the land.

From the decided cases on the forced sales of charged property (commonly termed as 'foreclosure proceedings'), any aggrieved chargee should not be denied of an order for judicial sale of such registry land just because the court feels sorry for the defaulting borrower or the chargee happens to be arrogant, boorish or unmannerly.²⁰⁷ If the court is satisfied that no defence of 'cause to the

204. (1993) 3 MLJ 449, SC.

205. (1990) 1 MLJ 110; (1990) 1 SCR 154, SC.

206. (1994) 1 MLJ 608, HC.

207. In *Keng Soon Finance Bhd v MK Retnam Holdings Sdn Bhd & Anor* (1989) 1 MLJ 457, PC; Lord Oliver of Aylmerton, at p 460, said: 'Section 256(3) of the National Land Code is mandatory. The court "shall" order a sale unless it is satisfied of the existence of "cause to the contrary". Granted that these words have been construed in Malaysia as justifying the withholding of an order where to make one would be contrary to some rule of law or equity, they clearly cannot extend to enabling the court to refuse relief simply because it feels sorry for the borrower or because it regards the lender as arrogant, boorish or unmannerly.'

contrary'²⁰⁸ could be established by a defaulting chargor, then it is mandatory for the court to order the sale of the charged property.²⁰⁹

However, there are not many incidents which a defaulting chargor may rely upon to resist or rebut a forced sale action against the charged land (foreclosure proceedings) instituted by his aggrieved chargee under section 256(2) of the National Land Code, 1965. Such incidents have been limited to three in number by the Federal Court in *Low Lee Lian v Ban Hin Lee Bank Bhd*.²¹⁰ In this instant case, a piece of alienated land in Sungei Buloh district was charged by the appellant/registered proprietor in favour of the respondent bank to secure a loan granted to a third party at the request of the appellant. The charge was duly registered in the appropriate land registry. When the third party defaulted in making repayment of the principal sum and interest accrued, the bank applied to enforce the registered Torrens charge by way of an order for sale. The appellant resisted the bank's application for a forced sale (foreclosure) but the judge directed that the land be sold by public auction. The appellant appealed against that order. The appellant argued that the judge was wrong in granting the order for sale of the land. Counsel for the appellant, *inter alia*, submitted that:

- (a) the bank had varied the rate of interest without giving any notice of the same to the appellant; and
- (b) the bank had, without the appellant's knowledge, permitted the third party to breach the terms of the agreement between them.

The main question that arose was whether, even if the complaints made by the appellant were made out, they constituted sufficient reason for the refusal of an order for sale by establishing 'cause to the contrary' under section 256(3) of the National Land Code, 1965.

208. Some of the local cases which have considered the root words 'cause to contrary' include *Keng Soon Finance Bhd v MK Retnam Holdings Sdn Bhd & Anor* (1989) 1 MLJ 457, (1989) 1 SCR 291, PC; *Gondola Motor Credit Sdn Bhd v Almurise Holdings Sdn Bhd* (1992) 2 MLJ 650; (1993) 1 SCR 45, SC; *James Edward Buxton & Anor v Supreme Finance (M) Bhd* (1992) 2 MLJ 481; (1993) 1 SCR 74, SC; *Kuching Plaza Sdn Bhd v Bank Bumiputra Malaysia Bhd and another appeal* (1991) 3 MLJ 163; (1992) 1 SCR 64, SC; *Kandiah Peter v Public Bank Bhd* (1994) 1 MLJ 119, SC; *United Malayan Banking Corp Bhd v Chong Bun Sun and another application* (1994) 2 MLJ 221, HC; *Kewangan Bersatu Bhd (previously known as Kewangan Usaha Bersatu Bhd v Metropolitan Property Holdings Sdn Bhd* (1996) 1 MLJ 79, HC; *Oriental Bank Bhd v Mohinder Pal Kaur a/p Tirlok Singh* (1996) 1 MLJ 789, HC; and *Low Lee Lian v Ban Hin Lee Bank Bhd* (1997) 1 MLJ 77, FC.

209. See the authorities on this point of law which have been listed in footnote 208, *supra*.

210. (1997) 1 MLJ 77, FC.

The Federal Court dismissed the appeal as having failed to meet the requisite legal test of what amounted to a cause to the contrary.²¹¹ Since much learning on the interpretation of the root phrase ('cause to the contrary') may be derived from the *Low Lee Lian* case, a part of the Federal Court's judgment will be reproduced at length. Gopal Sri Ram JCA, when delivering the judgment of the Federal Court, said:

The critical phrase in sub-section (3) of section 256 ('unless it is satisfied of the existence of cause to the contrary') to which we have lent emphasis, despite having been the subject of judicial pronouncements, continues to demand the attention of courts. There is no doubt that, upon a plain reading of the subsection, a High Court is entitled to refuse an order for sale of charged property once it is satisfied of the existence of cause to the contrary. But the question then arises: what is meant by 'cause to the contrary'?

In our judgment, 'cause to the contrary' within section 256(3) may be established only in three categories of cases.

First, it may be taken as settled that a chargor who is able to bring his case within any of the exceptions to the indefeasibility doctrine housed in section 340 of the Code establishes cause to the contrary. That section provides as follows:

- '340 (1) The title or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease, charge, or easement is for the time being registered, shall, subject to the following provisions of this section, be indefeasible.
- (2) The title or interest of any such person or body shall not be indefeasible:
 - (a) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or
 - (b) where registration was obtained by forgery, or by means of an insufficient or void instrument; or
 - (c) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law.'

211. *Low Lee Lian v Ban Hin Lee Bank Bhd* (1997) 1 MLJ 77, FC.

- (3) Where the title or interest of any person or body is defeasible by reason of any of the circumstances specified in sub-section (2):
 - (a) it shall be liable to be set aside in the hands of any person or body to whom it may subsequently be transferred; and
 - (b) any interest subsequently granted thereof shall be liable to be set aside in the hands of any person or body in whom it is for the time being vested: Provided that nothing in this subsection shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration, or by any person or body claiming through or under such a purchaser.
- (4) Nothing in this section shall prejudice or prevent:
 - (a) the exercise in respect of any land or interest of any power of forfeiture or sale conferred by this Act or any other written law for the time being in force, or any power of avoidance conferred by any such law; or
 - (b) the determination of any title or interest by operation of law.²¹²

In other words, a chargor who is able to demonstrate that the charge, the enforcement of which is sought, is defeasible upon one or more of the grounds specified under sub-sections (2) and (4)(b) above will be held to have established cause to the contrary under section 256(3). The decision of Smith J in *Subchent Kaur v Chai Sau Kian* (1958) MLJ 32, of the former Federal Court in *Phuman Singh v Kho Kwang Choon* (1965) 2 MLJ 189, of Raja Azlan Shah J (as he then was) in *Overseas Union Finance Ltd v Lim Joo Chong* (1971) 2 MLJ 124 and that of Edgar Joseph Jr J (as he then was) in *United Malayan Banking Corp Bhd v Syarikat Perumahan Luas Sdn Bhd* (No 2) (1988) 3 MLJ 352 (affirmed on appeal) sufficiently illustrate the proposition now under discussion.

Secondly, a chargor may show cause to the contrary within section 256(3) of the Code by demonstrating that the chargee has failed to meet the conditions precedent for the making of an application for an order for

212. The root phrase 'by operation of law' in section 340(4)(b) must carry some meaning because Parliament does not legislate in vain by the use of meaningless words and phrases: *Krishnadas a/l Achutan Nair v Maniyam a/l Samykano* (1997) 1 MLJ 94, 101A-D; (1997) 1 CLJ 636, 645 a-e; FC.

sale. For example, failure on the part of the chargee to prove the making of a demand or service upon the chargor of a notice in Form 16D would constitute cause to the contrary. So too, where the notice demands sums not lawfully due from the chargee. See *Co-operative Central Bank Ltd v Meng Kuang Properties Bhd* (1991) 2 MLJ 283. However, in such a case, it would be open to the chargee to subsequently serve a notice or a proper notice (as the case may be) before commencing proceedings afresh as the cause shown to the contrary does not in substance affect the chargee's right to apply for an order for sale.

Thirdly, a chargor may defeat an application for an order for sale by demonstrating that its grant would be contrary to some rule of law or equity. This principle finds its origins in the judgment of Aitken J in *Murugappa Chettiar v Letchumanan Chettiar* (1939) MLJ 296 at p 298 where he said:

'I agree that equitable principles should not be invoked too freely for the purpose of construing our Land Code, but surely a chargor, who shows that there would be no need to sell his land if the chargee (is) paid up in full what is due from himself in another capacity, has shown good and sufficient cause why the land should not be sold. Section 149 of the Land Code obviously contemplates that there may be cases in which charged land should not be sold, even though there has been a default in payment of the principal sum or interest thereon secured by the charge; and it seems to me that a chargor may 'show cause' either in law or equity against an application for an order for sale, and that the courts should refuse to make an order in every case where it would be unjust to do so. By unjust I mean contrary to those rules of the common law and equity which are in force in the Federated Malay States.'

In *Murugappa Chettiar (ibid)*, the appellant was one of two co-proprietors of land. The proprietors jointly charged the land to the respondent as security for a loan. The chargee commenced proceedings under section 149 of the Land Code (Cap 138), the precursor to section 256(3) which read as follows:

'After such default in payment or observance continuing for the space of one month from the service of such notice or for such other period as may in such instrument be for that purpose limited, it shall be lawful for the chargee, by summons, to call the proprietor of the charged land before the court to shew cause why the land subject to the charge should not be sold by

public auction under direction of the court. If no cause be shown to the satisfaction of the court, it shall order the public sale of land to take place at such place and time as shall appear most suitable, but not less than four weeks from the date of the order, and it shall be the duty of the registrar of the court to see that such sale is publicly notified during these four weeks in such manner as may be usually adopted for such notifications for the time being, or as shall be regulated by any rules of court in that behalf.'

The appellant alleged that he was liable for only half of the loan amount and that he had made part payment of that sum. He paid the balance due from him into court and alleged that the other chargor who was liable for the remaining half was the nominee of the respondent chargee. All these allegations were not denied by the respondent chargee. The judge at first instance granted an order for sale without investigating any of these allegations. The FMS Court of Appeal held that there ought to have been an investigation into the unrefuted allegations, allowed the appeal and remitted the matter to the judge for trial of the issues. It was in this context that the remarks by Aitken J in the FMS Court of Appeal in the passage earlier quoted were uttered.

The Federal Court continued to review a host of other authorities which bear some relevance to the third category of 'cause to the contrary' including the Privy Council's decision in *Keng Soon Finance Bhd v MK Retnam Holdings Sdn Bhd & Anor*,²¹³ *Buxton & Anor v Supreme Finance (M) Bhd*,²¹⁴ *Overseas Chinese Banking Corp Ltd v Lee Tan Hwa & Anor*,²¹⁵ *Gondola Motor Credit Sdn Bhd v Almurise Holdings Sdn Bhd*,²¹⁶ *American International Co Ltd v Union Builders (Malaysia) Sdn Bhd*,²¹⁷ *Kandiah Peter v Public Bank Bhd*²¹⁸ and *United Malayan Banking Corp Bhd v Chong Bun Sun and another application*.²¹⁹ The Federal Court finally dismissed the

213. (1989) 1 MLJ 457, 460, PC.

214. (1992) 2 MLJ 481, 487, SC.

215. (1989) 1 MLJ 261, HC.

216. (1992) 2 MLJ 650, SC.

217. (1973) 1 MLJ 95, FC.

218. (1994) 1 MLJ 119, SC.

219. (1994) 2 MLJ 221, 239, HC.

appeal filed by the registered proprietor and granted judgment in favour of Ban Hin Lee Bank Bhd. Since the judgment on the topic is so clear and instructive, the relevant passage is reproduced in full:²²⁰

We must confess our inability to discern any ‘wider proposition’ that *Kandiah* establishes. All that case did was to reaffirm well-established principles. At the risk of repetition, we emphasise that, by their very nature, proceedings under section 256 are not concerned with any contractual claims that the chargor may have against the chargee. They are concerned with the very narrow and limited question whether the chargor has adduced facts that establish cause to the contrary in the sense we have earlier discussed. If the chargor is unable to sustain his opposition to the making of an order for sale – a proceeding *in rem* – he may nevertheless sue the chargor *in personam* for breach upon the personal covenant or in equity for such relief as may be appropriate. The issue in the latter action is whether facts emerge that reasonably support a breach of contract or an equitable remedy such as an action for an account. Such an action will, of course, be subject to all available defences, at law and in equity, and to the wide discretion of the court to refuse specific relief in the exercise of discretion according to settled principles.

When properly understood, there is therefore nothing in the decision in *Kandiah* that permits a chargor in a subsequent action to set aside an order for sale granted by the court *inter partes*. That may not be done in the absence of an allegation of fraud in the procurement of the order. See *Hock Hua Bank Bhd v Sabari bin Murid* (1981) 1 MLJ 143. If a chargor is unhappy with an order for sale made *inter partes*, his only remedy is to appeal against it as has been done in the present case. All that *Kandiah* decides is that the making of an order for sale does not bar an action *in personam* between the same parties.

In our judgment, the problem fails to be resolved by reference to the doctrine of estoppel. It matters not what form the estoppel takes. It may take the form of a plea of *res judicata*²²¹ or cause of action estoppel or issue estoppel in the sphere of adjectival law. It may appear in some other form

220. *Low Lee Lian v Ban Hin Lee Bank Bhd* (1997) 1 MLJ 77, 92B-93G; (1997) 2 CLJ 36, 55c-56i, FC.

221. For a discussion on the application of the doctrine of *res judicata*, see the judgment of Murray-Aynsley J in *Sithambaran Chettyar v Chong Fatt* (1939) 8 MLJ (FMSR) 298, HC and *Kandiah Peter v Public Bank Bhd* (1994) 1 MLJ 119, SC.

to affect rights that may exist under substantive law. Whatever its label, there are certain basic features that are inextricably woven into the fabric of the doctrine.

One such feature is mutuality or reciprocity. For estoppel to apply, it must bind both parties to a dispute. If, for any reason, only one party will be estopped but not the other, if their roles were reserved, then the doctrine does not bite. See *Gaunt v Wainman* (1836) 132 ER 335; *Foster v Mentor Life Assurance Co* (1854) 118 ER 1058; *Concha v Anglo-American Telegraph Co* (1879) 5 QBD 188 at p 203, per Bramwell LJ.

An examination of the legal position reveals that the requirement of reciprocity is not met in relation to proceedings under section 256 of the Code.

Now, it is trite that a chargee/creditor may pursue any or all remedies to recover monies lent by him. He may enforce his statutory charge against the chargor by way of proceedings *in rem* under section 256 of the Code. He may sue the principal debtor (who may or may not be the chargor) upon the personal covenant contained in any loan agreement that was entered into between the parties. He may proceed against the surety who has guaranteed the loan. And he may pursue all of these courses simultaneously, contemporaneously or successively. See *China and South Sea Bank Ltd v Tan* (1989) 3 All ER 839 at p 842.

Thus, in the absence of any special circumstances, a chargee who has obtained an order for sale is not barred by *res judicata* or any other form of estoppel from pursuing actions in personam against the chargor or the surety. The test of mutuality or reciprocity is, accordingly, not met. Consequently, no legitimate ground may be advanced to bar the chargor from mounting an action in personam against the chargee, eg for breach of contract or for failure to furnish proper accounts.

When viewed from this standpoint, it is plain that the decision in *Kandiah* is not only correct but also just. Where an order for sale is made in the absence of the chargor, then, the court is not *functus officio* for the purposes of hearing an application by the chargor to set it aside. See *United Malayan Banking Corp Bhd v Syarikat Perumahan Luas Sdn Bhd* (No 2) (1988) 3 MLJ 352. We are not prepared to – indeed we cannot – predict all the issues that may arise upon such an application. Each case depends on its own facts. However, we will go so far as to say that one of the issues that will certainly arise upon such an application will be whether the chargor has established cause to the contrary.

Once these elementary propositions of law are understood, there need be no fear of confusion or of floodgates.

Hence, the law on auction sale is now well settled with the decision of the Federal Court delivered by the learned judge, Gopal Sri Ram JCA in *Low Lee Lian v Ban Hin Lee Bank Bhd*.²²² The creation of a Torrens charge must be in strict compliance with the statutory provisions of the National Land Code, 1965 or at least its creation must not offend any other written law for the time being in force in order to be valid.²²³ However, should an order for sale be ever refused by the court due to a cause to the contrary being established against the registered chargee, then, perhaps, all is not lost to the deprived chargee. Although he may not be able to fall back on the security to realise the repayment of the outstanding loan, albeit he may still institute proceedings *ad rem* for the recovery of monies had and received. This point was ventured into by Gopal Sri Ram JCA in the Federal Court case of *Low Lee Lian v Ban Hin Lee Bank Bhd*²²⁴ where he said:

Now, it is trite that a chargee/creditor may pursue any or all remedies to recover monies lent by him. He may enforce his statutory (Torrens) charge against the chargor by way of proceedings in rem under section 256 of the Code. He may sue the principal debtor (who may or may not be the chargor) upon the personal covenant contained in any loan agreement that was entered into between the parties. He may proceed against the surety who has guaranteed the loan. And he may pursue all of these courses simultaneously, contemporaneously or successively. See *China and South Sea Bank Ltd v Tan* (1989) 3 All ER 839 at p 842.

Auction sale vs sale by private treaty

From the decided cases reviewed, it is settled that the moment a defaulting chargor is unable to establish the defence of cause to the contrary to the satisfaction of the court, the court is then placed under a mandatory duty to order the sale of the charged property. The manner of sale must be by way of a public auction.²²⁵ An

222. (1997) 1 MLJ 77; (1997) 2 CLJ 36; FC.

223. Section 241(3)(a) of the NLC.

224. (1997) 1 MLJ 77; (1997) 2 CLJ 36 at p 56c; FC. See also *United Malayan Banking Corp Bhd v Chong Bun Sun & another application* (1994) 2 MLJ 221, HC.

225. As to a commentary on the statutory provisions which must be complied with by a forced sale chargee before a public auction may be conducted, see *United Malayan Banking Corp Bhd v Chong Bun Sun and another application* (1994) 2 MLJ 221, at p 229, *et seq*; HC.

order for sale by private treaty is outside the jurisdiction of the court. Thus, in *Chung Khiaw Bank Ltd v Lau Ah Yen & Anor*,²²⁶ Wan Adnan J expressed judicial reservations on the issue of whether or not the court has the power to order the sale of charged land by way of private treaty under section 265(3)(c) of the NLC where he observed:

It is my view that the court has no power to order sale by private treaty even under section 265(3)(c) of the National Land Code. ‘... to make such other order as it may think just’, to my mind, does not include the power to order sale by private treaty.

It must be noted, however, that the above observations of Wan Adnan J were made in relation to an aborted auction sale of charged land held under a land office title which has been referred to the court for a determination by the Land Administrator under section 265(3) of the National Land Code.²²⁷ The application before Wan Adnan J was not an originating application at the first instance under section 256 which deals with judicial sale of registry land. The original application was first made to the Land Administrator for the sale of charged land held under a land office title. Since no bid was received and the charged mukim land remained unsold, the jurisdiction for sale has, in a way, been transferred from the Land Administrator to the High Court under section 265(3)(b). In such an event, the court has the power, under section 265(3)(c), either (i) to make a new order for sale by public auction of the mukim land in substitution of the order of sale which had previously been made by the Land Administrator under section 263(1) or (ii) to make ‘such other order as it may think just’. Wan Adnan J then deduced, quite rightly, that the root phrase in section 265(3)(c) did not empower the court to make an order for sale by way of private treaty but merely empowered the court to order the sale of the mukim land under section 256 instead of the usual section 263(1) and perhaps at a reduced reserved price bearing foremost in mind that no bid was ever received at the previous reserved price.

226. (1989) 2 MLJ 247, HC.

227. Section 265(3) of the NLC states: ‘(3) If at the subsequent sale no bid is received at or above the reserve price:

- (a) the (mukim) land or lease shall be withdrawn from the sale;
- (b) the Land Administrator shall refer the matter to the Court; and
- (c) the Court may substitute for the order of the Land Administrator an order for sale under section 256, or make such other order as it may think just.’

On the point of the inability of the court to order the sale of charged land by private treaty, Visu Sinnadurai J in *United Malayan Banking Corp Bhd v Chong Bun Sun and another application*,²²⁸ said:

Considering the true nature of the statutory remedy of the chargee to apply for an order for sale under section 257 of the NLC, this court is of the view that once an order for sale has been made by the court by way of a public auction under section 257 of the NLC, the court does not have the power to make a subsequent order to vary or set aside the earlier order, and to make a new order for the charged property to be sold by way of private treaty.

It is the view of this court that in an application for an order for sale under section 256, the court must make an order for sale, and such sale must be by way of a public auction and no other.

The moment an order for sale of charged land has been made against a defaulting chargor, it does not necessarily mean that the chargor's rights *in rem* in respect of his land have been abrogated entirely. Until and unless the consequential auction sale has been concluded successfully, the chargor remains at least the registered proprietor of his charged land – because the order of sale does not tantamount to and is not an administrative act of registration so as to divest the registered title from him. An aggrieved chargee must bear in mind that the occurrence of an event of default or the granting of an order for sale does not necessary mean that the chargor has been deprived of all his proprietary rights to his charged land. It is still within his rights to intervene by applying to the court to set aside the auction sale but the onus is placed on him to establish the existence of a 'cause to the contrary'. In the Supreme Court case of *M & J Frozen Food Sdn Bhd & Anor v Siland Sdn Bhd & Anor*,²²⁹ Wan Yahya SCJ observed:

... the chargor's proprietary right is not entirely extinguished and so he is entitled to make an application to set aside an improper sale. We are not prepared to construe that a chargor is divested of his proprietary rights at the fall of the hammer nor are we disposed to interpret the complete surrender of his rights to the chargee at the making of the order of sale so as to deprive him of the rights to challenge the propriety of the sale.

228. (1994) 2 MLJ 221, HC.

229. (1994) 1 MLJ 294, SC.

Further down the judgment, Wan Yahya SCJ continued:

The chargor does not abrogate all his rights to the chargee at the making of the order for sale. He is merely compelled to abide by the court's order for his property to be sold in accordance with the statutory safeguards on his interest as provided under sections 257 and 258 of the NLC. He is a necessary party to the application for sale and must be served with a summons or writ in the manner provided under O 83 of the Rules of High Court 1980 in respect of an application under section 256, and, with a summons as provided under section 261(1)(c) of the NLC in respect of an application under section 260 of the NLC. Even after the order of sale has been made and when the auction sale is already in progress, but before a bid has been accepted, he still retains the right to tender payment of the amount which he owes the chargee (which may be less than the value of the land on sale) and call off the sale - section 266 of the NLC. The exercise of such rights do not appear to us to be consistent with a proprietor who has surrendered absolutely his rights over the land to another.

The order for sale confers on the chargee only the statutory rights to a judicial sale. A sale under sections 256 or 260 of the NLC is a judicial sale ordered by the court on the application of the chargee. The chargor, who has until that stage not been divested of his proprietary rights, may intervene to set aside the sale in the event of fraud, impropriety or the breach of any statutory or contractual terms of the sale. We agree that the terms or conditions of sale may be varied, if having regard to the interest of both the chargor and the chargee, it is fair to do so; but the sale being a judicial one, has to be done by the court after giving the chargor the right to be heard. As the court's power to order the sale, including to fix the price and conditions of sale, is derived from the statutory provisions of the NLC after giving the chargor the right to be heard, it is manifest that any alteration to the terms or conditions must likewise be exercised.²³⁰

230. The role of an auctioneer in the conduct of an auction sale was commented on by the Court of Appeal in *Malayan Banking Bhd v Lim Poh Ho & Anor* (1997) 1 MLJ 662; (1997) 2 AMR 1597 where, at p 676G, Mahadev Shankar JCA said: 'In the present case, the bank employed a licensed appraiser to conduct the sale by public auction. As stated in 32 Halsburys Laws (4th Ed) at para 729:

'The mortgagee is entitled to employ agents to effect the sale, and so long as he selects agents presumably competent, he is not liable for their errors of judgment, or errors in matters of detail not seriously affecting the success of the sale or the price realised; but if the agent is guilty of a serious blunder including a failure to sell, or a large diminution of the price realised, the mortgagee is responsible although he may have a remedy against his agent.'

Furthermore, if no auction sale has yet been concluded, albeit the date for the auction sale has already been fixed, it is still within the chargor's right to tender the judgment sum plus accrued interest thereon and a sum sufficient to cover all expenses pertaining to the judicial sale to the registrar of the court or, as the case may be, the Land Administrator or the auctioneer, and the order shall, thereupon, cease automatically to have any further effect against the land concerned.²³¹ On this particular point, Jemuri Serjan SCJ, sitting in another panel of the Supreme Court in the case of *Malayan United Finance Bhd v Tan Lay Soon*,²³² elucidated the respective registered title to alienated land of the chargor and the registered encumbrance of the chargee in respect of a charged land as follows:

Under the National Land Code the interest in the land subject to a charge does not vest in the chargee but, upon registration of a charge, it renders the land subject to the charge liable as a security only in accordance with the provisions of the charge, express or implied (section 243). Under section 244(1), the chargee is entitled to the custody of the issue document of title so long the liability stays under the charge. There is no statutory provision for the discharge of the charge by the chargor but his right and that of a borrower to do so is embodied in the provisions of the (instrument of) charge itself. See clause 3(ii) of the annexure to the charge and section 249(1) of the National Land Code. However, under section 266(1) any chargor may at any time before the conclusion of a judicial sale of a charged land tender the amounts due to the registrar of the court or the collector and the amount sufficient to cover all expenses in connection with the judicial sale. Since the right or interests in the charged land remains with the registered owner he has nothing to redeem.

This passage was cited with approval by the Supreme Court in a subsequent case of *M & J Frozen Food Sdn Bhd & Anor v Siland Sdn Bhd & Anor*.²³³ In an earlier case of *United Malayan Banking Corp Bhd v Chong Bun Sun and another application*,²³⁴ the High Court had this to say:

So long as the chargee's interest is not adversely affected, there appears to be no reason as to why a chargor does not have the right to sell the charged land before an order for sale has been made. As will be seen later,

231. Section 266(1) of the NLC as well as footnote 240, *infra*.

232. (1991) 1 MLJ 504, SC.

233. (1994) 1 MLJ 294, at p 308E-G, SC.

234. (1994) 2 MLJ 221, at p 234A-I, HC.

even after an order for sale has been made, the chargor may sell the property by way of private treaty. In both these situations, however, it is prudent for the chargor to obtain the consent of the chargee.

In this respect, attention should be drawn to the earlier decisions of Gill J in *The Chartered Bank v Packiri Maideen & Anor*,²³⁵ and of the Federal Court in *Eng Ab Mooi & Ors v Overseas-Chinese Banking Corp Ltd*,²³⁶ (this decision was criticized on some other grounds by the Supreme Court in the subsequent case of *Malayan United Finance Bhd v Tan Lay Soon*²³⁷). In both these decisions, the court pointed out that the chargor may only sell the charged property by way of private treaty prior to the commencement of any foreclosure proceedings by the chargee. However, the decisions in these two cases may be explained on the ground that in both the cases, the courts were concerned with the sale, by the chargor of the charged property, by private treaty without the prior consent of the chargee. Those decisions, therefore, merely hold that any time prior to the commencement of the foreclosure proceedings, the chargor, may without the consent of the chargee, sell the charged property by way of private treaty. This the chargor may do in exercise of his rights as the registered proprietor of the land, though the sale must be made subject to the existing charge.

(b) Right of chargor to sell by private treaty after an order for sale

Section 266(1) of the NLC provides that the chargor, against whom an order for sale has been made may, at any time before the conclusion of the sale, *tender the money owing to the chargee*. The said section reads as follows:

‘Any chargor against whom an order or sale has been made under this Chapter may, at any time before the conclusion of the sale, *tender the amounts* specified in sub-section (2) *to the Registrar of the Court or, as the case may be, Land Administrator* (or, if the tender is made on the day fixed for the sale, *to the officer having the direction thereof*), and the order shall thereupon cease to have effect.’

235. (1963) MLJ 276, HC.

236. (1983) 1 MLJ 209, FC.

237. (1991) 1 MLJ 504; (1991) 1 SCR 105; SC.

This provision is in line with the principle that the chargor always retains a right to discharge a charge: see *Jemuri Serjan SCJ* (as he then was) in *Malayan United Finance Bhd v Tan Lay Soon*,²³⁸ at p 508.

The most obvious manner in which the chargor may tender the money owing to the chargee is for the chargor to repay the chargee the outstanding loan, including interest thereon, which the chargor had borrowed. This the chargor may do either by obtaining the funds to repay the loan from some other independent source, or by selling the charged property to a third party. In the latter situation, the chargor may enter into a private treaty with a third party to purchase the charged property. The chargor, in such a situation may, from the proceeds of this sale, tender the said sum owing to the chargee. (Emphasis added.)

The root phrase ‘tender the money owing to the chargee’ in the passage quoted above infers that a forced sale (foreclosing) chargee is entitled to accept the outstanding sum from the defaulting chargor even though an order for sale of the charged property has been made by the court. This statement of the law is incorrect. It must be borne foremost in mind that when a forced sale (foreclosing) chargee exercises his special statutory remedy by seeking the court to assist him in selling the charged property, the chargee places the matter in the hands of the court under section 256, and it is the duty of the court as well as officials and auctioneers so appointed or approved by the court to discharge their respective quasi-judicial functions in accordance with the provisions contained in Chapter 3, Part 16 of the National Land Code, 1965. One of such functions is to ensure that, at the conclusion of an auction sale, all proceeds of sale must be paid to and received by a court official and no others. However, if after an order for sale has been made but before the consequential auction sale has been successfully concluded, the outstanding judgment sum as claimed by the aggrieved chargee may still be tendered in full²³⁹ at the eleventh hour by the defaulting chargor to the registrar of the court or to the Land Administrator or the auctioneer, as the case may be.²⁴⁰ However, this desperate payment must not be made directly to the chargee or his solicitors because

238. (1991) 1 MLJ 504; (1991) 1 SCR 105; SC.

239. As to what is the actual amount which is payable by the defaulting chargor in order to prevent, literally at the eleventh hour, his charged land from being auctioned by the auctioneer under an order of sale, see section 266(2) of the NLC.

240. See section 266(1) of the NLC.

under such dire circumstances, they are not permitted to accept the payment. The payment of the amounts outstanding, in such an event, will automatically cancel the order for sale of the charged land without the necessity of referring the matter to the court for its determination.²⁴¹ At this juncture, the forced sale (foreclosing) chargee is legally obliged to discharge the registered charge notwithstanding that the tendered sum will only be released to him in a year or two. After all, the tendered sum has already been paid into court which acts as some sort of a 'referee' for the aggrieved chargee in the auction sale. At this point, it is only proper that the chargee, although not in physical possession of the tendered sum, should act diligently in discharging his registered charge and returning the property to the chargor.

However, from the time when the proceeds of sale or perhaps the tendered sum has been received by the court, a time lag of one to two years needs to take its administrative passage before the aggrieved chargee will be paid his due. Meanwhile, the chargee's right to charge interest on the outstanding sum will cease the moment the auction sale has been successfully concluded. Unless the procedure for release of the proceeds of an auction sale is streamlined and the time factor for the release is shortened, who is to bear the holding costs? It is no wonder aggrieved chargees always feel that, under the present system, they have been short-changed by the administrative delay.

Chargee's duty of care in an auction sale

The next pertinent point which pertains to an auction sale is whether or not a forced sale (foreclosing) chargee owes a legal duty of care towards the defaulting chargor which duty is based on the tort of negligence. If such a duty exists, then what is the degree of care attributable to that duty? Perhaps registered chargees and counsel who specialise in litigation work should take note of this duty of care. It should be questioned whether the chargee's duty of care, once established, is an open ended duty to a chargor to get the best possible price for the sale of the charged property by expending further time, energy and financial resources in creating optimum conditions for the sale or whether the chargee is merely required to take the market as he finds it at the time of the sale and tries to obtain the best possible price he could under such market conditions without the necessity of throwing away good money after bad.²⁴² In short, does this duty demand a higher degree or perhaps a more relaxed degree of care?

241. Section 266(1) of the NLC.

242. *Malayan Banking Bhd v Lim Poh Ho & Anor* (1997) 1 MLJ 662, 672D-E; (1997) 2 AMR 1597, CA.

The standard of care was measured in the Australian case of *Pendlebury v Colonial Mutual Life Assurance Society Ltd*²⁴³ by Isaacs J where he remarked that 'so long as (the mortgagee) observed specified formalities and acts in good faith, his conduct cannot be challenged'. On the other hand, the opposite line of authority, as stated with some apprehension by Mahadev Shanker JCA, in the *Lim Poh Ho* case,²⁴⁴ is exemplified by the English Court of Appeal case of *Cuckmere Brick Co Ltd v Mutual Finance Ltd*²⁴⁵ in which Salmon LJ determined the duty of the English mortgagee, not on a standard of behaviour imposed by equity, but on a legal duty exerted on the tort of negligence and stemming from the proximity of the English mortgagor and the mortgagee. Salmon LJ said:

Surely they are 'neighbours'. Given that the power of sale is for the benefit of the mortgagee and that he is entitled to choose the moment to sell which suits him, it would be strange indeed if he were under no legal obligation to take reasonable care to obtain what I call the true market value at the date of the sale.

Thus, a controversy arises as to which of the two opposite tests should apply, namely, the more stringent test laid down in the *Cuckmere* case which demands a higher standard of care for the English mortgagee to observe or perhaps the more relaxed test which was laid down by Isaacs J in the *Pendlebury* case for the Australian mortgagee to abide by. Interestingly, this controversy has yet to be authoritatively resolved in Australia by the High Court. However, the *Cuckmere* test has been adopted by the Privy Council for Hong Kong's jurisdiction in the case of *Tse Kwong Lam v Wong Chit Sen*.²⁴⁶ Locally, in *Asia Commercial Finance (M) Bhd & Anor v Development and Realtor Sdn Bhd*,²⁴⁷ the High Court in Penang was faced with a similar dilemma and ultimately opted for the *Cuckmere* test. The High Court had this to say:

The issue of the appropriate standard of care owed by the chargee to the chargor is not free from difficulty. One line of authority is to the effect that a mortgagee's only duty is to act bona fide in the conduct of the sale

243. (1912) 13 CLR 676.

244. *Malayan Banking Bhd v Lim Poh Ho & Anor* (1997) 1 MLJ 662, 671I; (1997) 2 AMR 1597, 1612:14, CA.

245. (1971) Ch 949.

246. (1983) 3 All ER 54, PC.

247. (1992) 2 MLJ 504, 516, HC.

(see *Kennedy v De Trafford* (1897) AC 180; *Warner v Jacob* (1882) 20 Ch D 220). In the latter case, Kay J said at p 224:

... a mortgagee is strictly speaking not a trustee of the power of sale. It is a power given to him for his own benefit, to enable him the better to realize his debt. If he exercises it bona fide for that purpose, without corruption or collusion with the purchaser, the court will not interfere even though the sale be very disadvantageous, unless indeed the price is so low as in itself to be evidence of fraud.'

In the Australian case of *Pendlebury v Colonial Mutual Life Assurance Society Ltd* (1912) 13 CLR 676, Isaacs J stated at p 699 that 'so long as (the mortgagee) observed specified formalities and acts in good faith, his conduct cannot be challenged'.

The opposite line of authority is exemplified by the English Court of Appeal case of *Cuckmere Brick Co Ltd v Mutual Finance Ltd* (1971) Ch 949 where Salmon LJ based the obligation of the mortgagee, not on a standard of behaviour imposed by equity but on a legal duty based on the tort of negligence and stemming from proximity of the mortgagor and the mortgagee.

...

In Australia, the controversy as to which test is the appropriate test to apply – the more stringent test laid down in *Cuckmere* setting a higher standard for the mortgagee or the more relaxed test laid down in *Pendlebury* – remains to be resolved by the High Court.

I note, however, that in the Hong Kong Privy Council case of *Tze Kwong Lam v Wong Chit Sen* (1983) 3 All ER 54, their Lordships accepted the *Cuckmere* test. I would respectfully do the same.

However, the adoption of the English stringent test in *Cuckmere* case by the Penang High Court²⁴⁸ has caused some judicial concern in the Court of Appeal in *Malayan Banking Bhd v Lim Poh Ho & Anor.*²⁴⁹ In delivering the judgment of the court Mahadev Shankar JCA said:

I have been greatly troubled as to whether it can really be contended that *Cuckmere Brick Co Ltd v Mutual Finance Ltd* (1971) Ch 949 really

248. *Asia Commercial Finance (M) Bhd & Anor v Development and Realtor Sdn Bhd* (1992) 2 MLJ 504, HC.

249. (1997) 1 MLJ 662, 672D; (1997) 2 AMR 1597, 1612:39, CA.

decided that a mortgagee had some open ended duty of care to a mortgagor to get the best possible price for the mortgaged property by expending further energy and financial resources in creating optimum conditions for the sale or whether the mortgagee was entitled to take the line that he was not obliged to throw away good money after bad, but was entitled to take the market as he found it and get the best price he could in the circumstances.

There is a considerable diversity both in language and approach in the judgments of the three judges who decided *Cuckmere*. The facts show that the mortgagee was guilty of wilful default which in my view amounted to recklessness. So I think the conclusion of Salmon LJ (at p 968H of the report) *should be very cautiously applied in other circumstances*. He said this:

‘I accordingly conclude, both on principle and authority, that a mortgagee in exercising his power of sale does owe a duty to take reasonable precautions to obtain the true market value of the mortgaged property at the date on which he decides to sell it. No doubt in deciding whether he has fallen short of that duty the facts must be looked at broadly, and he will not be adjudged to be in *default unless he is plainly on the wrong side of the line.*’
(Emphasis added.)

That ‘the duty to take reasonable precautions’ is a narrow one which will not be extended to cover every possible step an altruistic financier could have taken regardless of time, cost or effort is clearly brought out by what a mortgagor can legally do. See p 965G of the report where Salmon LJ said:

‘I will now turn to the law. It is well settled that a mortgagee is not a trustee of the power of sale for the mortgagor. Once the power has accrued, the mortgagee is entitled to exercise it for his own purposes whenever he chooses to do so. It matters not that the moment may be unpropitious and that by waiting a higher price could be obtained. He has the right to realise his security by turning it into money when he likes. Nor, in my view, is there anything to prevent a mortgagee from accepting the best bid he can get at an auction, even though the auction is badly attended and the bidding exceptionally low. Providing none of those adverse factors is due to any fault of the mortgagee, he can do as he likes. If the mortgagee’s interests, as he sees them, conflict with those of the mortgagor, the mortgagee can give pref-

erence to his own interest, which of course he could not do where he is a trustee of the power of sale for the mortgagor.

Mr Vinelott contends that the mortgagee's sole obligation to the mortgagor in relation to a sale is to act in good faith; there is no duty of care, and accordingly, no question of negligence by the mortgagee in the conduct of the sale can arise. If this contention is correct, it follows that even on the facts found by the judge, the defendants should have succeeded.

It is impossible to pretend that the state of the authorities on this branch of the law is entirely satisfactory. There are some dicta which suggest that unless a mortgagee acts in bad faith, he is safe. His only obligation to the mortgagor is not to cheat him. There are other dicta which suggest that in addition to the duty of acting in good faith, the mortgagee is under a duty to take reasonable care to obtain whatever is the true market value of the mortgaged property at the moment he chooses to sell it: compare, for example, *Kennedy v De Trafford* (1896) 1 Ch 762; (1897) AC 180 with *Tomlin v Luce* (1889) 43 Ch D 191 at p 194.'

'The Mortgagee's Duty on Sale' by Peter Butt in (1979) 53 ALJ 172 at p 175 reads:

'This 'neighbour' approach has been condemned as a 'fusion fallacy', on the ground that, as the interest sold by the mortgagee includes the equity of redemption, any complaint by the mortgagor regarding the manner of exercise of power of sale ought to be made in equity, not at law, and that the approach of the Court of Appeal in *Cuckmere Brick Co's* case was inappropriate in so far as it 'strove to reassess the obligations of the mortgagee in terms drawn from the tort of negligence and treated the remedy as lying in damages'. While the criticism is appealing, the apostasy has been too long tolerated to be now decried as heresy.'

Indeed in *Brutan Investments Pty Ltd v Underwriting and Insurance Ltd and Anor* (1991-92) 39 ACTR 47, the Supreme Court of the Australian Capital Territory declined to follow *Cuckmere Brick Co Ltd v Mutual Finance Ltd* (1971) 1 Ch 949 and laid down the duty of a mortgagee in these terms:

'The duty of a mortgagee exercising power of sale is to act in good faith, that is, without fraud and without wilfully or recklessly sacrificing the interests of the mortgagor. His duty does not require him to take reasonable care to obtain the true market value of the mortgaged property.'

I have read all the cases cited or referred to in the decisions I have earlier mentioned, including *Kian Choon Investments (Pte) Ltd v Sociate Generale & Anor* (1990) 2 MLJ 74 and *How Seen Ghee v Development Bank of Singapore* (1994) 1 SLR 526. I have noted that wherever the court has found for the mortgagor, it has only been on the basis that there was some deliberate and wilful conduct on the part of the mortgagee in selling for a lower price when he knew that there was another purchaser available who was ready and willing to pay a higher price if the charged property had been made fairly available to him.

To fortify the court's finding that the *Cuckmere* test should not be applicable locally, his Lordship, Mahadev Shanker JCA took pains to cite at length the judgment of Lord Templeman in a New Zealand Privy Council case of *Downview Nominees Ltd v First City Corp Ltd*²⁵⁰ which reduced the *Cuckmere* case to the narrow proposition of law that if ever a mortgagee should decide to sell the charged property, he must take reasonable care to obtain a proper price but that case is no authority for any wider proposition.²⁵¹ Finally, to clarify what has been said in *Asia Commercial Finance (M) Bhd* case at page 517 of the lower court's decision on the need to prove that the under value was so gross as to indicate fraud or want of proper standards of care, the Court of Appeal in the *Lim Poh Ho* case preferred and adopted the pertinent remarks made by Peter Butt in his article which reads:

On the other hand, it is also beyond doubt that a mortgagee may not exercise the power of sale in a fraudulent manner. It has been said that the price realised may be so low as to be in itself evidence of fraud on the part of the mortgagee, but it is clear from the decided cases that the quantum realised, although relevant, will not normally be conclusive. It is only an exceptionally low price which, *per se*, conclusively demonstrates fraud (as, for example, where a property worth \$1,600 was sold for twenty-five cents, one worth \$5,500 was sold for \$50, and one worth between \$13,000 and \$19,000 was sold for \$1,000). Generally, inadequacy of price will need to be coupled with other factors, such as inadequate marketing or knowledge, that another buyer may be prepared to pay a better price, before the sale will be set

250. (1993) 1 NZLR 513, at pp 524, 525, PC.

251. *Malayan Banking Bhd v Lim Poh Ho & Anor* (1997) 1 MLJ 662, at p 674E.

aside. In any case, the value of real estate is largely a matter of opinion, and it is to be expected that the mortgagor may have an inflated idea of its worth, while the buyer naturally takes a conservative view of the value of what he is buying.

**Default interest chargeable for act of default:
Penalty or liquidated damages?**

In any loan transaction, it is quite common to provide in the charge annexure or the loan agreement a clause which will impose additional default interest over and above the interest chargeable on the loan facilities in the event of a default occurring. The object of such a contractual provision is to cultivate prompt repayments and to discourage default in repayment because any sum in arrears, if it has not been so in arrears and has been paid back punctually to the chargee, could have been lent by the chargee to some other person at a certain rate of interest for the period it was in arrears. If the loan transaction should fall apart, a dispute may arise on whether the default interest provisions are unconscionable and, therefore, amount to a penalty and not liquidated damages and, thus, will offend the provisions of section 75 of the Contracts Act, 1950.

This question was raised before the Federal Court in *Realvest Properties Sdn Bhd v Co-operative Central Bank Ltd (In Receivership)*²⁵². In this appeal case, the appellant/chargor created a third party charge to secure a RM3 million loan granted to K by the respondent/co-operative society. Clause 3.2 of the annexure to the registered charge stipulated as follows:

In the event that any amount due under this agreement (whether of principal or interest or otherwise including interest due under this article) is not received by the bank on the due date, the chargor shall pay to the bank interest at the rate of ONE AND ONE-THIRD ($1\frac{1}{3}$) times the normal ruling rate of interest on the sum in arrears calculated retrospectively from the due date of such default until the date of the payment of the amount thereof.

Default in the repayment of the principal sum plus accrued interest occurred and an order of sale was obtained by the respondent. The charged property was subsequently sold by public auction, and the proceeds of sale was paid to the respondent. The chargor appealed against the order of sale and one of the grounds of appeal was that the respondent had charged additional interest on the outstanding sum (which comprised principal and

252. (1996) 2 MLJ 461, FC.

capitalised interest) in addition to the interest calculated by means of the prescribed rate of interest payable before such default and continuing to be payable after such default and this amounted to a penalty which, under section 75 of the Contracts Act, 1950, was irrecoverable.

The Federal Court dismissed the chargor's appeal save for the chargor's contention that the imposition of the default interest amounted to a penalty and not liquidated damages, and ordered the chargee to refund the penalty interest to the chargor within a specified time. After setting out section 75 of the Contracts Act, 1950 in full, the Federal Court said:

The said section 75 has been explained by this court in *Selva Kumar a/l Murugiah v Thiagarajah a/l Retnasamy* (1995) 1 MLJ 817, for its legal effect and meaning, but the question of increased interest included in the said section 75 itself was not dealt with as it was not an issue there but the question has to be dealt with now.

There has been a great deal of litigation in India over this section in connection with increased interest for default and to such cases there, we are naturally inclined.

Looking at the section (section 75), any increased interest for default may very well be 'a sum named in the contract as the amount to be paid in case of such breach...'. However, the proviso there, to quote: 'Explanation - A stipulation for increased interest from the date of default *may* be a stipulation by way of penalty', was enacted by way of amendment in India to provide a modification to such a probable interpretation. We, of course, imported the said section 75 complete with such amendment in 1950. The meaning is clear that such a stipulation for default interest may or may not be a penalty, depending on circumstances. One may ask, 'what circumstances?' The answer is apparently found – partially, at least – in illustration (d) as set out above. Such modification, instead of making such default interest through and through a penalty, must have been intended to protect commercial banks which have always been in the habit and business of charging default interest. Commercial banks have to be protected as they are vital to any orderly national commerce, *inter alia*.

We now look at the illustration (d) which refers to default interest being increased from 12 per cent to 75 per cent from date of default. The illustration gives rise to clear implication that default interest rate must be exorbitant in order that it be caught by the said section 75.

The reluctance of a large number of Indian courts to recognise such default interest as anything having the characteristic of 'the sum named

in the contract as the amount to be paid' on breach and the subsequent amendment by way of such modification mentioned above has this curious result. While the object of enacting the said section 75 was to abolish the difference between penalty and liquidated damages so that every sum named in the contract to be paid on breach would be treated as unenforceable on the basis of such sum being a penalty in every case, the amendment by way of the said modification brought back such distinction only the case of interest or default interest, ie increased interest payable on default. This is evident from the wording of the 'Explanation' set out above, notably the words 'may' and 'penalty' therein. The use of the word 'penalty' therein must have been deliberate. Thus, in construing the effect of the provision of default interest in a contract, such specific provision would still be interpreted according to common law as to whether it is liquidated damages or a penalty, subject to and qualified by provisions of written law in the said section 75, ie the 'Explanation' and the 'illustration (d)' therein which are, by no means from their nature, capable of supplanting in toto the common law on the questions of penalty and liquidated damages.

It is not proposed to write in detail the difference between liquidated damages and a penalty in a contract but only to skim over it sufficiently for the purpose of this appeal.

The essence of a penalty is a stipulated payment *in terrorem* of the party breaching the contract whereas in liquidated damages, it is a genuine pre-estimate by both parties of the damages for such breach of contract, see eg *Dunlop Pneumatic Tyre Co Ltd v New Garage & Motor Co Ltd* (1915) AC 79 at p 87. In *Phonographic Equipment (1958) Ltd & Anor v Muslu* (1961) 3 All ER 621, a contention was there raised that a depreciation clause in a hire-purchase agreement as a penalty and therefore void. Harman LJ, in a very brief concurring judgment, made this observation (at p 632):

'The court, in my judgment, should be slow to interfere with bargains entered into freely and without pressure. I am not satisfied that this bargain can be described as harsh and unconscionable, and unless it passes the test, I am of opinion that the court should allow it to stand.'

Harman LJ seems to have summed up very accurately the essence of the difference between liquidated damages and penalty, The test is by no means easy in application, and is applicable to a large variety of factual situations for which it will be necessary to refer to a tremendous number of cases. We do not propose to do so, It should be, in brief, closely connected with morality

which must have much preoccupied the minds of the early Lord Chancellors who were then ecclesiastics or priests at the same time.

Reverting to facts in the instant appeal, what we have is something out of the ordinary. Ordinarily, in provisions for loans of money, if default is made by the borrower, the borrower is made to pay increased interest by means of a higher rate of interest in place of the lower rate of interest prevailing or payable before default. Therefore, arrears arising from default are subject to one single payment of interest still, though at a higher rate after default. It was been held or approved by the Privy Council that such default interest, if made payable from the date of contract (as distinct from the date of default), always amounts to a penalty. The case in the Privy Council we have in mind is *Sundar Koer v Raj Sham Krishnen* (1906) 34 IA 9 at p17.

The Privy Council said:

‘The Indian courts have invariably held that where (as in the present case) the stipulation is retrospective and the increased interest runs from the date of the bond and not merely from the date of default, it is always to be considered as a penalty, because an additional money payment in that case becomes immediately payable by the mortgagor. Their Lordships accept this view of the statute.’

The italicised words are crucial to the instant appeal. We, on our part, equally accept the same view.

In that case, questions arose in the taking of accounts between a mortgagor and a mortgagee as to whether certain interest should be allowed. There was a provision in the mortgage for payment of increased interest of 12 per cent pa (from the stipulated previous rate of 10.5 per cent pa) on the money lent to be chargeable and made payable from the date of the execution of mortgage bond till the date of payment should the mortgagor make default in paying interest on the money lent within one year. It was argued that it was a penalty within the meaning of the said section (section 75). Such argument was accepted and the Privy Council made the dictum quoted above.

It will be noticed that although the increased rate of 12 per cent pa was by no means exorbitant, the provision was held to be void since such default interest would be calculated from the date of the mortgage (though the default took place quite some time after the date of the mortgage) and not from the date of default. The rub was the additional

money payment in that case because it became immediately payable by the mortgagor on default. The additional money payment was that default interest payable at 12 per cent pa from the date of the mortgage to the date of default, and it must have been considered, by implication, as harsh or unconscionable.

Reverting to the instant appeal and having regard to what has been stated in the Privy Council, we have, in hand, the element of 'additional money payment' involved also in that on default, a default interest of 20 per cent pa chargeable separately and additionally on arrears comprising principal and interest, became payable. It will be clear from the evidence, eg at p 153 of the appeal record, that the default interest of 20 per cent pa was paid, side by side with the interest calculated by prescribed rate of interest of 14.5 per cent pa on the same money lent or owed for the same span of time. In other words, a second additional payment of interest on the same money lent or owed, and it became payable in addition to the normal payment of interest on the same money lent or owed at 14.5 per cent pa, well within the ambit of the ratio from *Sunder Koer's* case. We therefore hold that cl 3.2 of the annexure to the charge in question is void and unenforceable by virtue of section 75 of the Contracts Act 1950 and the interest calculated by virtue of cl 3.2 is irrecoverable (from the chargor).

Deficiency in proceeds of auction sale to meet outstanding ('redemption') sum

Whenever a piece of charged property has been successfully auctioned or if, prior to an order of sale, has been sold by private treaty, no problem will arise if the sale proceeds far exceed the outstanding ('redemption') sum which is payable to the chargee. However, complications will set in if the proceeds are way below the outstanding ('redemption') sum. In the latter event, does the execution of a discharge of charge by the chargee tantamount to a satisfaction of the whole debt notwithstanding the shortfall? This question has been considered by the High Court in Kota Kinabalu in the case of *Standard Chartered Bank v Mukah Singh*.²⁵³ In this case, a housing loan of RM300,000 was secured by a first charge on a piece of property that was later sold by private treaty for RM220,000 after the defendant/purchaser had failed to repay the loan instalments. No order for sale was applied for by the bank after an event of default had occurred. When the proceeds of the private sale was received, the bank executed the

253. (1996) 3 MLJ 240, HC.

satisfaction of charge ('discharge of charge') but with an inserted proviso which read: 'Without prejudice to our rights to claim the balance of the chargor's outstanding account (RM168,575.43) due to us'. The defendant/purchaser ingeniously averred that the private treaty sale resulted in the redemption of the charge and the sub-sale price of RM220,000 was duly paid in full and final settlement of the outstanding ('redemption') sum. It was also submitted that the bank's claim was based on a memorandum (instrument) of charge annexed with the loan agreement and since the memorandum (instrument) of charge was satisfied, it was argued that the bank's claim disclosed no cause of action.

The High Court succinctly held that a charge and a debt for which the former was executed are two separate things. The satisfaction of a charge does not necessarily mean that the debt has been repaid in full whereas the full repayment of a debt would entail the execution of a discharge of the registered charge. However, on the question of whether the execution of the satisfaction of charge is tantamount to a satisfaction of the whole debt, the court held a negative view. The court said:²⁵⁴

There is no statutory provision to regulate what happens when the proceeds of sale are insufficient to pay the debt owing though the said r 14(17) (of the Sabah Land Rules 1930) provides for surplus to be given back to the chargor. Therefore, nothing turns on the statutory provisions and there is no statute to say that the payment of a redemption sum discharges whatever is owing.

The High Court in Sabah continued with the delivery of its judgment:

Clearly, from the statutory definition and the prescribed form, the charge or the memorandum of charge is a form of security for the repayment of the loan. Therefore, when a charge is satisfied it means the land or property has been released from the security. This means that when a charge is satisfied, it could be either because the full amount of the debt has been paid or that a part of the amount has been paid but the chargee is nevertheless satisfied with receiving that amount, not in satisfaction of the debt but in satisfaction of the charge; that is to say, to release the title from the encumbrance of the charge to allow a dealing, like a transfer or another charge, with the title. Therefore, a charge (or memorandum of charge) and the debt for which the charge (or memorandum of charge) was executed are two separate things.

254. *Standard Chartered Bank v Mukah Singh* (1996) 3 MLJ 240, 250C -D, HC.

The satisfaction of a charge does not necessarily mean the satisfaction of the debt whereas the converse is the case.

When the plaintiffs (Standard Chartered Bank) sue for the balance due after the charge has been satisfied, he is not suing under the charge but suing for a debt which arose out of the housing loan granted by the plaintiffs to the defendant.

Deeds of assignment absolute versus deeds of assignment by way of a first or second charge

The above discussion focuses on sale of properties which have been issued with individual qualified or strata titles. However, in defaulting loan cases where subdivided lots or strata parcels offered as securities have no individual title deeds, the pertinent question to consider is whether the local courts have been correct or incorrect in ordering the sale of the properties ('ownership') while the defaulting purchasers/borrowers have yet to be registered as the proprietors of their respective properties?²⁵⁵ The current use of deeds of assignment 'absolute' should be replaced by deeds of assignment 'by way of a first charge' so as to comply with and be in consonant with the loan transaction. This proposed method will thus permit the subsequent creation of further deeds of assignment 'by way of a second charge' etc in order to cover second and further loans. If this is acceptable by the financial industry, then the ad hoc creation of second deeds of assignment absolute which relates back to the first absolute deed in order to secure a second loan transaction will be a thing of the past; so too is the current wrong usage of deeds of assignment absolute.

Housing loans repayable on demand

Housing loans granted by housing societies or commercial banks to purchasers/borrowers are normally term loans in nature. Such housing loans are granted for a fixed period of time. The tenure of such loans may stretch from five years to 20 years or more, depending on the age of the purchaser/borrower and his repayment capability. In practice, the loan documentation would usually provide that the loan together with accrued interest is repayable by monthly instalments over an agreed period of years unless a predetermined

255. See S Y Kok's criticism of the common but wrongful usage of deed of assignment absolute in his article: 'A Review of Loan Agreements and Deeds of Assignment under the Malaysian Torrens System' (1994) 2 CLJ xxxv.

event of default has been breached by the purchaser/borrower. However, in addition, a contradicting provision would normally be included whereby the housing loan could be recalled 'on demand' prematurely; albeit no event of default has occurred at all and notwithstanding that the housing loan facility has been agreed to be repayable by monthly repayments over a period of time. The legality of such conflicting housing loan provisions has been questioned by this writer during the late 1960s. It was lamented there was hardly any case law to indicate whether the unreasonable 'on demand' provisions were to be ignored or discarded if the purchaser/borrower had not, in the first instance, defaulted under any of the terms of the housing loan documentation.

Fortunately, in 1975, in an unreported case of *Titford Property Co Ltd v Cannon Street Acceptance Ltd*²⁵⁶, the court was asked to determine whether the bank could prematurely recall the loan after having agreed to grant to its borrower an overdraft for a fixed period and for a specific purpose notwithstanding that the innocent borrower had not default. The court in the *Titford* case held that it would be wrong, under the circumstances, for the bank to demand prepayment of the term loan notwithstanding the existence of a contradicting clause in the loan document which allowed the bank to recall the loan at any time. Goff J, the presiding judge, said:

It seems to me, where a bank allows an overdraft for a fixed time for a specific purpose – whether the time be such as the parties think is required for the achievement of the purpose, or only the most the bank will allow, that time is binding on the bank; otherwise the customer might well be led into a disastrous position, as has happened here. The customer, on the faith of the bank's promise to a loan, an overdraft for a fixed term, commits himself and then finds the overdraft cut off, so that he cannot meet his liabilities, and in addition he had incurred indebtedness to the bank in respect of the abortive expenditure. (the bank) could not, in my judgment, with one hand grant a facility for a term for a purpose which to its knowledge clearly involves the plaintiffs in incurring expenditure and liabilities, with a view to ultimate profit, and with the other take it away by an unqualified right to require repayment on demand at any time. In my judgment, therefore, I must modify cl 9, by reading it as subject to the provision as to the duration of this facility, or ignore it altogether.

256. Referred to in *Bank Bumiputra Malaysia Bhd Kuala Terengganu v Mae Perkayuan Sdn Bhd & Ors* (1993) 2 MLJ 76 at pp 86F-I and 94I-95C, SC. In this case, the Supreme Court, after observing that the overdraft facility granted to the borrower was for a term of years, and taking note of the circumstances of the case, refused the bank's pray for an order on the flimsy ground of non-servicing of monthly interest by the borrower.

The above passage from the judgment of Goff J was approved and adopted by the Supreme Court in *Eushun Properties Sdn Bhd v MBf Finance Bhd*²⁵⁷ and in *Bank Bumiputra Malaysia Bhd Kuala Terengganu v Mae Perakayan Sdn Bhd*.²⁵⁸ In the *Eushun Properties* case, Mohamed Yusoff SCJ, after reviewing the above quoted passage of Goff J, said:²⁵⁹

Goff J's decision in *Titford Property* was considered by Gibson J in *Williams and Glyn's Bank Ltd v Barnes*²⁶⁰ in the following terms:

'It is clear to me that Goff J decided that the true purpose of the agreement contained in the facility letter was to provide money to be laid out in a development project with a view to profit. A provision for repayment on demand was, he concluded, repugnant to that main purpose'

Gibson J did not specifically disagree with Goff J's decision in deciding the matter before him on the principle of repugnancy but said that he would prefer to decide the main object and intention of the transaction on point of construction of contract.

In view of the fact that the facility granted by the respondent to the first appellant in this present appeal is a term loan for three years, we are of the opinion that an issue of law has also been raised for determination of the court as to whether the demand for immediate repayment made by the respondent (MBf) on May 22, 1986 was *repugnant to the main purpose of the facility of the loan*. (Emphasis added.)

The Supreme Court then went on to decide that no financier has the right to recall any loan for a fixed term at random before the tenure of the loan has expired by effluxion of time unless, in the meantime, an event of default has occurred and has not been rectified.

In *Bank Bumiputra Malaysia Bhd Kuala Terengganu v Mae Perakayan Sdn Bhd*,²⁶¹ the Supreme Court, after referring to the judgment of Goff J in the *Titford Property* case and its own judgment in the *Eushun Properties* case, said:²⁶²

257. (1992) 2 MLJ 137 at 145B-G, SC.

258. (1993) 2 MLJ 76 at pp 86F-I and 94I-95C, SC.

259. (1992) 2 MLJ 137 at 145E-H, SC.

260. (1980) *Creswell Encyclopaedia of Banking Law*, pp 72-73; (1981) Com LR 205.

261. (1993) 2 MLJ 76, SC.

262. *Ibid*, at pp 86I-87A.

We consider that the bank was not entitled to issue the recall letter purely on the ground that interest had not been serviced by the first respondent because the first respondent is not obliged under the agreement to pay interest during the bridging period.

It would have been otherwise if, for example, the bank had established that the amount disbursed had been used for purposes other than the development of the project, or the project had been abandoned, which was not the case here. To that extent, the demand clause could be invoked by the bank.

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Legal and Administrative Framework for Housing Development and Finance: The Industry Viewpoint

Lawrence Chan

Introduction

The housing industry is a complex industry. It is governed by more than 30 pieces of legislation ranging from laws on lands and buildings to the environment and workers' safety. Such complexity is compounded by the fact that separate laws are administered by federal, state and local governments and agencies. These laws are constantly reviewed and updated to meet the demands of an industry which has achieved phenomenal growth in the last 30 years.

Since the early 1980s, the private sector has been regarded as the primary engine of growth in the nation's economy. The housing/construction industry has performed well, achieving double-digit growth in the last few years. Most significantly, such contributions to economic growth have a multiplier effect as well since there are more than 100 related industries upstream and downstream which are linked to the housing/construction industry.

To achieve the objectives of Vision 2020, the government has recognised the need to continue the process of de-regulation. There can be no doubt that regulations are an essential part of the governance of society, of which the economy is a part. A state without laws and regulations is a state flirting

with anarchy. Without order, there can be no development. What is not required is over-regulation although it may not be easy to decide when the government is over-regulating.

The question that is often asked is whether the housing industry is over-regulated? Are the laws adequate enough to protect house buyers against unfair and fraudulent practices by developers? With such stringent laws, are we achieving the government's objective to provide adequate, affordable and quality housing to the people?

It is therefore timely to examine the whole system of laws governing the housing industry to check their relevance and effectiveness in building a legal and regulatory framework which is geared towards rapid economic and social development rather than to stifle development.

Housing development process

The various stages of a housing development may be broadly described in the following chart:



Different laws are applicable at different stages of the development including federal and state laws. In addition, a housing developer also has to contend with a host of policies, rules and regulations, guidelines and procedures which are formulated at federal, state and local authority levels. As new laws and policies are introduced, new departments are set up for their implementation. The Department of the Environment, the Sewerage Department, the Construction

Industry Development Board and, more recently, the Landscape Department are some of the new departments created to deal with specific aspects of development. While new regulatory measures may be necessary to cope with the changing scene brought about by rapid development, it is also important that an efficient and effective administrative framework is in place to ensure the healthy growth of the industry. Some aspects of the administrative framework of housing development are examined.

Licensing of housing developers

The main legislation governing the housing industry is the Housing Developers (Control and Licensing) Act 1966 which came into force on August 29, 1969, three years after it was passed by Parliament. The delay was due to the long wait for the rules which were only made in 1969. Within a year, the 1969 rules were replaced by the Housing Developers (Control and Licensing) Rules 1970. The licensing of housing developers brought about some measure of control over housing development in order to protect house buyers. However, the Act and the Rules were only applicable to residential housing development carried out by a housing developer. They do not apply to commercial, industrial or other properties. Co-operative societies and state economic development corporations (SEDCs) are also not subject to these laws as they are not classified as housing developers. To exercise control over the entire industry, the government should look into the need for a uniform legislation.

The Housing Developers (Control and Licensing) Regulations 1982 which replaced the 1970 rules brought about substantive changes, principally the enforcement of a standard Sale and Purchase Agreement on landed property and the necessity to obtain a permit for advertisement and sale of houses. The Regulations prohibited the collection of any payments except as prescribed in the standard Sale and Purchase Agreement and therefore developers could no longer collect a booking fee from house buyers.

The weaknesses and inadequacy of the Act and the Rules were clearly demonstrated in the collapse of the property market in the mid-1980s. Many housing projects were abandoned, and there was a spate of bankruptcies and winding-up of companies. The banks and financial institutions exercised their rights as secured creditors to auction the lands, leaving the ordinary creditors and house buyers to suffer heavy losses. In some cases where good sense prevailed, the developer, the financier and the purchaser would enter into an arrangement in order to salvage the project.

To remedy the situation, on December 1, 1988 the government brought into effect the Housing Developers (Control and Licensing) (Amendment) Act 1988 which introduced radical changes. The intention was to tighten the housing legislation in an effort to promote healthier growth in the housing industry and to weed out unscrupulous developers.

One important feature of the amendments was the insertion of a new section 7A which required all licensed housing developers to open and maintain a Housing Development Account. In the words of the then Minister of Housing and Local Government Ng Cheng Kiat, 'The main objective of the government in introducing the Account system is to ensure that there will be a healthy, orderly and steady growth in the housing industry in the future...'

The Housing Developers Association Malaysia played an active role in providing input in the formulation of the regulations to ensure that, while regulatory measure were necessary to prevent abuses, such measures should not be too drastic as to stifle the industry. The Housing Developers (Housing Development Account) Regulations 1991 came into force on August 26, 1991. The main features of the Housing Development Account as contained in section 7A and the 1991 Regulations are:

- A licensed housing developer is required to open and maintain a Housing Development Account into which he must pay:
 - (1) All purchase monies collected by him from the sale of the housing accommodation in the project;
 - (2) Any loan obtained by him for the construction of housing accommodation in the project;
 - (3) Any interest earned in respect of the above two items.
- The developer is not allowed to withdraw any money from the account except as authorised by the Regulations;
- The cheques for the withdrawal of money from the Housing Development Account are drawn in favour of the developer only in respect of outgoing payments in respect of the land, stamp duty on loan documents and administrative expenses not exceeding 10 per cent of the total cost of construction of the project. All other withdrawals shall be made payable directly to the respective recipients;
- The monies in the Housing Development Account do not form part of the property of the developer in case of bankruptcy of the developer, or the developer going into liquidation. The law of bankruptcy or company liquidation will only apply to any surplus monies after all the liabilities and obligations of the developer in respect of the particular project are fully discharged;
- All monies remaining in the Housing Development Account may be

withdrawn upon completion of the housing development and transfers of land title having been effected.

The interests of an ordinary house buyer are now well protected at least in the following manner:

- In dealing with a licensed housing developer, the buyer is assured that the Controller of Housing would have vetted such matters as land ownership, layout and building plans, sale price, etc, before a developer's licence and the advertisement and sale permit is granted.
- The terms of the standard Sale and Purchase Agreement stipulate that the house purchaser shall be entitled to a registrable transfer of the property, that the house shall be completed in a good and workmanlike manner within 24 months in the case of landed property and 36 months in the case of subdivided building, that infrastructure shall be constructed, and on top of all that, the defect liability period has been extended to 18 months as from August 1996.
- All payments of house purchase price and other finances necessary for the project are strictly regulated by way of the Housing Development Account which is subject to annual audit and publication in the Gazette.
- The monies in the Housing Development Account are not subject to garnishment or bankruptcy or winding-up proceedings unless there is a surplus after discharging the liabilities and obligations of the developer under the Sale and Purchase Agreements.

Conversion and subdivision/amalgamation

Application for conversion and subdivision/amalgamation of lands is made under the National Land Code. This is a tedious process which requires the necessary planning approvals under the Town and Country Planning Act 1976. In addition, the application is also subject to approvals being obtained from numerous departments and agencies, such as the Drainage and Irrigation Department, the Public Works Department, the Waterworks Department, the Department of Environment, the local authorities, etc. As each department acts independently within its own jurisdiction, there is little co-ordination and the whole process takes one to five years to complete.

Planning and building approval

The whole process of obtaining approvals from various departments and agencies is repeated when any application is made for planning and building approvals. In order to preserve and to protect the environment, the Town

and Country Planning Act 1976 has been amended in 1995 to provide for a Development Proposal Report to be made at the time of application for planning permission. The report shall contain matters with regard to the protection of the environment, the preservation of the natural topography, trees and other vegetation as well as the natural heritage. The amendments also empower the local planning authority to make a tree preservation order in the interest of amenity.

Building plan approvals require strict compliance with the provisions of the Uniform Building By Laws 1984 under the Street, Drainage and Building Act 1974.

Sewerage infrastructure

As stipulated in the Sewerage Services Act 1993, matters relating to sewerage systems and sewerage services are now a federal matter. Under section 7 of the Act, the federal government has entered into an agreement with Indah Water Konsortium to take over, operate, maintain and refurbish all existing systems. The government has also formulated a new policy to impose a capital contribution charge on all new developments to provide the capital outlay for permanent central sewerage systems. This policy has been implemented since early 1996.

The construction stage

A developer has to deliver vacant position of a landed building within 24 months of the signing of the agreement. Although the Act empowers the Controller of Housing to waive or modify any of the provisions in the contract of sale in cases where, owing to special circumstances or hardship or necessity, compliance with such provisions is impracticable or unnecessary, many developers fail to avail themselves of this opportunity even though they have good grounds for doing so. For example, when the market is faced with a serious problem of shortage of cement which has caused delay in completion by the developer, it would be valid to apply for a waiver of the 24-month delivery requirement.

Certificate of fitness

For a long time, delays in the issue of the certificates of fitness of occupation were a cause of great concern to the general public. The government has reacted positively by issuing a directive to all local authorities to issue certificates of fitness within 14 days of receipt of an application which is in order. However, developers still face some

problems as the application cannot be made without the necessary clearance of all the technical agencies. There is no time frame for such technical agencies to issue the necessary clearance. There should thus be greater co-ordination between the various technical agencies to expedite matters.

The government has also made it clear that the issue of certificates of fitness should not be linked to extraneous matters such as non-compliance with low-cost housing requirements.

Strata titles

The government is making an effort to streamline the issuance of strata titles and has set a time frame of 180 days as the standard for issuing strata titles. There are plans to set up special strata title units and one-stop agencies at land offices. An advisory section will also be set up to assist the public. It is important that strata titles be issued expeditiously so as to reduce the problems with regard to management and maintenance of the subdivided building prior to the formation of the management corporation. The government is currently formulating the Building and Common Property (Maintenance Management) Act to regulate the management and maintenance standards of all subdivided buildings.

Conclusion

The sustained growth of the housing industry plays an important role in the nation's economy. Bureaucratic delays add to the costs of houses, which is contrary to the government's objectives to provide adequate, affordable and quality houses to the people. The following measures are therefore recommended to avoid delays:

- Adopt a one-stop agency for approvals;
- Issue clear guidelines on procedural requirements for obtaining approvals;
- Set a time frame for processing and granting of approvals;
- Require all relevant authorities whose clearance/approvals are necessary to act simultaneously to expedite approvals;
- Deploy competent and qualified staff to local authorities to process approvals;
- Require all technical agencies to work within a set time frame;
- No further conditions should be imposed once approvals are given.



Legal and Administrative Framework for Housing Development and Finance: The Private Sector Viewpoint

A B Marbeck

Introduction

This chapter discusses the overall legal and administrative framework currently affecting housing development and finance in Malaysia and suggests ways and means to overcome certain shortcomings. In line with this, relevant laws and the administration of such laws are examined to determine areas where they fall short of expectation. It should be emphasised from the start that what follows are personal observations of the writer from his years of service with the government and in the private sector.

The development process

In the development process for housing, several parties are involved and relationships exist between some of them for a period of time, determined either by contract or by law. Among the parties involved are the landowner, the estate agent, the developer, the land office, the land surveyor, the local/state/federal authorities, the architect/planner, the contractor, the quantity surveyor, the lawyer, the civil engineer, the financier, the valuer and the unit purchaser.

In the final analysis the unit purchaser needs the most protection as he will have to live with the final result of the development process until he sells the property to another party. However, in the development process he does not have a contractual relationship with all of the parties concerned. He has to rely, in most cases, on an action in tort to correct wrongs. A better case can be built on a contractual relationship. This article will focus mainly on the unit purchaser's point of view.

What follows is a discussion of the relationships between the various parties in the development process. It is an attempt to show that in these relationships the unit purchaser is not fully protected by the law and its administration. Some attempt must be made to address this shortcoming to make the legal and administrative framework for housing development and finance more meaningful.

Relationships

The landowner and the developer

The landowner is the first person on the scene. It is his land that is to be developed. That property will have certain legal rights attached to it. The main concern of the unit purchaser is the type of title (freehold or leasehold) that will be granted for the property. Freehold titles are preferred to leasehold titles. However, freehold titles are becoming a rarity these days and so command a premium. For leasehold land, questions revolve around the remaining tenure of the lease, can that tenure be extended, and if so, at what cost. These matters will determine the outcome of the titles of any subdivisions or amalgamations that are required.

The developer is also concerned with what the town planning requirements permit. In this connection, what is important is the density of the development (that is, the number of building units allowed on a particular site given its area). The higher the density, the more favourable it is for the developer and the present landowner, although not necessarily for the owner of the unit purchased at the end of the exercise. From the purchaser's viewpoint, a higher density merely means a more crowded neighbourhood and the tendency towards traffic problems.

The legal framework here requires the present landowner to have a clear title, clear provisions on what can be done on the land, and clear procedures on how to proceed to develop it to its highest and best use. The National Land Code of Peninsular Malaysia and the respective Land Codes of Sabah and Sarawak have clear provisions on title and title provisions. The respective Town and Country Planning Acts and Regulations also contain adequate provisions to deal with this matter.

However, planning provisions are sometimes not very transparent. For example, some planning authorities do not reveal the actual planning provisions. They tend not to disclose such information or reveal only a part of it. This is understandable sometimes as the law states that the planning authority is the state authority and not the local authority. So the final decision will have to be made by the state executive committee and not the local authority.

Another problem that arises is that town plans, though gazetted, are sometimes not adhered to as originally drawn up but are adjusted. This makes it necessary for the owner/developer to check constantly with the local planning authority while drawing up his plans. As far as the owner is concerned, the legal framework gives him a legal and indefeasible title with clear provisions on what he can and cannot do under the respective land codes. However, when it comes to the planning and implementation stages he might face problems with the authorities if the town plans have been varied. This matter has to be addressed.

In certain cases, the landowner may be the developer. If he is not, he either enters into an agreement to sell his land to the developer, or enters into a joint agreement with the developer. Various arrangements can be made in the joint venture agreement. For example, the landowner can use the value of his land as equity or receive in return for his land a number of the units to be constructed.

Sometimes the land required for development is compulsorily purchased and then alienated to the developer for development. In rare cases the landowner is permitted to also take part in the development. The law was amended in May 1997 to give the landowner the right of first refusal to be involved in the development of his land. However, the final decision as to whether this is done is still in the hands of the state authority.

If the landowner is involved, then the landowner and the developer are the two parties to the agreement. There are ample provisions in contract law to take care of this aspect of the arrangement. However, this contract is between the landowner and the developer, and leaves the unit purchaser out of the picture.

The developer and the professionals

In the process of development, the developer will engage professionals to assist him. A surveyor has to be engaged to conduct a survey of the land and to determine its terrain. The land surveyor will prepare the necessary plans. The developer may engage a valuer to conduct the market study to determine the feasibility and marketability of his proposals. The study will give him some idea of the phasing, the number and type of units in each phase, and the timing of each phase. He will also have an indication of the pricing of such units.

The next step is for an architect/planner to draw up the master plan for the development and house designs, and submit the plans and designs to the local authority for approval. Upon obtaining approval, the developer will then engage a quantity surveyor to help him with the cost element of the development while a civil engineer will assist with the levelling of the land, soil testing and structural aspects. The land surveyor will mark out the roads and subdivide the land into the required plots for development.

It will be observed that these professionals are answerable to the developer since their contract is with him alone. Should some aspect of the development go wrong, the developer has to take action against these professionals. All contracts are now subject to the Limitation Act, with a limit of six years. Of course anything brought up within the six years can continue to be the subject of legislation after that. However, the unit purchaser cannot sue those professionals as he has no contract with them. Perhaps the degree of care that is required of these professionals should be extended to the unit purchaser as well. Then, should anything go wrong later the unit purchaser will be able to sue these professionals too if they are deemed to be liable. Even then, it would be unfair to hold the professionals liable indefinitely, so a time limit of 10 years should perhaps be imposed.

It can be argued that in the Highland Towers case, the collapse occurred after 15 years. In this case the professionals will be allowed to go scot-free. One question that arises is whether the professional has the ability to foresee how events will develop for the period of a building's tenure. Surely not. It is thus unfair to hold any professional liable for such a long period.

One way round this problem of liability might be to have an insurance fund take care of problems arising during the tenure of the building. But this means incurring more expenditure for the unit purchaser as he will have to contribute to such a fund, unless the responsibility for the payment of the premiums is passed over to the professionals involved. The professionals, incidentally, will already be covered by their own liability insurance.

Another professional who may be involved at this stage is the valuer who assists the developer with the feasibility study normally required by banks for bridging loan purposes. When the developer's plans are approved and his licence granted, he may engage the services of an estate agent to sell the units. Some developers already have sales offices to handle this.

The developer and the Ministry of Housing and Local Government

The developer is of course subject to control under the Housing Developers (Control and Licensing) Act 1996 (as amended) and the Housing

Developers (Control and Licensing) Regulations 1989 (as amended). These laws subject all housing developers to a certain amount of control in their operations and dealings with unit purchasers. One of the controls currently in force is that the developer needs to assure the Ministry of Housing and Local Government that he is a genuine developer in order to obtain a licence to undertake the development. The developer's plans must be drawn up and approved, and a licence obtained before he can advertise the project. The advertisement must show the license number, the number of units and their prices. The developer is not allowed to make any false claims in his advertising.

In dealings with unit purchasers, the developer has to follow the prescribed Sale and Purchase Agreement contained in the regulations. The Sale and Purchase Agreement also prescribes the schedule of progress payments and the time period when he can claim them.

The regulations also make it necessary for developers to have a Housing Development Account in which all monies obtained will have to be deposited. Withdrawals are only permitted for the particular scheme when endorsed by the project's professionals.

All these rules exist for the protection of the unit purchaser. However, complaints against developers are many. Table 1 lists the common complaints received by the Ministry of Housing and Local Government, which demonstrates that the Act and the Regulations are not adequate to cover all circumstances.

The number of complaints received has increased, indicating a serious need for action to be taken to counter this trend. The complaints highlighted comprise only the complaints received by the Ministry of Housing and Local Government and does not reflect the total number of complaints made against developers. It also does not include cases settled between the complainants and the developers, pending cases which were not further pursued by the complainants who had given up after fruitless attempts, and cases which remained unsettled. If we were to add all these complaints to the list, it could possibly double or even triple the total number. It should be noted that pursuing legal action in civil suits is time-consuming and expensive. For this reason, resorting to the judiciary for action is seldom a popular choice for those with complaints unless action is taken jointly and costs shared by all those involved in a specific project.

The highest number of complaints was about shoddy workmanship. There is a provision in the Sale and Purchase Agreement that makes it necessary for the developer to correct all defects arising within a period of 12 months. As from August 1, 1996 that period has been increased to 18 months. In view of the number of complaints on this matter it is recommended to have different periods for different materials used in the construction of the building or for different parts of the building as

Table 1: Types and number of complaints from house buyers (1990-95)

Nature of complaints	1990	1991	1992	1993	1994	1995
Shoddy workmanship	30	88	87	109	148	80
Late delivery	41	48	62	86	101	97
Certificate of fitness	3	14	32	28	44	39
Interest/Compensation	180	86	84	73	94	85
Service	7	11	24	31	25	17
Payment	26	58	54	51	98	66
Deviation from	17	21	22	36	25	31
Mortgage/Ownership	7	10	16	15	19	20
Infrastructure	5	9	15	10	8	9
Flouting the law	9	6	5	9	9	15
Cheating	5	8	9	17	13	12
Others	116	55	42	42	58	63
TOTAL	446	414	452	507	642	534

Source: Ministry of Housing and Local Government

practised in some countries. For example, 18 months for materials, 24 months for electrical items, 39 months for pipes, etc.

Late delivery recorded the second highest number of complaints. The Sale and Purchase Agreement provides for the developer to compensate the purchaser if the unit is not delivered within 24 months in the case of houses, and 36 months in the case of an apartment or condominium unit.

The third highest number of complaints revolved around interest/compensation to be paid for delays. There is some tussle in relation to these two complaints. A way to resolve this may be to set up a tribunal to settle this matter. Alternatively, the parties involved could resort to arbitration to settle any disputes arising from these complaints.

The other complaints are equally important. Some are dealt with in the Sale and Purchase Agreement but others are not. For example, the question of certificates of fitness for occupation, payments, deviations from original plans, ownership and infrastructure are covered, but mortgage terms, flouting the law and cheating are not. Therefore, the solution is for most of these matters to be dealt with simply and without delay by a tribunal. Cheating cases, of course, will have to be handled by the police.

Legislation is only worth the paper it is written on if not enforced. In this respect there seems to be a need for the enforcement unit of the Ministry of

Housing and Local Government to be more vigilant. It should, for instance, monitor all advertisements and carry out spot checks on development sites to ensure that rules and regulations are followed. It should not wait for complaints to be lodged before acting. In other words, the enforcement unit should be proactive.

There is also the question about dealing with cases of false advertising overseas. If the subject of the advertising claim is local, action should be taken by the relevant authorities once a report is lodged in Malaysia. The reputation of the country is at stake in such cases.

The developer and the local authority

When the developer's plans and design specifications are ready, he will have to submit them to the local authority for approval. In considering the plans and designs, the local authority will require the developer to provide adequate roads, drains and open areas in addition to community facilities. These facilities will ultimately be surrendered to the local authority free of charge. However, sometimes these provisions are later used for other development instead of their original intended use. An example is the development of playing fields or open spaces into condominiums, hospitals and commercial complexes.

When approval is obtained and the relevant permits from the Ministry of Housing and Local Government have been issued, the developer will advertise the scheme and invite purchasers to view and buy the units.

On completion of the housing units, the developer is obliged to apply for a certificate of fitness for occupation for each unit. The local authority has become quite strict on this and has refused to issue such certificates unless all conditions have been complied with. This is a good move as it protects the unit purchaser's interests. However, in some cases, new conditions may be imposed (some not even related to fitness for occupation) and that has resulted in the unit purchasers suffering since they are unable to occupy the units purchased. The use of temporary certificates of fitness for occupation could be helpful in such cases.

The Sale and Purchase Agreement has been revised to make it compulsory for the developer to have a certificate of fitness for occupation and to ensure that the unit has water and electricity before handing the keys over to the unit purchaser. This is a good provision. Unless all the requirements are met, the unit cannot be considered to have been handed over to the purchaser.

The developer and the state authority

Where the state authority is concerned, the developer will first approach it for any conversion that has to be made. Then he will want to know if amalgamation

or subdivision has to be applied for. The question of block titles, individual lot titles and strata titles come under the jurisdiction of the state authority. That includes sums to be paid as conversion fees, premiums, annual rents and development charges. These issues are all adequately covered under the National Land Code, the Land Codes of Sarawak and Sabah, and the land rules of the various states. The unit purchaser will ultimately have a title with obligations specified under the respective land codes. These regulations adequately safeguard the interests of the unit purchaser.

The state authority also specifies the number of low-cost units and low-cost shops that the developer has to provide in his development. This is usually 30 per cent of the total housing units in the development, but the number can go as high as 50 per cent. The state authority will also specify the number of Bumiputera units to be allocated by the developer. All these are social obligations that the developer must fulfill. Recently, the state authority has also begun to specify the number of medium-cost units to be provided in each development. This is being done to make housing affordable to the average unit purchaser. Each scheme is also required to provide public facilities. These moves, considered good for the unit purchaser, are not necessarily so for the developer. In some cases, the developer has to subsidise various aspects of the development and, for Bumiputera quotas, the developer may find it difficult to dispose of the units within his sales time frame.

The developer and the federal authority

In the case of the federal authority, in specific cases the developer is required to submit an Environmental Impact Assessment (EIA) report and to obtain the approval of the Ministry of Science, Technology and Environment before proceeding with the scheme. There have been cases where sales were made before such approval was obtained. Subsequently, when approval was not given, sales had to be aborted. There should be proper co-ordination between the various approving authorities to prevent such occurrences.

The developer and the contractor

Having fulfilled the necessary conditions, the developer, if he is not also the contractor, now requires a contractor to build the units planned. The developer can ask for tender bids for the work and, together with the architect and the quantity surveyor, vet the tenders received and select a contractor. The lowest tender is usually accepted although there might be exceptions.

The lowest bid may not necessarily be the best, except in consideration of costs and profits. In many cases, contractors have ended up with a serious

problem when material and labour costs increased. In such cases, the contractor might opt out and abandon the scheme, or take the alternative of cutting corners so as not to make losses. The result would be shoddy workmanship, poor material substitutes and a generally unsatisfactory unit.

The contractual agreement at this point is between the developer and the contractor. The unit purchaser has no contractual relationship with the contractor and therein lies the problem. If the unit purchaser complains to the developer, the developer will just pass on his complaint to the contractor to put things right. In some cases the contractor might go bankrupt or just disappear. In this case the developer will have to put things right himself or engage another contractor to do the job. Sometimes the type of material originally used may be out of stock. The general result is that the repair work is unsatisfactory leaving the unit purchaser with a grievance.

The developer and the lawyer

The developer usually engages a lawyer to handle all the legal aspects of the development. This includes the title search, the drawing up of contracts, handling of the Sale and Purchase Agreements and financial agreements, etc. Since the lawyer is engaged by the developer, he has to ensure that the rights of the developer are protected in all respects. He would not necessarily be concerned with the rights of the other parties. Therefore, the unit purchaser should engage another lawyer to protect his rights.

Instead what usually happens is that the unit purchaser, who is ignorant of this, would be encouraged by the developer to use the same lawyer, usually at a special fee since bulk work is involved. If anything should go wrong, the unit purchaser ends up at the losing end because he might not have completely understood what was involved nor read all the clauses in the Sale and Purchase Agreement. Very often the purchaser has to sign in a hurry with no time to read the fine print. However, some lawyers do take the trouble to brief the unit purchaser about the contents of the agreement and point out the relevant parts. Also, with the provision of the standard Sale and Purchase Agreement in the Housing Developers (Controlling and Licensing) Regulations the terms and conditions have become standard and can be read by the unit purchasers at leisure. There is thus ample protection provided here for purchasers.

However, one aspect of the payment schedule needs comment here. Paragraph 4 of the Schedule of Payments reads:

Upon handing over the vacant possession as in item (3) and to be held by the Vendor's solicitor as stakeholder for payment to the Vendor as follows:

- (a) 2.5 per cent at the expiry of six months after handing over of vacant possession;
- (b) 2.5 per cent at the expiry of 18 months after handing over of vacant possession.

A question arises as to who should hold the last payment of five per cent. It would seem to be more appropriate for the payment to be held by the purchaser's solicitor as stakeholder and only released to the vendor's solicitor on the unit purchaser's instructions once all defects have been rectified. After all, it is the purchaser's rights that should be protected. The vendor's solicitor is only interested in the vendor's rights and not the unit purchaser's rights. This clause should also state the reason for withholding the five per cent payment, which is not stated here.

The developer and the financier

The developer can approach a single bank or a number of banks and finance companies to raise bridging finance for his development. Usually he also makes arrangements for a number of banks or finance companies to provide financing for the unit purchasers. Thus far unit purchasers have not been forced into using particular finance companies or banks. However, developers do recommend financial institutions that they are comfortable with. The financial institutions in turn recommend lawyers to draw up the financial agreements and insurance companies to provide the necessary fire and mortgage protection coverage. There are instances when financial institutions require the borrowers to use insurance companies in which they have an interest. Such recommendations, though helpful to the unit purchasers, must not be forced on them.

A problem sometimes encountered with financiers is their late response to the developer's demand for progress payments. The unit purchaser ends up being held liable for interest charges on late payments. This penalises the unit purchaser unnecessarily. Financial institutions should be conscious of this and avoid such late payments.

The current legal framework

It is appropriate to examine in detail some of the legislation affecting the process of housing development and to ascertain their effectiveness in safeguarding the unit purchaser's interests.

The land codes

<i>Peninsular Malaysia</i>	: <i>National Land Code 1965 (as amended)</i>
<i>Sarawak</i>	: <i>Land (Cap 81, Laws of Sarawak)</i>
<i>Sabah</i>	: <i>Land (Cap 69, Laws of Borneo)</i>

At the commencement of development the landowner may have a freehold title or a leasehold title. He may even possess a number of titles if a large area is involved. In such a case, to develop the land, he will have to amalgamate the lots first and then subdivide them into block titles. Different developers can then separately develop each block.

In some cases the government acquires land compulsorily for development. It then sells the land or the block titles to individual developers to carry out the development. In some cases the original landowner is also included as a joint developer. If a landowner's land is acquired compulsorily, he is not allowed by law to object to the acquisition. Under the Land Acquisition Act (whose provisions are dealt with later), all he can do is object to the amount of compensation to be paid.

Once the block titles are subject to development, they are subdivided into smaller saleable lots in keeping with the development master plan of the whole housing scheme. The unit purchaser will then have a title (either freehold or leasehold) for the lot purchased.

The land codes give the unit purchaser the assurance of, firstly, a qualified title which will be followed by a final title after a formal survey of the lots has been done. For subdivided buildings, strata titles are issued together with a note of any ancillary parcels attached to them.

The titles show the boundaries of the lot/strata and gives the tenure, category of land use, land area, the registered owner's name, the expressed conditions (the codes give the implied conditions), the restrictions in interest and the encumbrances attached to the title. The annual rent to be paid is also shown.

With this title the unit purchaser is free to conduct dealings for his property, meaning he will be able to raise loans on it and to sell it. All dealings are recorded on the title and can be traced to ensure there is no cheating.

In Sabah the title and the lot share the same number since the title is computer-generated. This helps in the identification of the title on the Revenue Survey Sheet. However, arising from this, cases of fraudulent titles being generated and used to sell non-existent properties have occurred. Instead of relying only on the issue document of title (which is in the possession of the landowner) the unit purchaser should also conduct a title search on the register document of title (held by the land

registry) to establish ownership as well as restrictions in interest or encumbrances on the land. He should also ensure that the annual rent and other assessment rates have been paid up to the date of his purchase. Otherwise he may have to shoulder that burden. Another matter to be checked is the extent to which the land will be or has been affected by any land acquisition proceedings.

Land acquisition

<i>Peninsular Malaysia</i>	: <i>Land Acquisition Act 1960 (as amended)</i>
<i>Sarawak</i>	: <i>Resumption of Alienated Land (Part IV Land Code Cap 81, Laws of Sarawak)</i>
<i>Sabah</i>	: <i>Land Acquisition Ordinance No.9/1950 (as amended)</i>

As mentioned earlier, the Land Acquisition Act only allows landowners whose property had been compulsorily purchased to object (with reasons) to the amount of compensation awarded. The compensation awarded is determined by the rules set out in the Schedule to the Act, which states that the market value of the property is to be assessed on the date of either a Section 4 or a Section 8 notice (different sections are used in Sarawak and Sabah). Matters considered in assessing such market value include:

- The effect of any express or implied condition of title restricting the use to which the land may be put; and
- The effect of any prohibition, restriction or requirement imposed by or under the Antiquities Act 1976 in relation to any ancient monument or historical site within the meaning of that Act.

Similarly, in assessing the market value of the acquired land certain matters are not to be taken into account, such as:

- The land is Malay reservation land, a Malay holding or customary land;
- The land is indicated in any development plan under any law relating to town or country planning as land intended for a public purpose;
- Where market value has been increased, or is currently increased, in either of the following ways:
 - (a) Any increase by means of improvement made by the owner or his predecessor in interest within two years before the acquisition date, unless it be proved that such improvement was made bona fide and not in contemplation of proceedings for the acquisition;
 - (b) Any increase by reason of the use of the land, or any premises on it, which is illegal or is detrimental to the health of the inmates of the premises or to public health.

In addition to the market value of the land the owner is also allowed to claim for damages sustained or are likely to be sustained at the time of the Land Administrator's taking possession of the land by reason of:

- Severing such land from his other land; and
- The acquisition injuriously affecting his other property, whether movable or immovable, in any other manner, or his actual earnings.

If he is compelled to change his residence or place of business he can also claim the reasonable expenses incidental to such a change. Also allowed are claims for the construction or erection of roads, drains, walls, fences or other facilities benefiting any part of the land left unacquired. According to the law, any increase in the value of the owner's other land which is likely to accrue as a result of the use of the acquired land, should be deducted from the total amount of compensation to be awarded.

Besides the above, some matters are to be ignored in the determination of compensation including:

- The degree of urgency which has led to the acquisition;
- Any disinclination of the owner to part with the land acquired;
- Any damage sustained by the owner which, if caused by a private person would not be a good cause of action;
- Any depreciation in the value of the land acquired likely to result from the use to which it will be put after acquisition;
- Any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired; and
- Any outlay on additions or improvements to the land acquired, incurred after the relevant date of publication of the declaration, unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair, and unless, in the case of agricultural land, it is any money which has been expended for the continuing cultivation of crops on it.

The relevant acts for Sarawak and Sabah contain similar provisions.

Although the provisions of the various acts are clear, their implementation often leaves the landowner in the lurch. First, the amount of compensation awarded is often insufficient to enable him to acquire another residence or place of business. The relevant claims under the other headings are inadequate and more often ignored. The only avenue open to the landowner is to appeal to the High Court and, if he is still not satisfied, to a higher court of law.

While the legal position may be clear, appeals are costly and time consuming. Thus the matter is often settled out of court – inadequately, in the disgruntled owner's viewpoint. If the case were to go to court, it is

usually dealt with in a summary manner because of the backlog of cases pending in court. With the court sitting down to hear 30 to 60 cases a day, how can a dissatisfied owner be assured of a proper hearing? Also it is a daunting prospect for any landowner to face the numerous lawyers, owners, valuers and government officials gathered in the courtroom.

One resolution to this issue is to set up a tribunal to deal with such claims in an informal manner. The owner should then be allowed to present his case either personally or through a lawyer. Such informality will at least let him have his say, which in a court of law is performed by legal counsel. The tribunal should include a valuer each from the public and the private sectors. The 1997 amendment to the Act does allow the appointment of two valuers as suggested here. However, the amendments require the judge to decide which of the opinions submitted by those two valuers is acceptable. No judicial compromise or opinion is allowed. This limits the judge's power, which is not a good move. After all, it is the judge's opinion that is required. Also, no further appeal on the quantum is allowed as the decision is based on the opinion of a competent valuer. Further appeals on points of law are allowed. What happens when such an appeal also relates to the amount of compensation awarded?

One other aspect of such cases has to be mentioned here. This is the use of Section 214A of the National Land Code. The provisions of this section deal with estate land, which means any agricultural land held under one or more titles, the area or the aggregate area of which is not less than 40 hectares and the lots constituting such area are contiguous. The lots shall be taken to be contiguous even if they are separated from each other only by such land as is used, required or reserved for roads, railways or waterways. The provisions state that such land cannot be subdivided without the consent of the Estate Land Board of the respective states. This legislation was passed in the housing boom period of the 1960s when estates were bought, subdivided and developed into housing estates. At the time, workers were left stranded without jobs and that created social problems. To deal with such problems, Parliament saw it fit to pass such legislation. Today, such problems do not exist. In fact, there is now a shortage of workers and state governments are encouraging the development of agricultural land. This legislation is outdated but, like the Rent Control Act 1960, which should have been repealed a long time ago, remains on the statute books. This legislation puts a limit to the value of land, which even with its potential for immediate development, is still treated as agricultural land. In two cases held before the Federal Court – Civil Appeal No 01-34-94 *Pentadbir Tanah Wilayah Persekutuan vs Yong Poh Kow* and Civil Appeal No 01-01-94 *Pemungut Hasil Tanah Kuala*

Langat vs Pengurus Golden Hope Plantation – this provision was overturned by the court. The written judgments of these cases are still awaited.

Town and country planning

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| <i>Peninsular Malaysia</i> | : | <i>Town & Country Planning Act 1976 (as amended)</i> |
| <i>Sarawak</i> | : | <i>Town & Country Planning (Cap 87, Laws of Sarawak)</i> |
| <i>Sabah</i> | : | <i>Town & Country Planning (Cap 141, Laws of Borneo)</i> |

The Town and Country Planning Act requires the local planning authority to prepare structure plans to outline the policy for the development of a particular area. The various local planning authorities have been slow in preparing such plans, which would first take the form of a draft structure plan to be published for public scrutiny, comment and objection. After receiving objections, the local planning authority has to conduct a hearing of such objections and revise the plan before submitting it to the state authority for approval and gazette, thus making it legal. Some local planning authorities have yet to come up with such plans for their respective areas. Those with plans also often do not follow them but exercise flexibility in implementing them.

Following the gazette of a structure plan, the local planning authority will then proceed to prepare local plans for the areas covered by the structure plan. Few authorities have prepared such local plans. Landowners and developers have therefore to depend on the state executive committee to determine approval for projects. Sometimes approval is given in principle, meaning that the approval of a higher authority is still needed. This is an unsatisfactory situation. Landowners and developers should be able to determine exactly what they can and cannot do with their property, without being subjected to an elaborate procedure and enquiry.

There have also been cases of areas reserved as open space later being used to develop shopping complexes, hospitals or condominiums. This should not be allowed. Those areas should have been gazetted as open space and not allowed to be converted for other use. Developers sometimes claim that such open space was already reserved for another purpose that the unit purchaser was ignorant of. To resolve this issue, it is recommended that the master plan for the area be attached to the Sale and Purchase Agreement.

Streets, drainage and buildings

<i>Peninsular Malaysia</i>	: <i>Street, Drainage and Building Act 1974 (as amended)</i>
<i>Sarawak</i>	: <i>Local Government Ordinance 1948 (Part VIII, Cap117, Laws of Sarawak)</i>
<i>Sabah</i>	: <i>Local Government Ordinance No 11/61 (Part V, Laws of Borneo)</i>

Besides setting out the regulation for streets, drainage and buildings, these laws also deal with such matters as setbacks, back lanes, building lines, sewers and drains. Other matters such as markets, garbage collection, etc are also covered. On the whole only minor problems have been encountered in this area. However the legislation has been generally prohibitive in nature as it deals with all aspects of buildings – failure of buildings, unauthorised buildings, buildings erected over unsanitary ground, ruinous and dangerous buildings, deserted buildings, nuisances and public buildings, and the maintenance of buildings in good repair and in a healthy state. There are provisions to prevent overcrowding, but the law has for a long time been silent on fire, floods and other disasters that could affect buildings and streets. Those calamities had so far been left to the unit purchaser to deal with through insurance although the authorities seem to be taking an interest in this area following the occurrence of some disasters.

Building by-laws under this Act are normally adhered to by the architect when submitting building plans for approval. These by-laws deal with such matters as fire prevention and health matters in buildings and streets. Some problems have arisen in low-cost housing because the standards imposed are quite stringent. A relaxation of some of these standards should be considered for such housing.

The problem related to the issue of certificates of fitness for occupation is that developers sometimes do not fulfill all of the requirements set out in the conditions of approval for their development. In such cases, the local authority will not issue certificates of fitness. Temporary certificates of fitness may in some instances be issued to help unit purchasers who would otherwise suffer because they are unable to occupy their units. Since obtaining compensation from the developer may involve litigation, which can be time-consuming, the use of temporary certificates seems to be a better alternative in some cases.

Similar provisions are contained in the respective laws of Sarawak and Sabah. There is a basic difficulty in obtaining approvals from local authorities. Such approvals can take a long time to obtain. If the procedures and

requirements were streamlined and standardised as is done in Singapore, approvals could be given more quickly. Such a move would require the setting up of a one-stop agency to make it work. Since some local authorities do not have qualified staff to deal with approvals, it might be better to privatise this aspect of the work.

Strata titles

Peninsular Malaysia : *Strata Titles Act 1985 (as amended)*
Sarawak : *Strata Titles Ordinance 1995*
Sabah : *None*

A number of provisions in the Strata Titles Act, governing this aspect of development, have hampered the issuance of strata titles. As a result, very few strata titles have been issued (see Table 2).

Table 2: Issuance of strata titles in Peninsular Malaysia (March 1997)

State	Categories of applications				Strata registers opened	Strata titles issued
	Received	Approved	Rejected	In process		
FT Kuala Lumpur	1,015	581	205	265	295	21,462
P.Pinang	450	363	23	64	288	27,352
Selangor	724	230	0	494	107	5,912
Johor	56	44	0	12	39	6,204
Perak	66	47	0	19	39	1,957
Terengganu	21	16	3	2	14	624
Melaka	149	49	57	43	19	879
Negeri Sembilan	7	5	1	1	4	395
Kelantan	4	4	0	0	4	236
Kedah	4	0	0	4	0	0
Pahang	7	4	-	3	3	205
Perlis	1	1	0	0	1	19
Total	2,544	1,342	290	911	811	65,245

Source: Ministry of Lands and Co-operative Development

The National Land Code has designated two forms of qualified titles: Registry Title – QT(R); and Land Office Title – QT(D). The purpose of the qualified title is to enable land to be alienated in advance of survey; and to enable title to be issued in advance of survey. A qualified title confers on the owner similar rights in every aspect as those conferred by final title – except that the land boundaries on the title document are provisional and the land cannot be subdivided, partitioned or included in any amalgamation, nor shall any building thereon be capable of subdivision.

Section 6 of the Strata Title Act states that any building or buildings, with two or more floors on alienated land held as one lot under final title, can be subdivided into parcels. The basic problem has been the provision that the property must have a final title before any application for strata titles can be made. This makes it difficult for developers to apply for strata titles as most of their lots only have a qualified title. While the reason for the requirement is understandable (to avoid any problems that may arise since the area of the lot has not yet been determined by final survey), the delay in the issuance of strata titles can lead to some problems for unit purchasers especially if they want to transfer or conduct other dealings with their property. The solution is to amend the Act to allow qualified strata titles to be issued. This means that most of the present owners would be able to obtain strata titles for their units. With the enactment of Amendment Act A951 in 1996, developers can now apply for strata titles based on a qualified title. However, even with this amendment, the situation has not improved much.

Another problem relates to the application for strata titles. Basically, if not all of the requirements needed in such applications are fulfilled, delays result. To minimise this, a checklist should be drawn up for each application (spelling out all the common failings as well) to ensure that all the requirements of the Act have been satisfied when an application is submitted.

One other problem with this law is that it requires the co-operation of a number of people (sometimes a few hundred) to manage the parts of the building which are owned in common by them. As it is, it is difficult to get two or three people to agree on anything, let alone a few hundred. However, that is how the law operates. The law also provides for action to be taken against those who do not fulfill their obligations under the Act (for example, not paying the service charge, etc). Such action is seldom taken since it is not condoned socially. This is a human problem that requires the co-operation of the unit purchasers to be effective.

Licensing and control of housing developers

Peninsular Malaysia : Housing Developers (Licensing & Control) Act 1966 (as amended; and Housing Developers (Licensing & Control) Regulations 1989 (as amended).

As far as the unit purchaser is concerned, the developer's advertising claims should be fair and accurate. If the advertising promises greenery around the development, there should be adequate greenery. If a good road network or light rail transit stations in the area are claimed, then these should exist. If such structures are in the planning stage, the developer should indicate when they are likely to be operational. All claims made in the advertising of housing should be factual and correct and subject to strict guidelines.

Plans and specifications of the unit should be factually accurate and correct. The Sale and Purchase Agreement does allow some variation. In instances when a certain material cannot be obtained, substitution can take place, although the replacement should be of similar quality. The question is, who decides on the quality? To be fair it should be the unit purchaser. However, the purchaser will not see the material used until he takes possession of the property. The purchaser often will not know whether the substitute material is of the same quality and value, and has to accept it on face value. The developer and the architect should be made to account for any differences and to inform purchasers in writing when substitutes are made and the equivalent values. This should also be done for variations in plans.

Of course the unit should be handed to the purchaser with water and electricity, and gas (if provided), ready for connection together with the certificate of fitness for occupation. There have been cases when such utilities were not provided when the keys were handed over to the unit purchaser. This is also the same for facilities. If the condominium block, for example, was claimed to have a utility shop, cafeteria, games room and gymnasium, then all those facilities should be in place at least within six months, if not sooner. This does not always happen. Usually only the swimming pool and the gymnasium would be ready on project completion and other facilities provided at a leisurely space over a long period of time.

Generally the above legislation does help to prevent the exploitation of unit purchasers, especially in the creation of the Housing Development Account to be used for a particular development and not for any other, and also in the requirements for advertisements and licensing.

Sale and Purchase Agreement

The standard Sale and Purchase Agreement covers a lot of ground in its provisions. The developer is not allowed to collect any payments other than what is prescribed in the Schedule to the Agreement. The Agreement standardises the information contained: agreement date, developer's name, business address and licence number. It also identifies the property purchased by type, title number and description. It also includes site and layout plans showing the building and parcel purchased. It will give the loan provisions and state what happens should the unit purchaser default on such payments. The lot's position, boundaries and areas are provisional and will be subject to final survey when adjustments on the price will have to be made. Here is the catch. Since this will be done only a few years later when the strata title is issued, this adjustment is very often forgotten. Of course, if the area is bigger than as stated in the Agreement, the unit purchaser gains if the matter is forgotten. But, if the area is smaller, the purchaser loses out. It is a double-edged sword and the best thing to do is to be honest about it either way.

The specifications of the unit are spelt out. Once the Agreement is signed, no alterations or additions are permitted. However, if for any reason substitutes have to be made the unit purchaser has to consider them carefully and seek professional advice as to their quality and price before agreeing. If need be, a reconsideration of the price of the unit can be negotiated.

As set out in the Agreement the developer is responsible for providing the infrastructure. He will also provide maintenance, and is allowed to charge a fee for this service. Likewise he is responsible for providing the common facilities and services as advertised. He can collect a fee for maintaining and managing those facilities and services. The developer can also claim the deposits required by the relevant authorities from the unit purchaser. For condominiums a service charge is payable for the maintenance and management of the common property based on the share units assigned to the parcel by the developer's architect. The unit holder has no say in its calculation. In the case of condominiums, the building has to be insured and kept insured against loss or damage by fire and all other risks (for example, public liability, theft, etc). The premium is payable by the unit purchaser in proportion to the share units assigned to the particular unit. All expenses (rates, water, electricity, etc) are payable by the unit purchaser.

The developer has 24 calendar months (36 calendar months in the case of condominiums) to complete the property and hand it over to the unit purchaser ready for water and electricity supply to be connected. If the developer fails to do so, he will be subjected to liquidated damages at the rate

of 10 per cent per annum of the purchase price calculated on a daily basis. The developer also has to obtain the certificate of fitness for occupation for the unit purchaser. He can then hand over the keys to the unit purchaser to enter the premises to examine it for defects, do whatever renovations he requires and settle in. The defects liability period, previously 12 calendar months, has since August 1, 1996 been increased to 18 calendar months from the date of handing over of vacant possession. Any defects, shrinkage or other faults notified to the developer in writing have to be remedied within 30 days of the receipt of the written notice. If the developer fails to do so, the unit purchaser shall notify him of the unit purchaser's intention to carry out the works himself and what it will cost. The developer has 14 days to respond after which the unit purchaser can carry out the repair work himself and charge the developer for it.

The above provisions are good in principle to protect the rights of the unit purchaser. However, in practice they do not work so well. Hence the numerous complaints to the Ministry of Housing and Local Government. Since it is time-consuming and expensive to resort to civil suits, an alternative should be found to resolve any issues. The idea of setting up a tribunal should perhaps be explored further.

Ministry of Housing and Local Government statistics show that 622 developers were taken to court between 1993 and 1996 for various offences. Of these, 536 were fined a total of RM1.34 million in the past four years. The remaining cases are still pending. Errant developers were charged with four major types of offences: misleading advertising, operating without a developer's licence, failure to open a Housing Development Account or not operating such an account according to rules, and not fulfilling conditions in the Sale and Purchase Agreement, including cheating unit purchasers. The increase in the prosecution rate has resulted in the Ministry's enforcement unit acting more actively on complaints. The Ministry has also acted as mediator between developers and unit purchasers in cases that could be settled out of court. It is suggested that the enforcement unit of the Ministry should further monitor developer's advertisements and conduct on-site investigations and scrutiny on its own accord.

In Sarawak and Sabah, the developers exercise self-regulation and are supervised by the Ministry of Housing in each state. It would be a good idea to extend the Peninsular Malaysian law to these states as well. It is to be noted as well that Peninsular legislation does not extend to co-operative societies which fall under the purview of another Ministry. To ensure uniformity, co-operatives which are involved in housing should be subjected to the same laws as housing developers.

Consumers Act

There has been much publicity regarding the control of prices of essential goods especially just before and during festivals. Such initiatives currently fall under the Control of Supplies Act 1961, which has provisions to designate controlled items which have to be supplied in specified quantities at controlled prices. According to the regulations, such items must be price-tagged and the stocks of such items kept in the premises must not exceed permitted quantities.

The Ministry of Domestic Trade and Consumer Affairs is proposing to introduce a Consumer Protection Act to provide an avenue for consumers to air grievances and seek redress. At present consumers with grievances can settle disputes only by filing civil suits in a court of law. The proposed Act will specify the responsibilities of the private sector in offering products and services to consumers. The Act will incorporate matters not covered under existing consumer-related laws.

It is hoped that the proposed Act will prove effective in protecting the rights of unit purchasers. Introduction of such legislation is good since complaints against housing developers are currently directed to the Ministry of Housing and Local Government. Units purchasers are also consumers and if they find defects in their purchases, they should be able to have recourse to the complaints bureau and the Ministry of Domestic Trade and Consumer Affairs to seek redress.

The proposed Consumer Protection Act makes it necessary for sellers to put price tags on their products. Although developers do currently set prices on properties for sale, these 'price tags' fluctuate with demand and at each launch. Some control on this might be healthy.

The issue that has been a bane to the unit purchaser is the question of under-counter 'tea money'. It has been alleged that some developers demand such payments, which is why we often find that good units have already been taken up immediately when bookings open. This underhanded practice, it seems, happens even in the allocation of low-cost housing. What unit purchasers end up paying is much more than the controlled price of RM25,000 (RM32,000 in Sarawak and Sabah). One solution to this is for the state to take sole charge of such allocations and sales. Another is to register all such sales and to determine that only eligible purchasers obtain the units. Computerised records of this registry should be kept and made available to all land offices where such allocations and sales are allowed. Of course, there is nothing to prevent the unit purchaser from subsequently selling the unit at a profit unless it is made compulsory for him to stay in the dwelling for at least three years or more, and to sell his unit back to the state/local authority only should he wish to sell.

Some developers have introduced a recent practice of selling property at a discount for cash. This is an unhealthy development since the property is already sold and paid for before it is built. The developer could even abscond with the money leaving the unit purchasers in the lurch.

Rent control

<i>Peninsular Malaysia</i>	: <i>Control of Rent Act 1966 (as amended)</i>
<i>Sarawak</i>	: <i>Rent Control (Cap 86, Laws of Sarawak)</i>
<i>Sabah</i>	: <i>Rent Control Enactment 1965 (repealed in 1970)</i>

In a situation where demand exceeds supply, as is the case in the housing sector of Malaysia's property market, those in control of the supply can exploit the situation by demanding high prices. Such situations arise in the property market during times of war, post-war recovery periods and at times when, due to inelasticity, the construction of new buildings does not keep up with the needs of an increasing population. In such situations, landlords can demand high rents as well and some in fact do.

In the past and even today the government has been wary of such situations and, responding to public outcry, has attempted to establish equilibrium in the property market by controlling rents that the landlords could demand. A parallel to such action is the control of prices of essential commodities and, in times of war, rationing of controlled items. In the case of the property market, the government has attempted to establish a 'fair rent' – meaning that rentals would be within the means of the tenant while at the same time ensuring a fair return to the landlord for his investment in the property. At the same time the government also attempted to provide security of tenure for tenants.

These principles of ensuring fair rent and security of tenure could only operate within limited periods of time since returns on property vary, leases are bound to mature, and the effects of inflation have caused rentals fixed in, say 1948, to be absurd in 1997. For these reasons rent control is temporary in nature or at least subject to review from time to time. The history of rent control in Malaysia shows that it was not introduced for political and other reasons. The law thus remains on the statute books until today.

Rent control in Malaysia has not kept to the basic tenets stated above. The result has been a deterioration in the stock of buildings under control since the return on investment to the landlord has made it impossible for him to repair his buildings. As a result, there are dilapidated buildings which are unsanitary, dangerous and overcrowded. Regulations have been passed

Table 3: Number of premises under Rent Control (as at December 1996)

State	Number	%
Johore	5,659	18.6
Kuala Lumpur	2,500	8.2
Melaka	4,135	13.6
Penang	12,609	41.4
Perak	5,531	18.2
Total	30,434	100.0

Source: Ministry of Housing and Local Government

to rectify this situation to a certain extent such as permitting increases in rentals and allowing the landlord to recover possession of his premises for development. However, the process for recovery is time-consuming with planning permission lasting only one year. In many instances the planning permission lapses before recovery is obtained.

Rent control is an experiment that failed purely because those who advocated it did not foresee the many difficulties that would arise from its implementation. Many parties had hoped that the problem would solve itself as the stock of buildings under control exhausted itself through development and deterioration. Since the present stock is estimated to number some 30,000 buildings (Table 3) that hope will take a long time to become reality. Meanwhile, some landlords are unable to enjoy proper returns from their investments while others whose properties are not controlled continue to enjoy the fruits of progress and inflation. In 1996 a Cabinet decision was made to repeal this law. The repeal will be done progressively from 1997-99, with complete decontrol by December 31, 1999.

Malay reservation and native titles

Malay reservation legislation is designed to protect ownership of specified areas of real property by Malays. Certain areas of state land have been declared to be Malay reservation land by each state authority and only Malays may own, occupy or deal with such land. Despite an existing constitutional definition of Malay, the definition used for Malay reservation land purposes varies from state to state since this is a state matter.

Article 89 of the Federal Constitution makes a special reference to Malay reservation. Article 161A(5) of the Federal Constitution makes the

provision that it is constitutional for any state law to provide for the reservation of land for natives of the state or for the alienation of land to them or for giving them preferential treatment with respect to the alienation of land for the state. This is particularly the case in Sarawak and Sabah.

Section 5 of the Land Code of Sarawak provides for native customary rights to be recognised in accordance with native customary law of the communities concerned. Such land shall be issued with documents of title. Likewise, according to Section 6 of the Code, the Minister may declare any area of state land to be Native Communal Reserve for the use of any community having a native system of personal law. A person who is not a native of Sarawak may not acquire any rights or privileges whatever over any Native Area Land, Native Customary Land or Interior Area Land.

In the case of Sabah, native customary rights are also enshrined in Native Titles. Native customary rights that have been established shall be dealt with either by money compensation or by grant of the land to the claimant – in the latter case a title shall be issued. All dealings in land between non-natives and natives are expressly forbidden and no such dealings shall be valid or be recognised in any court.

There is a restricted market for such land. They are not good mortgage collateral and are generally not favoured by banks. In this respect their development is affected because:

- Their values are below the open market values of other properties;
- Non-Malays/natives cannot have dealings in them;
- Such land is not favoured by banks as collateral; and
- Many areas of such land have numerous owners attached to them.

To overcome these obstacles it is suggested that while ownership remains in the hands of the protected group, tenancies/leases should be open to the general market. Where numerous owners are involved, a co-operative or trust can be established to manage and develop all the lands involved with each owner using the value of his portion as equity. These two moves can create better value for such land and give them a better chance of being developed.

Laws controlling the professions

All the professions involved in housing development are subject to control by their respective professional boards including the Bar Council, the Land Surveyors Board, the Board of Valuers, Appraisers and Estate Agents, the Quantity Surveyors Board, the Board of Architects and the Board of Engineers.

These boards have been set up under their respective legislation enacted by Parliament to control and improve the professions. In the respective Acts and/or their regulations, the professionals are expected to

act professionally and ethically. Disciplinary action can be taken against them if they flout the rules and regulations governing their respective professions. For example, legislation on valuers requires all those who value housing units or assist owners and purchasers in the selling and purchase of such units to be registered by the Board of Valuers, Appraisers and Estate Agents Board, Malaysia, to be able to practise their profession. This is to ensure that unit purchasers have access to a reliable source of advice and competent people to assist them to sell and purchase such units. Unfortunately, some unit purchasers prefer to deal with unregistered people and then complain when they are taken advantage of. Fortunately the law has now been amended to allow the boards to prosecute any unregistered person who practises any of those professions. This is to enable the boards, with the assistance of the police, to protect the general public from being exploited and cheated. Generally complaints against any of the professionals can be directed to the respective boards controlling those professions.

Financial institutions

Financial institutions, such as banks, merchant banks, finance companies and insurance companies, which lend money for housing purchases, fall under the purview of Bank Negara Malaysia. Complaints against them can be directed to Bank Negara Malaysia. The unit purchaser's interests can be considered to be taken care of by Bank Negara Malaysia since it does have a say in determining the base lending rates of financial institutions. Bank Negara Malaysia has also directly controlled the interest rate for loans of housing units priced below RM 100,000, imposing a ceiling rate of nine per cent per annum or 1.75 per cent above the best leading rate (whichever is less) on interest charged for such loans. It has also restricted foreigners from raising loans locally to prevent speculation in the property sector. At the same time, Bank Negara Malaysia has also hindered unit purchasers by directing financial institutions to provide only up to 60 per cent loan facility for purchasers buying their second homes. This makes it difficult for a unit purchaser to upgrade from, say, a terrace house to a semi-detached one. The purchaser would have to sell his present property first before upgrading. While waiting for the sale of his present property the price of the semi-detached one could go up and he would lose his chance to own it. This situation is further compounded by a recent Bank Negara Malaysia directive, effective from April 1997, restricting financial institutions from lending more than 20 per cent of their total loan portfolio to the property sector, except for cases of houses costing RM150,000 and below, and for owner-occupied housing.

Guidelines for foreign purchasers

In 1984 the National Land Code was amended to restrict foreigners from purchasing housing units in Malaysia. This move came in the wake of a property boom, which had unfortunately declined by the time the legislation was made effective. Consequently the National Land Code provisions were repealed in 1987, practically freeing the market for foreigner unit purchasers. As the economy improved and Malaysia headed towards another property boom, steps were again taken to curb foreigners from purchasing housing units in Malaysia. With the advantage of wealth and gains from foreign exchange, these foreign purchasers were accused of causing property prices to rise rapidly and thus fanning speculation. In 1991 the government again amended the National Land Code to restrict foreigner ownership of landed property. The steps taken were multi-pronged. Control was established through Bank Negara Malaysia restrictions, Foreign Investment Committee guidelines and Part 33A of the National Land Code.

Bank Negara Malaysia restrictions included a directive to all financial institutions not to lend money to foreigners for the purchase of housing units in Malaysia. Foreign purchasers had to raise funds overseas for this purpose. This restriction was later relaxed and up to 40 per cent of the loan could be raised locally. That was the extent of Bank Negara Malaysia's control.

The Foreign Investment Committee guidelines were more restrictive. It was agreed that all states would follow the guidelines, although it was left to each state to impose additional restrictions if necessary. Since land is a state matter this was fair. However, in the process, uniformity was lost and foreigners were left with a variety of guidelines and restrictions to follow in different states. This, as far as the foreign purchaser was concerned, was unsatisfactory.

In June 1995 the National Land Council drew up a new set of guidelines to be followed uniformly in all the states. Although all the states agreed to these guidelines, some states wanted minor adjustments to suit their particular situations. Under these new guidelines, as far as residential property was concerned foreign purchasers were not allowed to buy:

- Terrace houses of two-storeys or below in height
- Low-cost and medium-cost houses
- Low-cost and medium-cost apartments or flats
- Condominiums worth below RM250,000
- The Bumiputera quotas in housing schemes.

Foreigners can buy bungalows and semi-detached houses, but their purchases should not exceed 10 per cent of the total in any development. Foreigners can also buy condominiums exceeding RM250,000 in value and holiday homes, on condition that the number purchased by foreigners does not exceed 30 per cent in each block.

All purchases need the Foreign Investment Committee approval. Foreigners can own only one residential unit and properties cannot be sold within a period of three years from the date of the Foreign Investment Committee approval unless it is to a Malaysian citizen, a local company or to those given special approval by the state authority.

To give an idea of the variations made to the guidelines, the requirements of Melaka, Johore, Penang and Selangor are cited here.

In Melaka, foreign purchasers can buy condominiums and holiday homes which are more than RM250,000 in value but not more than 50 per cent of all the types in each project. They can buy bungalows and semi-detached houses which are more than RM400,000 in value with areas not more than 8,000 square feet each, limited to less than 10 per cent of the same type in each project. Each foreigner is limited to two units and he must not sell or lease the properties within five years of registration.

In Johore, they can buy condominiums and apartments which are more than RM250,000 in value but not more than 30 per cent in each project. They can buy landed properties/ bungalows valued at more than RM750,000 each but again not more than 30 per cent in each project. Foreigners can only sell their properties after three years.

In Penang, foreigners can buy condominiums, apartments, flats and semi-detached houses worth more than RM350,000 each but not more than 30 per cent of each type in each development. They can also buy detached houses and holiday homes valued at more than RM500,000 but not more than 10 per cent of the total of each type in each development.

In Selangor they are allowed to buy condominiums, apartments and holiday homes exceeding RM250,000 each but not more than 30 per cent in each block. They can also buy bungalows and semi-detached houses exceeding RM250,000 each but not more than 10 per cent in any development.

The Minister of Finance, in his Budget Speech on October 27, 1995, introduced the imposition of a RM100,000 levy on every purchase of property by a foreigner transacted after that date. The levy was to be collected by the state as state revenue. The rationale for this was to curb speculation as the levy would in effect raise the purchase price by that sum. A third measure was introduced during that Budget to curb speculation. This measure served to raise the Real Property Gains Tax (which had been pegged from 15 per cent to 0 per cent based on the number of years the property was held, that is, less than a year to six years) to a flat 30 per cent for foreigners irrespective of the period the property was held. Part 33A of the National Land Code and the Real Property Gains Tax Act 1976 were amended to pave the way for these provisions. Effectively then, a foreign unit purchaser is subject to all the normal provisions and also to the above restrictions.

Conclusion

This discussion has outlined the legal framework currently governing the development process and has shown its strengths and weaknesses. Some suggestions for overcoming those shortcomings have been identified. The legal framework has to promote a healthy housing industry by preventing the exploitation of unit purchasers and checking unfair and fraudulent practices by developers. This it can do to a certain extent. However, unit purchasers cannot depend solely on the law to protect their interests. They should, as responsible consumers, also take measures to ensure that they are not cheated or short-changed. The ultimate responsibility is theirs and they should be vigilant on all matters related to the purchase, subsequent maintenance and safeguarding of their legal rights for the unit they have purchased

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Appendix 1: Summary of issues and recommendations

Issues	Recommendations
1. The enforcement unit of the Ministry of Local Government and Housing waits for complaints before acting.	The enforcement unit should be proactive.
2. Not all matters advertised are factually correct.	All brochures and advertisements should be subjected to strict guide lines.
3. Offences are sometimes committed overseas.	The relevant Ministry should deal with any overseas offences as soon as the complaint is lodged.
4. There have been cases where schemes had to be abandoned because the EIA report was not approved although the scheme has been approved.	There should be proper co-ordination between the various approving authorities.
5. The developer's lawyer sometimes acts for the unit purchaser as well.	Each party should engage its own lawyer.
6. When materials are substituted, the purchaser will not know whether it is of the same quality and value.	The developer and the architect should be made accountable for such differences and should inform purchasers in writing about substitutes made and their equivalent values.
7. The unit purchaser is not kept informed about variations in plans.	Variations in plans should also follow the above requirements.
8. Units have been handed over to purchaser without water and electricity ready for connection.	These cases are now rare.
9. Promised facilities take a long time to be installed.	All facilities should be in place within six months.
10. The current liability period is 18 months.	There should be different liability periods for different materials or parts of the building.

Issues	Recommendations
11. Paragraph 4 of the Payment Schedule states that the developer's lawyer should act as stakeholder of the last five per cent payment.	The unit purchaser's lawyer should be the stakeholder. This condition should also state what the five per cent is for.
12. Disputes between unit purchaser and developer are referred to court.	A tribunal should be established to settle disputes fast and informally.
13. In the relationships that exist between the various parties in the development process, the unit purchaser is not fully protected by law and its administration	It is recommended that a legal relationship be established between the unit purchaser and the parties involved in the development.
14. The unit purchaser cannot sue the professionals involved in the development process.	The degree of care exercised by professionals should be extended to the unit purchaser for at least 10 years.
15. Some unit purchasers still deal with unregistered persons.	The law has been amended to allow respective professional boards to prosecute those unregistered persons.
16. Issuance of strata titles can take a long time because of requirement for final title; non-application; and application requirements not satisfied.	Qualified titles can now be used for such applications. There should be a checklist for applications listing the common failings found so far.
17. After the final survey of the strata units, price adjustments have to be made. This is often forgotten.	This may be resolved with the speeding up in the issue of strata titles.
18. Cooperation in managing a condo block is difficult.	This human problem can only be overcome through education of occupants.
19. The housing developers legislation does not extend to Sarawak and Sabah, and to co-operatives	It should.
20. There are developers who sell units at a discount for cash.	This practice should be controlled as the units have still to be built.
21. The unit purchaser is restricted in the amount of loan he can get.	Bank Negara should not be too restrictive.

Issues	Recommendations
22. Financiers delay settlement of demands for progress payments by developers resulting in late interest charges to purchasers.	This should not happen.
23. The FIC guidelines on foreign purchases of property are still not standardised.	These guidelines should be standardised.
24. Consumer protection is currently legislated for housing.	The proposed Consumer Protection Act will specify the responsibilities of the private sector in offering products and services to the public.
25. The problem of under-counter 'tea money' still exists.	The state should take sole charge of sales and allocation of low and medium-cost houses. There should be online registration of buyers in all land offices. Buyers should be required to stay in such houses for at least three years. Otherwise, within that period, they can only to sell them back to the state.
26. Purchasers currently have to depend wholly on the Government to protect their rights.	Purchasers should be educated on their rights to be vigilant on matters relating to purchase, maintenance and defence of the legal rights to the unit purchased.
27. Not all local planning authorities have prepared structure plans.	This should have been done long ago.
28. Authorities with structure plans are flexible in their implementation.	This should not be the case.
29. Not all local planning authorities have prepared local plans.	This should have been done long ago.
30. Planning provisions are not transparent. Some authorities do not reveal the actual planning provisions.	Planning provisions should be transparent so that the developer knows exactly what he can do on the land.

Issues	Recommendations
31. Town plans, though gazetted, are not followed, and can vary.	Once gazetted, town plans should not be varied.
32. Open spaces in housing schemes are later used for other types of development.	This should not be permitted.
33. Approvals from local authorities can take a long time since numerous departments are involved.	A one-stop agency should be set up to deal with approvals. Requirements for approvals should be standardised.
34. New conditions are imposed by the local planning authority for the issue of certificates of fitness.	The local planning authority should abide by the original conditions agreed upon when approval was given.
35. In land acquisition cases the amount of compensation awarded is inadequate and very often other losses are ignored.	Compensation awarded should be fair and all legal claims awarded.
36. In court cases appeals are dealt with in a summary manner because of lack of time.	A tribunal should be set up with a judge, a government valuer and a private sector representative to hear such cases.
37. When land is compulsorily acquired, the landowner is not involved in the development of the land acquired.	The landowner should have the right to be involved in the development of the land acquired.
38. Section 214A, NLC, (Estate Land) is still being used.	This regulation has served its usefulness and should be repealed.
39. Rent control is still on the statute books.	This law should have been repealed long ago. It is only to be fully repealed on December 31, 1999.
40. Malay Reservation Land/Native Lands can only be owned and occupied by the protected groups.	Ownership should remain in the hands of the protected group, but leasing and tenancy should be opened to the general market.



Legal and Administrative Framework for Housing Development and Finance: The Government Viewpoint

Nik Mohd Zain Haji Nik Yusof

The objective of this paper is to explain the various laws affecting the housing industry in Malaysia. It is also aimed at highlighting the rules and procedures on housing development vis-a-vis the National Land Code, 1966; the states land rules; the Strata Titles Act, 1985; the Strata Titles Regulations; the Housing Developers (Control and Licensing) Act, 1966; the Housing Developers (Control and Licensing) Regulations, 1989; the Housing Developers (Housing Development Account) Regulations, 1991; the Town and Country Planning Act, 1976; the Environmental Quality Act, 1974; the Land Acquisition Act, 1960; and other related land laws.

Introduction

The housing and property development sector has been one of the major contributors to the economic growth of Malaysia. There is no specific law governing the housing industry in Malaysia. The Housing Developers (Control and Licensing) Act, 1966 and rules thereunder is one of the laws which controls both the developers and purchasers. The principal objective of the Act is the control and licensing of the business of housing development in Malaysia and for matters connected therewith.

The law applicable to housing developers in Peninsular Malaysia is the Housing Developers (Control and Licensing) Act, 1966 (Act 118), which came into force on August 29, 1969. The Act does not apply to Sabah and Sarawak. Apart from the 1966 Act, the law governing housing development in West Malaysia is contained in the two regulations of 1989 and 1991. The Act does not apply to any society registered or incorporated under any written law relating to co-operative societies. This means that housing projects undertaken by co-operative bodies are not governed by the 1966 Act. The Act also does not apply to housing projects undertaken by any statutory bodies or agencies of the federal or state governments. Thus, housing projects undertaken by such agencies as the state economic development corporations (SEDCs) are not governed by this Act.

Before a housing developer can develop a piece of land, certain procedures must be followed. These procedures can either be legal, such as conforming with the requirements of the National Land Code and other related land laws, the Planning Act or the Environmental Quality Act, or the conformity might be in the form of administrative regulations or directives given by the government to fulfil certain policy objectives. This being the case, before a piece of land is developed with buildings put up on the land, certain legal and administrative procedures must be resolved, or else the developer or the land owner will face legal and administrative issues. The mistakes can be costly for the developer. Litigation in court might take a few years before the issues are finally decided.

Any land development to be carried out by the private sector must be on alienated land, that is, land with a land title issued by the land office on behalf of the state authority.

Background

On alienation by the state authority, the land will be subject to either one of the categories:¹ agriculture, building or industry. The state may also alienate a piece of land without any category of land use provided for by section 76 of the National Land Code. On imposition of the category of land use, the land is subject to implied and express conditions.² Non-conformity with the above conditions will result in land being forfeited by the state authority under section 128 of the National Land Code. Thus, to avoid breaching the express or implied conditions, the proprietors of alienated land may apply to the state

1. Section 52(1), National Land Code.

2. *Ibid*, section 52(1)(b)(ii)

authority for alteration or imposition of category of land use, or the rescission or amendment of any express condition or restriction in interest³ to enable the land owner to use or develop his land for purposes other than that allowed at present. This process is commonly known as 'conversion'.

Upon conversion, the land will now be subject to a new type of land use, for example, land for planting oil palm may now be used for development. However, housing developers require individual title to the land for practical purposes of selling the land to a purchaser. The purchaser would need the land title for purposes of charging⁴ the land to a financial institution as security for a housing loan. Thus, after conversion, the land needs to be subdivided into smaller lots suitable for housing. This process is known as subdivision,⁵ with each title to be held by the same proprietor or by the same co-proprietor under separate titles. On partition,⁶ if two or more persons or co-proprietors hold the land, each of them will hold a separate title. Thus, the above provision of the National Land Code provides a mechanism for a housing developer to change the use of his land, for example, from agriculture to development for purposes of building residential accommodation.

Land system in Malaysia

With the enforcement of the National Land Code, 1965, on January 1, 1966, for the first time in the history of land administration in Peninsular Malaysia, all states came under a uniform land law.

Under the Malaysian land system, all lands alienated in the states are held in all cases under the Torrens system⁷ of land registration. The Torrens system establishes and certifies under the authority of the respective state governments, the ownership of an indefeasible⁸ title to land. Administratively, the system simplifies, hastens and lowers the costs of all land dealings. The objectives of the Torrens system are to provide security and simplicity in all dealings with land. The land title issued by the land office is conclusive proof that the name of the person mentioned on it is the legal owner of the land described.

3. *Ibid*, section 79(2)(g)

4. *Ibid*, section 241(1)(aa).

5. See section 135, National Land Code.

6. See section 140, National Land Code.

7. For a detailed study of Torrens System of Land Administration, see KS Das (1963).

8. See section 340, National Land Code. The concept of indefeasibility will not apply in cases of fraud, forgery or misrepresentation.

Registration of land titles

Under the National Land Code, as emphasised in section 78, land is still considered as state land until a land title is registered – notwithstanding that its alienation has been approved.

Land title as proof of ownership

Under section 76 of the National Land Code, the state authority (that is, the state government) has absolute power over all state lands within the state boundary.⁹ The power to alienate or dispose of state land lies with the state authority. Land titles may be issued by the state through its alienation process either for a period of 99 years (known as leasehold) or in perpetuity (freehold). However, by virtue of section 76 (aa) (iii), the state authority will alienate land in perpetuity only to the federal government or to any public authority or if the land is to be used for public purposes. However, in exceptional cases when the state authority is satisfied that there are special circumstances which render it appropriate to do so, it may alienate such land in perpetuity to any person or body as provided for under section 76 of the National Land Code.

The evidence that a person owns a piece of land is the land title. With a land title, the proprietor can carry out various dealings or transactions on his land.¹⁰ He can transfer, lease, charge the land, or grant right or easement over it. Thus, a land title shows who the proprietor is and which land he owns. The land title too shows a number of other particulars such as the amount of quit rent, conditions and restrictions, and categories of land use. There are some conditions and restrictions imposed on the land which are not stated in the title. They are stated in the law only and have to be complied with by the proprietor. They are known as implied conditions.¹¹ Therefore, security of tenure in terms of land ownership in Malaysia is the fundamental aspect of our democratic system of government.

9. See 9th Schedule List 11 - State List, Item 2, of the Federal Constitution. See also Part Three Chapter 1, Ss 40-50 of the National Land Code

10. See section 92(2)(c), National Land Code, on the landowner's rights to carry out dealings.

11. For implied conditions see section 115, 116, 117, National Land Code. .

Land use planning under National Land Code

Land legislation and planning laws¹² govern and define the parameters of the land use policy of Peninsular Malaysia. However, within the previously mentioned parameters, it is the state authorities and the National Land Council which determine the context and thrust of the land use policy actually implemented.

Policy on land use begins when the state government alienates a piece of land and issues a land title to a person or body under the National Land Code. The land granted under the National Land Code is subject to positive and negative conditions. Failure to observe these conditions renders the land liable to forfeiture by the government without any compensation whatsoever. The land owner may apply for a change of use of his land. He may also apply to subdivide his land into portions to be held under separate land titles. Within local authority areas where planning legislation is also applicable, no development or use of land is allowed without permission from the local authority which is responsible for physical planning in its area.

Nevertheless, conditions attached to land titles prevail over planning restrictions as provided by section 108 of the National Land Code. To avoid conflict, local authorities are consulted before the government grants land or allows an owner's application for change of use.

The main objective of land use policy in any country is to ensure that land needed for urban and regional development (either for public or private use) is available in the needed quantities, at the appropriate locations, for the appropriate tenure, at the right time and at the appropriate prices, having consideration for efficiency and equity in the allocation of resources in pursuit of targets in urban and regional plans.

In the case of agricultural land, the policy against subdivision was adopted to ensure that each subdivided portion did not become an uneconomic holding leading to low productivity, under-employment and under-utilisation of land.

The land use policy also incorporates a social benefit dimension. For example, in relation to agriculture land, it should seek to maximise income for the land owners.

As for land designated for residential, commercial or industrial use, the land use policy should be geared to ensuring the growth of the sectors to the overall economic development of the nation and in bringing about the

12. The Town and Country Planning Act, 1976, controls land use in Peninsular Malaysia.

equitable distribution of the benefits thereof – especially in relation to land and house ownership. The right use of land through a well balanced industrial and commercial policy optimising scarce industrial and commercial land will have the direct social benefit of increasing employment in the commercial and industrial sectors.

Enhancing productivity of the agricultural, industrial and commercial sectors will serve not only to alleviate rural and urban poverty but also facilitate the retention of productive labour in agriculture and create more employment for the urban population.

Land ownership policy and proprietary rights over land

It is observed that the present system of land law and land administration in Peninsular Malaysia represents a heritage of its past legacy as developed in the former Federated Malay States. The introduction of the National Land Code, 1965 to replace the various state land laws has significant effects on the overall land tenure system, its land policies and land development. The changes, initiated with the view of achieving national development objectives and ensuring the proper management of land as a scarce resource, were set out under the various national development plans. In this context, land laws are seen as instruments of growth and of equitable distribution of wealth.

Land policies were not contained in the legislation enacted but often left open-ended at the discretion of the individual state governments.

Land law deals not only with possession and ownership of land, but also with the rights and obligations of the owner and occupier. The formulation of land law requires an understanding of the concept of land, its definition, land tenure systems, and the machinery that makes the system tick, as well as other laws relating to land. Land policies, on the other hand, will ensure that land is governed and administered systematically for the benefit of society.

In Peninsular Malaysia, the laws relating to land, which formerly existed in 43 different types of legislation, both federal and state, have been consolidated into one – the National Land Code, 1965, which was adopted by all 11 states in Peninsular Malaysia in 1966.

The National Land Code was enacted pursuant to Article 76(4) of the Federal Constitution for the sole purpose of ensuring uniformity of law and 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. The National Land Code also ensures that land as a scarce resource is managed and used properly and economically for the benefit of society and future generations.

Land tenure in Malaysia

Under the National Land Code in Peninsular Malaysia, all land is vested in the state. The state may alienate land to an individual, either in perpetuity (freehold) or for a term of years (leasehold), who becomes the owner thereof. In Sabah and Sarawak, the Sabah Land Ordinance and Sarawak Land Code apply in the two states respectively.

Under the National Land Code, all lands alienated by the state under the provisions of the Code, and which have been surveyed will be held either under a Registry Title or Land Office Title, both of which are documents of final title. Qualified title is issued in respect of land which has not been surveyed by a first-class survey.

The National Land Code professes to be a complete and comprehensive code of law governing the tenure of land in Malaysia and its incidents. However, it does not make provision for certain related matters. In the matter of private dealings, for example, the National Land Code provides for the regulation of the rights and obligations of the respective parties only from the stage of registration onwards but not for the period prior to registration.

Powers over land

Under the Federal Constitution of Malaysia, land is a state subject and the federation has no power over land matters except under Articles 83, 85 and 86 of the Constitution, which are related to the reservation and disposition of land held for federal purposes to the extent of ensuring common policies on land matters and a common system of land administration. Powers under Article 76(4) for example have been exercised in the legislation of uniform land laws, namely, the National Land Code (Act 56) of 1965, the Small Estates (Distribution) Act, 1955, the Land Acquisition Act, 1960, and the Land (Group Settlement Areas) Act, 1960.

Thus the states own and control the land within their respective state boundaries. The executive functions pertaining to land matters are vested in the states and the supreme authority in each state. Questions of land administration (including management of land resources) are vested in the states. The supreme authority in each state on questions of land administration is the Ruler-in-Council, that is, the State Executive Council. Land administration is, therefore, one of the most important functions of state governments in Peninsular Malaysia.

Besides the National Land Code, there are 125 other laws in Peninsular Malaysia relating to land administration. A number of separate federal and state land laws continue to exist and are not affected by the Code. Some of the laws

relating to land resource management and land administration include the Land Conservation Act, the State Mining Enactment, the State Forest Enactment, the Land (Group Settlement Areas) Act, the Land Development Ordinance, the Continental Shelf Act, the Exclusive Economic Zone Act, the Town and Country Planning Act, the Petroleum Development Act, the Strata Titles Act, 1985, the Malay Reservations Enactment (for every state in Peninsular Malaysia except Penang and Malacca), the Small Estates (Distribution) Act, 1955, the National Land Rehabilitation and Consolidation Act, 1966 (Felcra Act, 1966), the Land Acquisition Act, 1960, Stamp Act, 159/1949, Powers of Attorney Act, 64/1949, and Trustee Act - Act 208.

Federal role in land management

The role of the federal government in land administration and resource management is very limited. However, the federal government can play quite a substantial and influential role in shaping the land policies in the various states through the National Land Council, the Department of Director-General of Lands and Mines and the regional development authorities.

National Land Council

Through the National Land Council,¹³ the federal government may influence the state governments in the formulation of a national land policy, as provided for by Article 91 of the Constitution. The resolutions of the National Land Council are treated as policies agreed by the states of Peninsular Malaysia by virtue of Article 91 of the Constitution. The governments of Sabah and Sarawak are not required to follow such policy unless they choose to do so.

By virtue of Article 91(5) of the Federal Constitution, the National Land Council's function and responsibility is:

To formulate from time to time in consultation with the Federal Government, the State Governments and the National Finance Council, a national policy on the utilisation and control of land throughout the Federation for mining, agriculture, forestry or any other purpose and for the administration of any laws relating thereto, and the federal and state governments shall follow the policy so formulated.

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13. The National Land Council consists of a Minister (normally the Deputy Prime Minister) as the Chairman, one representative from each of the states (normally the Menteri Besar or Chief Ministers and not more than 10 representatives from the federal government (normally 10 Ministers). There shall be at least one meeting every year.

Article 91(6) emphasises that the Council, in addition to exercising the power of control over utilisation of land, may give advice to the governments of both the federation and the states, in respect of utilisation of land or any proposed legislation dealing with land or the administration of any such law, and it shall be the duty of the National Land Council to advise that government on any such matters.

Since its establishment in 1958, the Council has been active in the formulation of major policies covering land administration, land alienation and land development, land use planning, agricultural policy and the adoption of a uniform National Land Code for Peninsular Malaysia.

State authority and land administration

Sections 11, 14, 40, 41 and 42 of the National Land Code give wide powers to the state authority in matters relating to land. The states permit the use or occupation of state land under a title, temporary occupation licence or extraction of rock materials under a permit. Basically, upon alienation of land, the rights over the land passes from the state to the person or body named in the title subject to certain conditions set out in part Five of the National Land Code.

In each state, the State Executive Council, a state cabinet analogous to the Federal Cabinet, is the main political body with executive powers to decide on day-to-day land policy. The State Executive Council has nearly absolute powers to decide on any land matter, and provided that the decisions do not contravene federal or state land laws or land policies agreed upon in the National Land Council, it can overrule the advice tendered by the head of any of the state's technical departments.

Rights to property and proprietary rights to land

Article 13 of the Federal Constitution protects the individual's property rights. However, this protection is qualified and not absolute for Article 13 states that:

- (1) No person shall be deprived of property save in accordance with law; and
- (2) No law shall provide for the compulsory acquisition or use of property without adequate compensation.

Article 13(1) of the Constitution is negative in that it prevents the executive from doing certain things except under authority of the law. It does not restrict Parliament from enacting legislation to deprive a person of his property. The article only restricts the executive powers of the

government from acting arbitrarily, that is, it protects against executive action, but not against legislation.

The National Land Code strengthens Article 13 of the Constitution by protecting all registered land holders through the issuing of indefeasible land titles. Once the title is registered, the person named in the land register is the legal owner of the land.

Article 13 of the Constitution together with section 340 of the National Land Code, where the states protect the proprietor of alienated land through the principle of indefeasibility of land title, strengthens further the sanctity of the land ownership principles in property ownership in Malaysia.

Alienation under National Land Code

Alienation is used in the National Land Code to mean the 'giving away' of state land in perpetuity (freehold) or for a term of years (leasehold). In other words, alienation is one form of disposal of state land by the state.

Disposal refers to the granting of certain rights, whether proprietary or otherwise, by the state in respect of state land in favour of private individuals or bodies as provided for by section 43 of the National Land Code. Land alienation is the most important part of land resource management. It is the alienation of state land that enables an applicant to use or occupy a piece of land under a title, temporary occupation licence or by way of reservation under a permit. Under the Torrens system of land registration, once the title to the land alienated by the state is registered, the rights on the land passes from the state (as landlord) to the person or body named in the title (as tenant) subject to implied and express conditions such as the payment of a land premium and an annual land rent. Under List II in the Ninth Schedule of the Federal Constitution, the state authority is vested with the entire property in all state lands, within the territories of the state, and all minerals and rock materials within and upon any land in the state, the rights to which it has not disposed of. With the coming into force of the National Land Code, the state authority is accordingly vested with powers to dispose of land in the manner provided, as well as in the Mining Enactment (Cap 147) and Forest Enactment (Cap 153) together with all such rights in reversion and other similar rights conferred on it under the aforesaid laws. The state authority has the power to dispose of state land, mining land and reserved land to private individuals in the following ways:

- (a) By alienating state land in a lease form of title for a term not exceeding 99 years;
- (b) By granting leases of reserved land for periods not exceeding 21 years;

- (c) By issuing licences for the temporary occupation of state land;
- (d) By granting mining leases (under the Mining Enactment Cap 147);
- (e) By issuing permits for the extraction, transportation and removal of rock material from state land, alienated land, mining land and reserved land;
- (f) By issuing permits for the use of air space above state land or reserved land for periods not exceeding 21 years in respect of the erection, maintenance, and occupation of structures on or over such land as adjunct to any structures on adjoining land;
- (g) By granting a forest licence under the Forest Enactment (Cap 53) for the purpose of removing forest produce from state land.

Under current land legislation, the owner's rights over land as regards its use have been restricted by the state (as will be discussed later).

Effect of legislation on land resource management

Under section 52 of the National Land Code, land is classified into three categories: agriculture, building and industry. The state therefore controls the use of land. On alienation, the land is subjected to special terms and conditions (specified in Part VIII of the National Land Code) in each category.

The effect of this category provision is to ensure that land shall at all times be fully and properly used for the purpose for which it was alienated and shall at no time be used for any other purpose.

Individual rights in alienated land

Conditions and restrictions in interest are imposed variously on alienated land by the state authority under section 120 of the National Land Code, at the time when the land is approved for alienation. These conditions or restrictions referred to in the document of title do not represent an attack on the indefeasibility of the registered title. They merely affect the quantum of that indefeasibility. The conditions and restrictions in interest made under section 120 of the National Land Code are unlimited except that it must be 'conformable to law'.

As regards the policy of imposing restrictions in interest on land titles (on new alienation), most state governments make use of section 120(1) of the National Land Code to restrict the transfer, lease or charge of such lands to another person without the prior permission of the state authority or the land administrator. Such a policy is to ensure that lands alienated to persons will remain in their possession and such lands will not be made use of for speculative purposes in order to obtain quick profits out of the sale of the land.

In most new alienation for agricultural and residential purposes, restrictions in interest are imposed on the land titles prohibiting the landowner from dealing in land. However, the proprietor may apply to the state authority for amendment or for approval to carry out any dealing on the land, where the land is subjected to restriction in interest.

Under the new section 3(b) of the Land Acquisition Act, 1960¹⁴ a private individual or a private company may now request the state government to acquire land on its behalf if the land is to be used for the economic development of Malaysia. Housing developers may use this provision to increase their land bank for residential purposes. Even though land is a state matter, the federal government, by virtue of its control of development fund, plays a major role in determining the land use policy especially at the regional level determining new town centres, housing and human settlement.

Machinery employed in land legislation

The District Land Office is the main agency involved in land use control at the local level under land legislation. In each district, the land office is responsible for all land matters regardless of whether the land is within a local authority area or outside it. The Land Office and the Registry Office are also responsible for registration of all land dealings. The main agency involved in land use control at the state level is the state Department of Lands and Mines.

As stated earlier, Malaysia practices the Torrens system of land administration. The government thus guarantees the ownership of an indefeasible title to land and simplifies, hastens and lowers the costs of all land dealings. The objectives of the Torrens system are to provide security and simplicity to all dealings with land. The registered proprietor as shown in the land title is conclusive proof that the person mentioned is the proprietor of the land described.

Thus, among the advantages of the Torrens system of land registration are as follows:

- (a) Every registered proprietor of land will hold a single clear document of title, guaranteed by the government, setting out both for his information and the information of all people concerned, all the conditions and other interests affecting the land;

14. Section 3(b), Land Acquisition Act, 1960, states that: 'The state authority may acquire any land which is needed: (b) by any person or corporation for any purpose which in the opinion of the state authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public;...'

- (b) Every person may deal in land by a simple registration of stereotyped memorandum without the need for complicated and expensive search through prior documents; and
- (c) The title to the land and the rights of all persons holding leases or charges will be indefeasible. (section 304, National Land Code)

Thus, the Torrens system of land registration provides a strong foundation in promoting healthy housing development and housing finance.

Role of National Land Code in land development

The National Land Code facilitates land development in the following ways. The state may dispose any state land to those eligible under section 43 of the National Land Code by way of:

- (a) Alienation of state land (sections 76-92)
- (b) Temporary occupation licence (sections 65-69)
- (c) Permit to extract rock material (sections 70-75)
- (d) Permit to use air space (sections 75A-75G)
- (e) Disposal of underground land (sections 92A-92I)

The National Land Code also facilitates the following land development procedures, either for housing development, housing finance or other land development purposes.

- (a) Providing facilities for change of use of land from one category to another (conversion) (sections 124-124H, sections 204A-204H)
- (b) Facilitating the rescission and approval of the conditions and restrictions in interest.
- (c) Allowing the subdivision, partition and amalgamation of land if all conditions are met (sections 135-150)
- (d) Allowing the subdivision of buildings and issuance of strata titles under the Strata Titles Act (1985).
- (e) Allowing the issuance of qualified title prior to final title being issued (sections 176-179)
- (f) Allowing the proprietor of the land to carry out dealings (transfers, charges, leases, lien, etc) (sections 214-291)
- (g) Requiring all dealings to be registered (sections 292-318)
- (h) Allowing the entry of caveats as protection against improper dealings, fraud, forgery or misrepresentation (sections 319-333)
- (i) Protecting the federal and state governments and their agencies as well as the public at large, through the prohibitory order provisions where land or an interest in land held by a judgement-debtor is to be sold in execution proceedings (sections 334-339)

- (j) Giving indefeasibility of title and interest in land once registration under the National Land Code is effected (section 304)
- (k) Prohibition against non-citizen or foreign company from acquiring agriculture and building land (sections 433A-D)
- (l) Other general provisions.

Land use policy and land development procedures

Land use in Malaysia is controlled by the land legislation and planning law. The two laws which control land use in Peninsular Malaysia are the National Land Code and the Town and Country Planning Act, 1976. As stated earlier, a piece of land has to be converted to the use required by the developer, say from agriculture to housing (building), before any buildings can be erected.

Categories of land use

There are three categories of land use under the National Land Code, 1965 – agriculture, building and industry.

The implied conditions affecting the above three categories of land use are provided for in the National Land Code, 1965. In cases where the implied conditions are inconsistent with any express conditions which the land is for the time being subject to, the express conditions will prevail.

The National Land Code provides that a proprietor of alienated land may apply to the state authority for alteration or imposition of category of land use, or the rescission or amendment of any express conditions or restriction to enable him to use or develop his land for purposes other than that allowed at present. For example, a piece of land alienated for purposes of planting oil palm may now be more beneficially used for building of residential houses. In such a case, the proprietor may apply for the imposition of the building category. Such a process is now commonly known as ‘conversion’.

Application for conversion

Application for conversion from agriculture to the building category, for example, should be made by using a form as prescribed in the state land rules. In the application, it must be stated clearly whether it is to alter the category of land use, to impose a new category of land use, to rescind any express condition or restriction in interest, to amend any express condition or restriction in interest, or to impose new express conditions.

The application is addressed to the Land Administrator of the District concerned and must be accompanied by:

- (a) Such application fee as prescribed in the state land rules;
- (b) A plan of the land;
- (c) A certificate of an official search; and
- (d) Such written consent of any person or body having registered interest in the land or having tenancy exempt from registration, if any.

However, an application in respect of any of the above matters will not be entertained by the state authority unless every person or body having a registered interest such as a charge, lease or easement or a person occupying a tenancy exempt from registration has consented to the application, or the circumstances of the case is such that the consent ought to be dispensed with.

By Act 832 A (National Land Code) Amendment 1992, a new condition is imposed whereby the state authority shall not entertain any application for variation of conditions, restrictions and categories of land use unless all rent due in respect of such land has been paid. Under the same amendment of this section, the state authority is empowered, on the application of the proprietor of any alienated land, to remove from the document of title the express condition pertaining to land use, and to impose other express conditions pertaining to land use, for example from 'one bungalow house' to a 20-storey condominium.

The state authority in approving an application in respect of any of the above matters, has the discretion to impose such conditions as it may think fit in addition to the payment of a further premium and the reservation of a new rent. The Federal Court in *Pengarah Tanah dan Galian Wilayah Persekutuan v Sri Lampah Enterprises Sdn Bhd*¹⁵ held that such discretion of the state authority is unfettered and that the conditions imposed must be fair, reasonable and related to the permitted development of the land in question.

Other related laws affecting housing industry

As stated earlier, there are other laws controlling the housing industry – one of which is the Town and Country Planning Act 1976. The objective of this Act is to ensure that township development in Malaysia is planned properly based on the socio-economic and political conditions of the country. It is also aimed at achieving environmentally-sound planning and control of township development. The law introduces a planning system consisting of development plans, that is, structure and local plans under which all physical planning such as township planning is to be undertaken.

15. See [1979] 1 MLJ 135 Federal Constitution.

Structure plans are prepared for areas covered by municipal areas and also smaller district councils. A few smaller district councils can jointly prepare their structure plan together. The local plans are accorded to those areas of the municipality or district council where there is an urgent need for development or where there is priority for control.

The housing developer requires the approval of a local authority for its development plan. A township development plan can be submitted by a government body or by a private developer for approval by a local authority such as the municipal council or district council. The township plan approval usually involves the change of use of land or land conversion such as from agricultural use to urban – housing and/or industrial – use. The plan is also submitted to the land office for approval under the National Land Code. The land office and the local authority will in turn, submit the layout and the amenities plan through the state director of land and the state secretary respectively, to be submitted to the State Executive Council for approval. Prior to tabling the plan for the State Executive Council decision, the plan is circulated to various agencies for comments. Each agency comments on the plan according to the various laws such as the National Land Code, the Environmental Quality Act, the Drainage Works Ordinance, the Forestry Act, the Local Government Act, the Street, Building and Drainage Act and the Sewerage Services Act, etc. Housing development with an area exceeding 50 hectares is further subject to Environmental Impact Assessment (EIA) requirements.

In essence, a township development plan has to conform to the policy framework of the structure plan as well as the local physical layouts of the local plan and the town and country planning guidelines prescribed by the Director-General of the Town and Country Planning Department. Besides what is required above, the township plan has also to satisfy other regulations, including:

- The Environmental Impact Assessment requirements under the Environmental Quality Act;
- The various environmental planning guidelines on drainage under the Drainage Works Ordinance;
- The forest reserve provisions under the Forestry Act;
- The public health and solid waste management provisions under the Local Government Act;
- The provisions under the Street, Building and Drainage Act; and
- Sanitary provisions under the Sewerage Services Act.

Based on the proposal submitted by the developer, the State Executive Council has three options: granting approval unconditionally, or with conditions, or refusing permission.

However, development plans that are likely to cause a significant impact on the environment can be denied planning permission. The state authority may attach conditions relating to the site and the period of operations. Indirect control over the development activities that contribute to nature conservation, pollution prevention and waste minimisation can be exercised during the development and operation of the township itself.

Strata titles for high-rise buildings

Provisions for the issuance of strata titles were already made in the National Land Code. In 1985, a newly-enacted Strata Titles Act 1985 replaced the provisions in the National Land Code. The basic objective of the Strata Titles Act 1985 is the issuance of a separate document of title known as a strata title to the individual proprietor¹⁶— in respect of his parcel in a subdivided building, and the management and maintenance of the common property for the benefit of all the parcel proprietors, by an automatic formation of what is known as a management corporation.¹⁷ The advantage of having a strata title is the freedom of transfer, charge, lease, lien and other dealings allowed by the National Land Code. In a strata title development scheme, the licensed developer sells to purchasers the individual parcels in its building of two or more storeys duly subdivided or in the course of subdivision. The states of Sabah and Sarawak have their own strata title legislation, namely the Sabah Land (Subsidiary Title) Enactment, 1972 and Sarawak Strata Titles Ordinance, 1974.

One important innovation of the Strata Titles Act, 1985 is the introduction of the concept of provisional block (sections 20 to 23). One advantage of this concept is that it allows the developer to carry out the development of the project in different stages or phases. Thus the developer, based on supply and demand factors in the market, can decide whether to proceed with the next phase or not. This will save the developer from losses or financial disaster. However, although section 10(6)(a) of the Act shows the quantum of provisional share units, dealings in the provisional block are prohibited under section 16(4).

Another innovation in the Strata Titles Act, 1985 is that the provision for subdivision must also establish the management fund (section 63). However, the management corporations for low-cost buildings come into existence only

16. See section 6 of the Strata Titles Act, 1985.

17. *Ibid*, section 39.

when strata titles have been transferred to all the parcel proprietors (section 64[1]). The original proprietor shall convene the first general meeting of the management corporation within one month of its automatic establishment, failing which a fine of RM1,000 may be imposed by the court.¹⁸

The management corporation is responsible to manage the strata scheme¹⁹ with respect to the maintenance of all common properties, the payment of quit rent and assessment, and to insure the building to its full reinstatement value in case of destruction by fire or other causes.

Conclusion

In Malaysia there is no law which requires the government to provide housing accommodation except through section 3(a) or (c) of the Land Acquisition Act, 1960. This section is sometimes used by state economic development corporations to acquire land for housing development. In the United Kingdom, for example, section 91, Part V of the Housing Act, 1957 provides that it shall be the duty of every local housing authority to consider the housing conditions and the needs of their districts with respect to the provision of further housing accommodation. Such authorities were subject to ministerial power to require periodic reviews of their housing needs and conditions, but their requirement has been expected by section 26 to the Housing Act 1980.

Under section 69 of the Housing Developers (Control and Licensing) Act, 1966, local authority may provide housing accommodation:

- (a) By the erection of houses on any land acquired or appropriated by them;
- (b) By the conversion of any buildings into houses; and
- (c) By acquiring houses.

Therefore, section 91 of the 1957 Act of the United Kingdom and section 70 of the Housing Developers (Control and Licensing) Act, 1966 place local authorities under statutory duties to carry out reviews of their housing performance and functions. They could be ordered to discharge these functions by way of a mandated order. The Town Development Act, 1952 of the United Kingdom was passed to facilitate, as its first section as amended provides: 'development, in a district... which will leave the effect and is undertaken primarily for the purpose of providing accommodation for residential purposes...'

18. *Ibid*, section 65(i).

19. *Ibid*, section 43.

In Malaysia, with the introduction of section 3(1)(b) of the Land Acquisition Act, 1960 in July 1991 any private individual or corporation may acquire any land for any purpose which is, in the opinion of the state authority, beneficial to the economic development of Malaysia. This includes the power to acquire private land for residential purposes.

We can conclude that the housing industry in Malaysia is protected both by housing legislation such as the Housing Developers Act and its regulations and the various land laws which include the National Land Code, the Strata Titles Act and other related land laws. This protection enables the housing industry in Malaysia to develop successfully. Besides providing accommodation to the public it also contributes to the economic growth of Malaysia.

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Technology for Housing: Past and Future Trends

Kenneth Yeang

This paper examines the physical and technological aspects of housing in Malaysia and discusses how housing production issues might be alleviated through technological means.

Effects of urbanisation

The provision of housing is as much a locational issue as a technological one. In Asia, the provision of housing is related directly to the high rates of migration of people from the villages and rural areas into the urban centres. These types of migration are at such extraordinary levels, that our planners and policy makers need to come up quickly with effective ways to cope with the situation. Clearly, it is this trend of rapid rural-to-urban migration shift that has significantly changed the character of Asian society and the face and the quality of its urban environment. Furthermore, this trend is envisaged to continue for the next two decades in line with the pace of rapid economic growth. It is projected that by the year 2020, at least 60-70 per cent of the Asian population will be living in towns and cities.

The immediate consequences of this will obviously be on the job market, followed by a huge demand on the physical aspects of the urban environment, such as urban infrastructure, transportation and housing provision.

What should be the government's approach towards housing provision? It is commonly recognised that the provision of adequate and affordable housing has become a crucial issue in almost all Asian cities, particularly countries with a 'house-owning democracy'. Simply stated, the reason why governments do not want to see their people, especially those who are flooding into their increasingly densely-populated cities and urban areas, get cast out into the streets is because of the potential troubles which could arise. Therefore governments generally tend to take a proactive role in the technology and process of the provision of housing.

Even without referring to other precedents in smaller and more manageable nation-states in Asia, it is recognised that the successful provision of adequate and affordable housing to meet rural-urban migration demands has to be a combined effort undertaken by both the public and the private sectors. No single sector should be assigned the entire responsibility alone, nor would one sector be able to handle the provision entirely on its own.

What is housing? Housing, simply stated, means having a roof over one's head. The extent of this 'roof', that is, the level of provision of housing, depends upon the income level of the occupants. The provision of a 'roof over one's head' is an overriding priority for the people arriving at a new urban location. For many, including those in a nation perceived to be as economically successful as Malaysia, this provision for affordable housing has become an expectation.

Technological solutions

What are the technological solutions to cope with the increasing housing demand? Some may see this situation of meeting housing demand as being resolvable through a quick technological fix. However, it must be made clear from the onset that this is not likely to be achievable or even prove to be practical.

New or advanced building technology applied to housing can certainly contribute to some extent towards alleviating the shortage, albeit at a cost. The final solution is likely to be a composite solution. It will involve a focused political agenda from the public sector to enable the volume for production to take place and for the provision of economically-viable land for housing, with a commitment to implementation by the private sector. This has to be accompanied by the appropriate technological means to produce the various housing types, which is further related to the intensity of development and the affordability level of the housing occupant.

Past experiences

What has been the situation of housing production in the past? It is a truism to state that in the production of housing, house purchasers and owners today have become both physically and commercially remote from the actual task of the production of their own homes. It is important to highlight the technological implications of this. Throughout history, people have tended to build their own dwellings and, frequently, with the vital support of others in their local community.

In earlier times, when people built their own housing, the technology of housing production was considered handiwork. Most of the traditional house-builders would acquire some basic hands-on experience on how to build a house. This experience might perhaps have been acquired since childhood through their participation as helpers in the making of homes for others in the same community. The technology and materials used were limited to what were locally available or could be imported cheaply.

The local house-builders would use materials that could be obtained close to the site such as timber and attap in Malaysia. Their construction methods would also be traditional methods, proven to be reliable and developed intuitively over hundreds of years of trial and error. For instance, it has been noted that attap was so extensively used during the Japanese occupation during the Second World War that it was in short supply after the war. As a result, corrugated iron became popular as a substitute roofing material.

During those early times, the link between the designer-cum-builder and the end-user of the dwelling-unit was very direct. During construction, with the habit of inadvertent extemporisation of construction of the building, its details and the internal spatial configuration, the early owner-cum-user-cum-builder could change the construction and built-form at will during construction. The resultant dwelling units were individual-looking buildings with customised personal features establishing a close affinity between the occupant and the dwelling unit itself.

The best examples are the traditional Malay timber houses found throughout Peninsular Malaysia. Many of these have developed sub-regional characteristics pertaining to the sub-cultures of the locality or that particular state.

Other examples of such personalised buildings emerged later in the traditional urban Malaysian terrace house or shophouse. At the turn of the 19th century, many of these terrace houses and shophouses in Malaya were built and designed by unqualified draftsmen or artisans.

Current trends

In present day conditions, the link between the contemporary house-dweller and the dwelling unit has unfortunately become remote and complicated. The myriad numbers of people involved in the production of a house or a block of flats include: the housing developer initiating the project, who is the investor acquiring control or ownership of the land; the bankers providing the bridging finance for the developer and the end financing for the house purchasers; the insurance company providing coverage for the house owners; the land office approving and issuing land titles; the lawyers preparing and formalising the sale and purchase agreements between the developers and the house purchasers; and the building authorities reviewing and giving or denying the approvals for the changes in land-use, planning and building as well as issuing certificates of fitness for occupation upon completion of construction.

Within this process there is also the architect responsible for the architectural design and the part management of the process leading to the completion of the building. Besides the architect are other consultants such as the civil and structural engineer, the mechanical and electrical engineer, the quantity surveyor, the land surveyor, the valuer, the marketing agent, the project manager, etc. Finally there is the builder, his sub-contractors and his many labourers and site personnel.

Each one in this extremely complex network of linkages has his own agenda and priorities in the whole complicated process of the production of the dwelling unit. Although there are many connecting flow-lines between the parties, the flow-lines connecting the person actually living in the house to the architect and building contractor have become virtually non-existent. Simply stated, the traditional one-to-one link between the house-producer and the house-occupier is now virtually non-existent.

In summary we find today that the entire business of the production of the house as a dwelling unit has been taken over by a number of entrepreneurs, specialists, experts, various governmental departments, and a large number of other intermediaries. There is little wonder that the present-day house purchaser sometimes feels isolated and dissatisfied with the process of the production of the dwelling unit.

Some experimental endeavours have been attempted to streamline this process through the use of 'design-and-build' contracts that put the architect and the consultant's team on the same side as the builder, rather than as adversaries, at the onset.

Building technology: Trends and types

The housing building technology that is most commonly employed in contemporary housing in Malaysia is the use of the structural reinforced-concrete frame and floor-slab (for example, using about 4-5.5 tons of steel reinforcements in a typical terrace house unit). Reinforced-concrete works are constructed using concrete poured onto conventional timber-and-plywood formwork with mild-steel reinforcements. The technology is relatively simple and can be erected with relatively unskilled labour whether by local or by imported labour such as from Indonesia.

The in-fill walls of this reinforced-concrete frame consist of conventional masonry brickwork (usually very badly laid in a slapdash manner for the internal-walls, party-walls and external-walls) subsequently covered up by plastering and paint, often to hide any mistakes or poor construction.

The dwelling unit's mechanical and electrical system consists of the traditional internal water and sewerage piping and the telephone and electrical wiring. Most of the sub-structural piling works (if required) are timber 'bakau' piling and this limits the depth of piling. For deeply-filled sites, such as in land that was previously tin mining ponds, the piling may need to be friction piles or concrete piles. The roof structure is usually treated timber-trusses (often using 'gang-nail' joints) overlaid with clay-tile roofing, sisalation and plaster-board ceilings.

These units are then served by a local infrastructural system for the entire site of a water reticulation (and storage) system, electricity mains cabling, telephone cabling, street-lighting, roads, drains and paving, gas (where provided) and sewerage lines (connected either to the city mains or to an oxidation pond or treatment plant).

This constitutes the current conventional construction technology used in housing in Malaysia. The construction process of this technology is generally slow. With large numbers of units being built in parallel and with the low skill levels of construction workers, the modicum of quality control practised by the builders becomes increasingly less as developers seek to maximise profits and in turn make increasing demands upon the vigilance of the architect to oversee quality.

Such forms of construction are used in the popular terrace house dwelling unit and for medium-rise walk-up apartments, high-rise apartments and condominiums. For other dwelling types, the reinforced-concrete frameworks and the mechanical and electrical systems become more complex depending on the complexity of design and the intensity of the development.

Because of uncertain soil conditions and constant threat of slope failures and soil subsidence, the technology of using load-bearing brickwork is seldom used, if at all.

What are the current trends in building technology in the housing industry? As the Malaysian building construction becomes more mechanised, a term commonly in use is 'systems construction', where some form of repetition (hence the term 'system' is used) occurs. These are some of the common technological systems of construction used.

System formwork

System formwork is essentially formwork that is made from some durable material (as compared to the conventional timber formwork) such as aluminium or steel or marine-ply. The formwork is standardised and re-used considerably many more times than would be the case of the conventional timber formwork.

Such system formwork is simply re-used formwork that makes the casting of concrete quicker with the installation and removal of formwork more organised. Of course, a slightly higher level of skilled labour is required but this can be quickly acquired through some training.

Using system formwork, the wall and slab can be cast separately or cast together. Currently available system formwork suppliers where the wall and slab are cast together are:

- Steel formwork: Half-tunnel - Outinord formwork
- Steel formwork: Full-tunnel - Hunnebeck formwork
- Aluminium panel formwork - Mascon formwork
- Alloy steel panel formwork - Pujol formwork
- Timber plywood on steel grid panel - Paschal modular formwork

System-formwork suppliers where the wall and slab are cast separately are:

- Steel-faced plywood on aluminium formwork backing - Aluma formwork
- Steel formwork for walls - Outinord formwork
- Aluminium panel formwork - Grace formwork
- Plywood on lightweight I-section timber formwork backing - Hunnebeck formwork
- Timber plywood on steel grid panel - Paschal modular formwork
- Timber plywood on lattice girder - Peri formwork

Pre-cast systems

Pre-casting is where some or most of the components of the building are fabricated elsewhere or within the same site and then installed as a component. This has been applied to structural-frame elements, pre-

cast wall panels with in-built beams, pre-cast concrete fascia panels, pre-cast floor-panels and floor-planks, and pre-cast staircases. A casting yard is required and this yard may be adjoining the project site (depending on availability of space and size of project) or located elsewhere. Large volumes of production make this technology more viable.

In using pre-cast systems, dimensional co-ordination is crucial, as is the provision of adequate protection from chipping and damage during transport of the pre-cast units and good site storage prior to installation. These pre-cast units have to be lifted up for installation and therefore require the use of tower or mobile cranes, which is an added cost to the process.

Tunnel-form construction

This is another form of pre-cast construction except that the pre-casting is in U-shaped tubes (similar to mini-tunnels) or tunnel-form. The constraints to the designer are that the built form configuration in the architectural design needs to be linear in layout and requires good grouting and water-sealing of joints between pre-cast components.

Prefabricated systems

This covers a wide range of different shapes and materials that are prefabricated and then assembled on site (for example, fascia cladding panels, floor-planks and columns, staircases, etc).

Composite systems

Besides the above, there are a number of other composite and unusual systems (for example, steel-panel systems, steel truss-systems, fibreglass systems, geodesic domes, etc).

The problem with many of these systems is the level of restrictions in the range of architectural design options available to the architect. Some systems also require a higher level of skilled labour, which may not be immediately available, which subjects the builder to in-house demands by the building trades and inflexibility in employment.

A balance has to be drawn between the level of technology vis-a-vis the availability of skilled manpower and labour resources, which are currently in dire shortage in Malaysia, worsened by high mobility in employment between project sites.

A number of factors besides cost determine the choice of systems and the level of technology used. One of these considerations is whether the system is 'open' or 'closed'. Essentially 'open' systems are those that enable

future changes and renovations by the occupants. Some systems enable this flexibility to a greater extent than others. 'Closed' systems are those systems in which future renovations are restricted.

For example, one particularly restrictive panel-system used in medium-rise housing construction had all its floor-to-wall joints grouted. To protect these joints, the household is not permitted to wash the unit's floors in the conventional Malaysian way of splashing water onto the floors. This is for fear of dislodging the grouting between the panels and weakening the overall building structure. Such systems therefore do not take into consideration local habits in the cleaning of houses.

Buildability also becomes an important factor. A project's buildability (that is, ease of construction) involves a number of issues that include the simplification of construction and joints, modular co-ordination, level of standardisation of components, an orderly system of construction, etc.

Another aspect that can speed up construction is modular co-ordination. This makes the interchangeability of panels and structural components as well as cladding and window/door components much easier.

Slip-form construction

Slip-form construction is frequently applied to the lift-core walls using raisable steel-shuttering. These are placed around the lift-core walls and are raised at regular intervals as the concrete-walls to the lift shaft are cast. This method enables fast construction of the lift-core shaft and a very high level of verticality control so that corrections in verticality errors can be made on a floor-by-floor basis. This method has also been applied to the external walls of skyscrapers, having made provisions for framing the openings for windows at the prescribed intervals.

This system enables 'top-down construction' where the construction of the towers for a building project can proceed ahead of the basement construction which can then be carried out subsequently or in tandem.

Load-bearing shear-walls

A popular form of system construction is the use of load-bearing shear-walls. These shear-walls are essentially 'flattened-columns' that usually go all the way from the ground level (after the pile-caps) right up to the top of the building.

However, composite systems can be used where conventional reinforced-concrete frames are used for the lower floors of the building (for example, for retail use or for ease of placement of car-parks, etc) and then

by means of transfer-beams, the construction converts into shear-walls (as flat columns) upwards for the rest of the tower.

As the wall is extended for all the floors upwards, a repeated system of formwork can be economically used.

The concrete strength used is 30-35 N/mm² for the shear-walls to achieve 12 N/mm² after 12 hours; with 25-30 N/mm² for the floor-slabs depending on slab-spans and depths.

One advantage of this method is that it minimises the column-thickness, enabling walls to be generally flat without having the 'kinks' that arise from protruding columns that come about from using conventional reinforced-concrete structural frame with bulky column sizes and thinner brick-work in-fill panels.

The major disadvantage of shear-wall construction technology is that since the wall becomes part of the structure, the internal walls cannot be randomly removed (for example, for later renovation) without affecting the structural integrity of the building.

The structural system becomes 'closed' with regard to the flexibility for future renovation options. However at the design stage, certain walls may certainly be pre-designated to be later hacked away (if need be) for, say, future door-openings. In instances where the entire shear-wall is required to be totally removed at a later date, then some form of structural stiffening, corrections and transferring of structural forces might have to be done to transfer the vertical load to the opening periphery.

The savings in cost using shear-walls arise because, instead of using conventional steel reinforcements for the columns, these structural walls use welded-steel mesh and pre-fabricated reinforcement.

The benefits from using load-bearing shear-wall design are:

- Less reinforcements than conventional reinforced-concrete frame construction;
- Minimisation of human resources (less manpower needed);
- Eliminate brick-work and plastering as the walls are cast in situ and are already generally smooth;
- Faster construction;
- Better quality construction (more accurate dimensioning, better wall and slab finishes, better verticality);
- Better cash-flow (the architect can certify stage completion of reinforced-concrete framework and plastering in one certificate);
- Easier project management;
- Lower formwork costs;
- High re-use value of formwork; and
- Reduced floor-to-floor heights (say, 2.74m instead of 3.05m, resulting in cost savings).

Ready-mixed concrete

A technological convenience for builders is that instead of the conventional site mixing of concrete by a batching plant with a concrete sump, a common practice now is to use 'ready-mixed' concrete. This is concrete that is mixed elsewhere and then delivered to the site by a regular convoy of trucks with rotating containers. This saves space on site, especially in urban sites. The concrete can also be pumped up to the upper levels of the building.

Pre-cut reinforcements

Another technology used to systematise conventional reinforced-concrete frame structural and shear-wall construction is to use factory-manufactured and pre-cut-to-size steel-reinforcements. These can also be pre-fabricated or pre-welded where there is considerable repetition, and as a consequence increases the speed of construction.

Composite 'open' and 'closed' systems

The approach generally preferred by the Singapore Housing and Development Board is a composite solution where the building's main structural frame is an 'open' system (that is, using conventional cast in place reinforced-concrete structural frame), with pre-cast staircase units and pre-cast external-wall cladding and cast in situ floors or, occasionally, pre-cast floor-planks and conventional brick-work or concrete-blockwork for the internal in-fill wall panels.

Use of innovative building technologies

An aspect that can restrict the use of innovative building technologies is the current building by-laws which stipulates the level of fire-rating by the fire authorities of certain building elements (for example, the requirement for a 9-inch party-wall between terrace-house units) which can be deemed to be excessive.

Another aspect to consider is timing. If the intention is to use non-conventional construction systems, then the anticipated consequences of this form of construction must be taken into account from the onset. Very often the architect might, upon instructions from the owner, obtain the usual planning and building approvals from the relevant authorities with drawings based on conventional systems. In instances when a decision is made to use other building systems, a re-submission to the approving authorities is needed before construction can commence. This results in delays in the commencement of the project, which can have financial consequences to the housing

developer. Essentially the decision to use non-conventional building systems should be made as early as possible and preferably before the preparation of drawings for building approval by the architect.

Looking at the region as a whole, what might then be the implications of regional development of housing technology? It is likely that regional co-operation can contribute towards finding innovative solutions through research and development on technological products and technological processes, for example, in the methods of assembly, building systems and construction management. However, to date such efforts have not been forthcoming. Efforts should be directed towards such endeavours with appropriate funding for research and development.

The economical use of new and advanced housing technologies also depends upon volume to make them financially viable. Therefore, one form of regional co-operation is to standardise building by-law requirements and local authorities' planning and layout requirements to enable cross-border developments to take place using the same housing technology. Doing so would result in creating the volume of production needed to make the use of new technologies economically viable.

The concept of passive low-energy housing becomes a crucial proposition with energy costs continuing to increase. Passive low-energy houses are essentially dependent on the use of the techniques of bio-climatic design. Such techniques are already well known and it is important that architects and planners today re-examine these principles (originally developed during the 1960s by the Ogyay brothers in the United States) and advance these techniques using contemporary materials and technologies such as solar collectors, photovoltaics, etc.

Elsewhere the use of photovoltaics and solar collectors is increasing in importance - witness the US President's mandate for the 1,000 solar-roofs to be built in the US in 1997. Currently the use of photovoltaics will likely increase as the costs of production decrease and as new forms of production of photovoltaics are being developed.

In addition to the use of solar energy, research and development efforts are being directed by some countries such as Britain and Germany towards the use of natural ventilation of internal spaces for the occupant's comfort through the lowering of ambient temperatures in tropical zones and the control of humidity in offices and in housing.

Some research is also being done by architects in some schools of architecture in the United States on the 'super-cool' house using passive low-energy design and ambient energy sources.

The type of building technology to be used in housing is also related to the house type or the 'housing typology' and to planning layouts.

The range of housing types in Malaysia and their density are as follows:

Type	Density
Detached houses	3-4 units/acre
Semi-detached houses	5-6 units/acre
Terrace houses with large frontages	10-12 units/acre
Terrace houses with medium frontages	12-14 units/acre
Terrace houses with narrow frontages	18-20 units/acre
Four-storey walk-up apartments	18-20 units/acre
Five-storey walk-up apartments	20-60 units/acre
Ten-storey low-cost apartments and above	90+ units/acre
Cluster-houses (low-rise)	16-40 units/acre
Cluster-houses (medium-rise)	18-30 units/acre
Composites of the above	varies
Other optional layouts	varies

The above densities depend on the terrain, the configuration of the site (for example, the more regular the configuration, the higher the density), the road widths and the open-space provision.

Conventional construction technology is most commonly used for the first eight types of housing.

Achieving cost reductions

Can cost reduction be achieved through technology enhancement in the housing industry? Yes, this can be achieved provided the volume of units to be built is in sufficient numbers of 1,000 units and above to make the technology viable and to enable the initial capital costs to be spread over a large number of dwelling units.

There is a belief that the present building technology and the quality of the built unit (and with it comes most of the architecture), is concentrated on maximising the housing developer's profits based on locally available labour, materials and technology. Decisions are made by housing developers almost entirely to minimise costs, enhance profits and achieve the quickest returns.

Currently the general rule-of-thumb of housing developers appears to be the well-known 'one-third/one-third/one-third' rule. Simply stated, usually before embarking on a project, the housing developer will assess his feasibility study and the projected sales price per dwelling unit. In his mind, one-third of the sales price is usually allocated for the total construction costs including charges and fees, etc; one-third is allocated for the land costs per unit; and the final one-third of the sales price represents his profit.

If most housing developers today still insist upon expecting this level of profit (that is, a 33 per cent return-on-investment), then the housing market will remain extensively a 'maximum-profit-driven' and 'lowest-costs-driven' industry.

As mentioned earlier, the lowering of costs of housing through technological means and industrial techniques can only be achieved through large volume production and standardisation of types, components and processes. However, while economies of scales might contribute to lowering some of the costs of housing, innovative technologies would more often incur higher initial costs. However, cost savings would be derived later through better quality control and a reduction in the need for follow-up rectification of bad or poor workmanship, which is common in conventional construction.

From the above discussion it is clear that of the one-third of the building costs, a certain portion goes to infrastructure costs and to other developmental costs such as professional fees, etc. Therefore the major cost savings to be derived, if one is seeking to lower the cost of housing to make it affordable to the lower and mid-lower sector, is through the provision of cheap land (for example, by the government) and for the housing developers to have lower profit expectations.

Technological improvements and innovation in housing can be carried out at two levels simultaneously by improving the product itself and by improving the processes through which it is made.

On one level, the architect and the engineer might add refinements and complexity to their product, while on the other level, they can try to shorten time and lower costs in the production processes.

Future trends

What might be the future trends? In the future, the technology will likely depend more on the electronic and telecommunication multimedia systems than on the physical materials that builders currently use for the building's enclosure.

The Multimedia Super Corridor in Malaysia holds the greatest promise for a wired and connected future in which the flagship applications will, within several years hence, significantly affect housing design and internal space use and layout, enabling the creation of the smart house and interactive functions at home for business, retail, government-related transactions, recreation and education.

The brain of the house of the future will be an automation system. It will link together every electronic function at the housing estate from turning off the lights and lawn-sprinklers to heating meals or the swimming

pool or switching on the air-conditioning before the owner arrives home. The gadgets in the smart home will also link security, lighting, entertainment and communications.

Smart home features were virtually unheard of two or three years ago. However, in the US today, for example, 2.4 per cent of new houses have a lighting-control system, 8.8 per cent have a system that pipes music into every room, 18 per cent have programmable thermostats, and 3.7 per cent have home theatres.

A further aspect of housing design that must finally be addressed is the impact of housing development upon the natural environment. There has to be a responsible concern for a sustainable future arising from the clearing of land for housing construction and the use of materials and energy resources as well as the huge amounts of waste that are emitted from these developments. The energy embodiment of the materials in housing must be considered in its design and the waste discharge (solid, household and liquid) must be considered in terms of recycling or return to the environment with low-environmental impact. Furthermore the materials used in the housing construction must be selected for their low-environmental impact and considerations given to the way that they are fixed in the building. This method of fixing must facilitate their future recycling or re-use.

In addition to this, it is envisaged that greater attention will be paid by architects and planners in future to the conservation of non-renewable energy, in which case the need to plan layouts and built configurations along passive low-energy designs shall likely become the norm.

This discussion has highlighted the current and likely trends in construction technology in housing in Malaysia.

Labour in the Local Housing Industry

Suresh Narayanan and Lai Yew Wah

Introduction

This chapter begins with an overview of the construction sector. This is followed by a review of the dimensions of labour supply and demand in the local housing sector. Supply dimension issues discussed include labour recruitment systems, immigrant labour, compliance with labour laws and safety standards, and the occupational and skill profile. In terms of labour demand, issues discussed include trends and categories of demand and estimates of the extent of skill shortages. Factors affecting the development of skills in the industry are highlighted next. The discussion then moves on to cover the impact of the labour shortage on wages, cost and quality of housing, housing design, completion time and the operating capacity of the sector. Our discussion closes by highlighting the major policy initiatives necessary to address human resource challenges.

Overview of construction sector

The construction sector, which comprises residential, non-residential and civil engineering construction, and special trade works, has maintained a steady

Table 1: Gross domestic product by major sectors, 1980-2000

Sectors	RM million (in 1978 prices)					Average annual growth rate (%)			
	1980	1985	1990	1995	2000	4MP (1981-85)	5MP (1986-90)	6MP (1991-95)	7MP (1996-2000)
Agriculture, forestry, livestock and fishing	10,189	11,854	14,827	16,406	18,460	3.1	4.6	2.0	2.4
Mining and quarrying	4,487	5,958	7,757	8938	10,023	5.8	5.4	2.9	2.3
Manufacturing	8,932	11,263	21,340	39,825	66,251	4.7	13.6	13.3	10.7
Construction	2,066	2,738	2,832	5,277	8,560	5.8	0.6	13.3	10.2
Non-government services	14,465	18,323	24,126	38,185	58,987	4.8	5.7	9.6	9.1
Government services	4,563	6,957	8,447	11,683	14,354	8.8	4.0	6.7	4.2
GDP at purchasers' value	44,702	57,093	79,329	120,214	176,635	5.0	6.8	8.7	8.0

Source: Fifth, Sixth and Seventh Malaysia Plans**Note:** 4MP, 5MP, 6MP and 7 MP refer to the Fourth, Fifth, Sixth and Seventh Malaysia Plans respectively

Table 2: Contribution of construction and housing to GDP and employment, 1985-95

Year	Construction sector		Housing subsector	
	Share in GDP (%)	Share in employment (%)	Share in GDP ¹ (%)	Share in employment ² (%)
1985	5.0	7.6	1.08	2.23
1986	4.1	6.7	0.89	1.93
1987	3.4	6.0	0.83	1.89
1988	3.2	5.5	0.78	1.52
1989	3.3	5.9	0.72	1.59
1990	3.6	6.3	0.79	1.72
1991	3.7	6.7	0.82	1.81
1992	3.9	7.1	0.85	1.97
1993	4.0	7.4	0.85	2.00
1994	4.2	7.8	na	na
1995	4.4	8.1	na	na
1985-93 average	3.80	6.58	0.85	1.85

Source: Ministry of Finance, Economic Reports; and Annual Surveys of Construction Industries (various issues)

- Notes:**
1. Estimated by multiplying share of construction sector in GDP (Economic Reports) with the ratio of residential construction output to total construction output (Annual Surveys).
 2. Estimated by multiplying share of construction sector in total employment (Economic Reports) with the ratio of residential construction employment to total construction employment (Annual Surveys).

growth. Its growth parallels the economic climate, experiencing rapid expansion when the economy is buoyant and a sharp deceleration when the economy is on the downside. As a consequence, its contribution to the gross domestic product (GDP) has varied throughout 1985-95, ranging from five per cent in 1985, falling to a low of 3.2 per cent in 1988 and rising to 4.4 per cent by 1995 (Tables 1 and 2). In terms of employment, although the annual rate of growth in the 1986-90 period was negative (due to the adverse impact of the recession years of the mid-1980s), its contribution to total employment has been steadily rising (see Tables 2 and 3). In fact, during the pre and post-recession periods

Table 3: Employment by major sectors, 1980-2000

	Employment (in thousands)					Average annual growth rate (%)			
	1980	1985	1990	1995	2000	4MP (1981-1985)	5MP (1986-1990)	6MP (1991-1995)	7MP (1996-2000)
Agriculture, forestry, livestock and fishing	1,910.9	1,759.6	1,738.0	1,428.7	1,187.7	-1.6	-0.2	-3.8	-3.6
Mining and quarrying	80.1	44.4	37.0	40.7	44.5	-11.1	-3.6	1.9	1.8
Manufacturing	755.1	855.4	1,333.0	2,051.6	2,616.3	2.5	9.3	9.0	5.0
Construction	270.2	429.4	424.0	659.4	845.4	9.7	-0.2	9.2	5.1
Non-government services	1,142.4	1,716.3	2,303.8	2,862.8	3,477.6	8.5	6.1	4.4	4.0
Government services	658.2	819.5	850.2	872.2	894.7	4.5	0.7	0.5	0.5
Total employment	4,816.9	5,624.6	6,686.0	7,915.4	9,066.2	3.1	3.5	3.4	2.7

Source: Malaysia, Fifth, Sixth and Seventh Malaysia Plans
Note: 4MP, 5MP, 6MP and 7 MP refer to the Fourth, Fifth, Sixth and Seventh Malaysia Plans respectively

(that is, the Fourth and Sixth Malaysia Plan periods), this sector experienced the strongest growth in employment in the whole economy. By the year 2000, it is estimated that 9.3 per cent of total employment in the economy will be in the construction sector.

In terms of the gross value of output, residential construction (used here interchangeably with housing) contributed an average of 22.4 per cent to the construction sector between 1983 to 1993 (calculated from Tables 9 and 10). Using this ratio, the contribution of housing to GDP is estimated to have averaged about 0.85 per cent between 1985 to 1993 (Table 2). Similarly, housing contributed about 28.3 per cent of the total employment in the construction sector (calculated from Tables 9 and 10). The average contribution of housing to total employment in the economy between 1985-93 was about 1.9 per cent (Table 2).

The above estimates of employment are based on published figures in the *Annual Survey of the Construction Industries*¹ which only reports legal immigrant labour. These figures thus grossly underestimate foreign labour. It is inconceivable, for instance, that in 1992, only 17.5 per cent of the workforce in the construction sector were foreign. Despite the underestimation, the capacity of the construction sector to generate employment is impressive. During the 1981-85 period, while output in the sector grew by only 5.8 per cent a year, employment grew by 9.7 per cent (Tables 1 and 3). In comparison, manufacturing output in the same period grew by 4.7 per cent a year, while its employment grew by only 2.5 per cent a year. Over the 1991-95 period, the rate of employment growth in these two sectors appears to have equalised. Output in both these sectors grew by 13.3 per cent a year respectively, while employment grew by 9.0 per cent in manufacturing and by 9.2 per cent in construction. However, this hides the fact that construction employment was being increasingly understated because the number of illegal immigrants working here was rising.

The annual rate of employment growth in construction between 1981 and 1995 (except for 1986-90), exceeded the average growth rate of total employment (Table 3). Such a rapid growth has resulted in an acute shortage of labour, in general, and of skilled workers in the finishing trades, in particular.

1. From 1975 to 1991, the principal statistics of the surveys were included in the *Industrial Surveys*. After 1991, a separate *Annual Survey of Construction Industries* was published. In the rest of this chapter, we refer to both publications as Annual Surveys. It should also be noted that the employment data refer to full-time, paid employees.

Table 4: Number of direct and contract workers¹ in construction and housing

	Direct workers	Contract workers	Total	Percentage of contract workers
Construction				
1983	111,755	186,095	297,850	62.5
1986	98,648	142,607	241,255	59.1
1988	78,894	114,793	193,687	59.3
1990	111,448	183,854	295,302	62.3
1992	142,408	270,679	413,087	65.5
1993	152,216	286,105	438,321	65.3
Housing				
1992 ²	27,426	84,538	111,964	75.5

Source: *Annual Surveys of the Construction Industries* (various issues)

- Notes:**
1. Full-time, paid employees only.
 2. Data unavailable for other years.

The supply dimension

Labour recruitment

The housing industry, as part of the larger construction sector, relies on two systems to recruit labour—direct employment by the contractor or developer, and employment of contract labour either directly by the main employer or through a labour intermediary (*kepala*). In the latter case, the intermediary is responsible for recruiting the workers, paying them and otherwise providing for their needs. The employment of contract workers through an intermediary is more popular and the workers are linked to the main project through the intermediary.

The *Annual Surveys* are the primary source of data on employment in this sector. In 1992,² contract labour in the housing subsector (residential construction work)³ accounted for nearly 76 per cent of the total workforce,

2. This is the only year for which employment data in the industry is broken into residential and non-residential categories. For all other years, the data is for construction sector as a whole.
3. The figures refer to workers employed in general residential construction, as opposed to those involved in special trades (like electrical, metal, wood, painting and tiling work). The latter are presumably used in both housing and non-housing construction. However, no information is provided on how to allocate those involved in special trades into the residential and non-residential categories.

a pattern also obvious for the construction sector as a whole (Table 4). Contract workers accounted for over 60 per cent of the workforce in most years, for the sector as a whole, between 1983-1993.⁴ Since it is likely that the number of contract workers has been under-counted, not only because of their mobility but also because of a large immigrant component, the actual percentage is probably closer to 80 or 85 per cent.⁵

The widespread use of contract labour is not difficult to understand, given the nature of the construction sector. Since much of the labour demand is project-related and ceases on project completion, the proportion of fixed employment is low. The main contractor maintains a small core of managerial, supervisory and administrative personnel, preferring to employ the bulk of his project-related workforce through subcontractors.⁶ The principal employers and contractors prefer contractual recruitment because this allows them to maintain flexibility in the use of labour – ensuring a ready supply in times of high labour demand and the ability to release workers without much penalty during demand downswings. It also relieves principal employers of the responsibility of safeguarding the workers' welfare since that comes under the purview of contractors.

Direct vs contract employees

The nature of work carried out by direct and contract workers differs. Generally, in the housing subsector, contract workers are not employed

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4. The total workforce data in the construction sector shown in the Table 4, drawn from the *Annual Surveys*, differ from (are lower than) the totals presented in documents such as the *Malaysia Plans* or the *Economic Reports*. For instance, the workforce in construction in 1992 was put at 507,000 in the *Economic Report of 1996/97* relative to the 413,100 reported in Table 4. The shortfall in the latter figure may be due to the fact that the *Annual Surveys* focused primarily on larger establishments which, nevertheless, accounted for a very high proportion of the total value of work done in the construction sector. Similarly, for the years 1983-90, only those reporting work valued at RM100,000 or above were *fully* covered. In 1991, all establishments were surveyed but a simpler questionnaire was canvassed for those reporting work valued below RM100,000. It is not clear how the Economic Planning Unit makes adjustments to the survey data compiled by the Department of Statistics. Another reason for the discrepancy is that the data in our table refer only to full-time, paid employees.
 5. A Universiti Teknologi Malaysia study on the construction industry in the early 1980s suggested that between 60-70 per cent of workers were either working for contractors or were employed on a contract basis. See UTM (1982).
 6. Navamukundan, A, (1992), *Contract Labour in Plantations, Forestry and Construction Sectors in Malaysia*, p57.

in managerial, professional, technical, supervisory or general positions. Contract workers are all directly involved in construction activities (and are hereafter referred to as 'building workers').⁷ In contrast, directly-employed workers can be found in all occupational categories, with slightly over one-quarter of them involved in managerial, professional, technical, supervisory or general duties (Table 5).

However, taking into account building workers only, proportionately more skilled and semi-skilled workers are employed through contract than directly in the housing industry (Table 6). This reflects the fact that skilled workers are required on a task basis and it is therefore more economical to employ them contractually. Even so, data for the construction sector as a whole suggests that the differences in the skill composition of direct and contract building workers are negligible for the 1983-92 period⁸ (Table 7).

Sources of labour supply

The housing subsector, like the construction sector as a whole, draws on two sources of labour supply – domestic and foreign (or immigrant) labour. Although the former has been the major source of labour, the foreign component has risen rapidly in recent years.

Domestic labour

Domestic labour continues to be the primary source of supply although its numbers are decreasing rapidly with competitive activities offering opportunities for higher-status and more congenial work, if not more earnings. In 1983, official statistics indicated there were about 11 local workers to every immigrant in the construction workforce. By 1992, this figure was reduced to only six residents to every immigrant (Table 8). Bearing in mind that immigrants are under-enumerated in official statistics, the decline in domestic labour is likely to be even more significant. Expectations are that local workers will be in the minority by the year 2000 (see discussion below). The gap resulting from the declining interest of local workers in construction has been filled by a rapidly growing immigrant component.

7. Since 1992, foreign contract workers have been used at managerial and technical levels.

8. Foreign workers are largely unskilled and semi-skilled. Since they are over-represented in contract work but tend to be under-enumerated due to their illegal status, the general skill level of the contract workforce may be exaggerated in official statistics.

Table 5: Direct and contract workers by occupational categories¹ in housing, 1992

Categories	Direct workers		Contract workers		Total	
	No	%	No	%	No	%
Managerial/Professional	2,069	7.5	-	-	2,069	1.8
Technical and supervisory	1,958	7.1	-	-	1,958	1.7
Clerical	2,526	9.2	-	-	2,526	2.3
General	1,236	4.5	-	-	1,236	1.1
Skilled	4,749	17.3	23,808	28.2	28,557	25.5
Semi-skilled	6,747	24.6	33,000	39.0	39,747	35.5
Unskilled	8,141	29.7	27,730	32.8	35,871	32.1
Total	27,426	100.0	84,538	100.0	111,964	100.0

Source: *Annual Surveys of the Construction Industries* (various issues)

Note: 1. Full-time, paid employees only.

Table 6: Number of direct and contract workers¹, by skill composition, in housing, 1992

Skill level	Direct workers		Contract workers	
	No	%	No	%
Skilled	4,749	24.2	23,808	28.1
Semi-skilled	6,747	34.4	33,000	39.1
Unskilled	8,141	41.5	27,730	32.8
Total	19,637	100.0	84,538	100.0

Source: *Annual Surveys of the Construction Industries* (various issues)

Note: 1. Full-time, paid employees only.

Table 7: Skill composition of workers¹ in construction sector

Category	1983		1986		1988		1990		1992	
	Direct workers	Contract workers	Direct workers	Contract workers	Direct workers	Contract workers	Direct workers	Contract workers	Direct workers	Contract workers
Skilled (%)	28.3	26.7	28.1	27.1	27.5	28.1	27.8	28.0	28.3	28.6
Semi-skilled (%)	31.2	34.3	32.9	32.5	33.3	34.9	33.9	35.0	34.1	36.8
Unskilled (%)	40.5	39.0	39.1	40.3	39.2	37.1	38.3	37.0	37.6	34.6
Total (no)	76,501	186,095	65,618	142,607	52,980	114,793	76,560	183,850	98,803	270,679

Source: Annual Surveys of the Construction Industries (various issues)

Note: 1. Full-time, paid employees only.

Table 8: Number of direct and contract immigrant workers¹ in construction

	1983	1986	1988	1990	1992	Growth 1983-92 (%)
Contract workers						
Immigrant	15,355	14,523	8,929	20,955	55,151	15.3
Total	186,095	142,607	114,793	183,850	270,679	4.31
% Immigrant	8.3	10.2	7.8	11.4	20.4	-
Direct workers						
Immigrant	11,766	8,033	6,686	8,908	17,010	4.2
Total	111,755	98,648	78,894	111,448	142,408	2.7
% Immigrant	10.5	8.1	8.5	8.0	11.9	-
Total						
Immigrant	27,121	22,556	15,615	29,863	72,161	11.5
All workers	297,850	241,255	193,687	295,302	413,087	3.7
% Immigrant	9.1	9.3	8.1	10.0	17.5	-

Source: *Annual Surveys of the Construction Industries* (various issues)

Note: 1. Full-time, paid employees only.

Immigrant labour

The use of illegal foreign labour in construction began around 1982 when the construction boom of the late 1970s and early 1980s caused difficulties in attracting local labour at the prevailing wage rates.⁹ The fact that working conditions were characterised by hardship and impermanence did not help. Matters worsened with the reluctance of employers to make upward revisions in wages and terms of employment.¹⁰

9. Gill, MS (1988), 'The Features of Labour Utilisation and the Problems of Migrant and Immigrant Workers in the Construction Industry', p228.

10. Narayanan, Suresh, (1992), 'The Impact of International Migration on Malaysia: The Positive and Negative Aspects', p143.

Illegal immigrants from Indonesia proved to be an attractive choice. Not only were they easily available,¹¹ but their close affinities to the predominant ethnic group (Malays) meant that they were less likely to be detected. Furthermore, drawn largely from an uneducated and poor group that often lacked previous experience in construction, they were willing to work long hours for meagre wages and bare working conditions.¹²

Although the supply situation of local workers turned into a surplus with the onset of the recession that affected the industry from 1983-86, the reliance on cheaper immigrant workers continued.¹³ By 1987, the Construction Workers' Union (CWU) estimated that 60 per cent of the 300,000-350,000 workers in the construction industry were immigrants.¹⁴ Since the prevailing level of remuneration was low, even for skilled workers, many Malaysian workers preferred to emigrate to Singapore, Japan and Taiwan instead. In 1993, it was estimated that 150,000 Malaysians were working abroad – most of them illegally – in the three countries. It is believed a sizeable number of them were construction workers.¹⁵

The *Annual Survey* statistics indicate that immigrant labour constituted 21 per cent of the 111,964 full-time, paid workers in general residential construction in 1992. Even taking official figures at face value, the immigrant component has been rising rapidly. Between 1983-92, the proportion of immigrants among full-time paid workers in the construction sector doubled from nine per cent to 18 per cent (Table 8).

However, immigrant labour is underestimated in the *Annual Surveys* due to several factors. First, many contractors, primarily employers of immigrant labour, could not be located during the survey period since they moved from site to site. Second, there was widespread use of illegal immigrants until the end of 1991, when a decision to deport them was overturned to allow employers to instead register them before June 30,

11. Many were already being used through contractors, despite their illegal status, in clearing works associated with government-sponsored Felda settlements. See Azizah (1995:3-4).

12. Gill (1988); Azizah Kassim (1988), 'Immigrant Workers and the Informal Sector in West Malaysia: A Case Study of the Indonesians in Kuala Lumpur'; Navamukundan (1992).

13. Gill (1988) p229; Azizah (1988) p241.

14. Gill (1988) p227.

15. Abdul Rashid Abdul Aziz (1996), 'Foreign Workers in the Construction Industry', p11.

1992.¹⁶ This meant that at least until 1992, there was a greater tendency to understate the immigrant component of the workforce since many of them were clandestine workers.¹⁷ Third, due to the nature of construction work, the size of the workforce varied at different times in a year. Thus, obtaining accurate figures of the size of the workforce, with a sizeable foreign component, was made much more difficult.

The Seventh Malaysia Plan estimated that the proportion of immigrant workers in the construction sector was 7.9 per cent of the total in 1990 and 14 per cent in 1995, but these figures are on the low side. Our own estimates (see Table 9), which assumed that for every immigrant worker reported in the *Annual Survey*, there was another worker not reported, suggest that the proportion of immigrant labour in the construction sector was 18 per cent in 1990 and 29 per cent in 1992. In the housing subsector, the estimates are 18 per cent in 1990 and 34 per cent in 1992 (Table 10).

Based on the adjusted *Annual Survey* data, the annual growth rate of the proportion of immigrant labour in total construction employment between 1983 to 1992 was 6.7 per cent (computed from Table 9). Using this growth rate, the proportion of immigrant labour in total employment in the construction sector is projected to be 36 per cent in 1995, 41 per cent in 1997 and 50 per cent by the year 2000. Similarly, in the housing subsector, based on an annual growth rate of 6.94 per cent of the immigrant component between 1983 to 1992 (Table 10), the ratio of immigrant labour to total employment would be 42 per cent in 1995, 48 per cent in 1997 and 58 per cent in the year 2000. Interestingly, the 1995 estimate for the proportion of immigrant labour in total employment in the construction sector matches estimates from other sources which cite a figure of between 30 and 40 per cent.¹⁸

Considering that the proportion of immigrant labour to total employment in the construction sector and the housing subsector has been growing at a significantly higher rate in recent years, our estimates, based on the average growth rates between 1983-92, are obviously on the conservative side. Nevertheless, these estimates give an idea of the extent of the dependence of the construction sector on immigrant labour.

16. Pillai, P (1992), *People on the Move: An Overview of Recent Immigration and Emigration*, p31.

17. Even after this date, the high cost of registering workers to legalise them, the levy payments involved, the long bureaucratic delays in obtaining legal workers and poor enforcement, make illegal workers an attractive choice.

18. Edwards, Chris (1997), 'Foreign Labour in Malaysian Development: A Strategic Shift', p18.

Table 9: Wages and employment¹ in construction sector, 1983-93

Year	Output (RM million)	No of Malaysian workers	No of non- Malaysian workers ²	Non- Malaysian workers/Total employment	K/L Ratio ³ (RM/ worker)	Wages and salaries (RM million)	Wages/ Total cost of input ⁴
1983	9,108.8	279,173	54,478	0.163	4,551	2,061.9	0.273
1984	9,702.1	na	na	na	na	2,057.2	na
1985	9,648.1	264,553	59,024	0.182	5,642	2,068.5	0.255
1986	8,026.3	227,417	45,510	0.167	5,592	1,763.4	0.262
1987	5,915.0	179,521	32,222	0.152	6,301	1,330.8	0.268
1988	6,187.1	185,800	31,552	0.145	5,400	1,370.5	0.260
1989	8,288.6	226,398	48,166	0.175	5,047	1,833.0	0.257
1990	11,938.9	275,324	60,446	0.180	6,102	2,560.7	0.253
1991	15,573.5	310,907	103,682	0.250	5,926	3,379.4	0.257
1992	19,634.8	352,031	146,508	0.294	10,511	4,401.9	0.265
1993	24,290.4	na	na	na	na	5,191.4	0.257

Source: *Annual Surveys of the Construction Industries* (various issues)

- Notes:**
1. Refers to total paid employment.
 2. Adjusted by assuming that for every non-Malaysian worker reported in the Annual Surveys, there will be one unreported foreign worker.
 3. Capital-Labour ratio which is proxied by ratio of value of fixed assets to employment.
 4. Total cost of input includes wages and salaries.

In direct contrast to the low estimates from official documents, industry contacts estimated that the proportion of immigrant workers was as high as 80 per cent in 1995. However, they are probably referring to building workers on specific work-sites they are familiar with.

Not surprisingly, immigrant workers predominate among those involved in contract work, relative to those who are in direct employment. In 1992, *Annual Survey* statistics suggest that nearly 22 per cent of full-time paid contract workers in residential construction were immigrants compared to only 16 per cent of full-time paid direct workers. For the industry as a whole, this pattern continues to prevail with the immigrant share of contract workers increasing from eight per cent to 20 per cent between 1983-92, whereas their

Table 10: Wages and employment¹ in housing subsector, 1983-93

Year	Output (RM million)	No of Malaysian workers	No of non- Malaysian workers ²	Non- Malaysian workers/Total employment	K/L Ratio ³ (RM/ worker)	Wages and salaries (RM million)	Wages/ Total cost of input ⁴
1983	2,088.1	80,618	18,438	0.186	3,054	550.6	0.309
1984	2,304.2	na	na	na	na	586.7	na
1985	2,081.7	77,049	17,766	0.187	2,943	580.4	0.323
1986	1,739.9	62,581	15,916	0.203	3,546	472.4	0.314
1987	1,433.9	55,034	11,490	0.173	4,933	381.4	0.309
1988	1,505.4	51,428	8,514	0.142	4,123	362.7	0.282
1989	1,812.4	63,991	10,090	0.136	3,177	469.3	0.290
1990	2,632.2	75,015	16,780	0.183	3,411	682.9	0.296
1991	3,459.8	79,322	32,424	0.290	4,165	895.4	0.295
1992	4,270.1	91,380	47,172	0.341	3,371	1,131.3	0.296
1993	5,135.1	na	na	na	na	1,363.7	0.305

Source: *Annual Surveys of the Construction Industries* (various issues)

- Notes:**
1. Refers to total paid employment.
 2. Adjusted by assuming that for every non-Malaysian worker reported in the Annual Surveys, there will be one unreported foreign worker.
 3. Proxied by ratio of value of fixed assets to employment
 4. Total cost of input includes wages and salaries.

share in direct employment remained virtually unchanged during the period (Table 8). The rate of growth of immigrants in contract employment was more than thrice their growth in direct employment during this period.

It is easy to understand why immigrants predominate in the contract workforce. Since many of the immigrants initially came in as illegal workers, it was difficult to take them through the legal formalities of formal employment. In contrast, contractors who tend to move from site to site were more logical employers because their mobility reduced the chances of their illegal workers being discovered. The informal nature of the employment arrangements with their workers also made it easier for them to escape detection. While providing employment and protection from the law to the immigrants, the

contractor often does not comply with labour laws and standards so as to reduce the costs of maintaining his large workforce (see next section).

Statistics for work passes issued to immigrant workers in Peninsular Malaysia, between July 1992 to December 1995, show that the plantation and construction sectors attracted the highest number of foreign workers – 31 per cent each. Indonesians and Bangladeshis predominated in the construction sector, accounting for 71 per cent and 20 per cent, respectively. Construction and plantation work were also the most popular choices among Indonesian workers. About 34 per cent of them opted for the former sector and 37 per cent for the latter.¹⁹

Statutory benefits

Malaysian labour laws do not distinguish between direct workers and contract workers. Similarly, foreign workers should be entitled to all benefits accruing to domestic workers, including the right to trade union membership (if unions exist). However, foreign workers cannot hold office in a trade union. In short, all workers – whether foreign or local, whether employed directly or through contract – are entitled to the same rights and benefits. Appendix 2 lists the major rights and benefits assured to a worker under existing labour laws. These include the right to medical attention at the employers' expense, paid sick and maternity leave, one day rest per week, overtime payment when work exceeds the normal eight-hour work day, fixed paid gazetted public holidays, annual leave, termination and lay-off benefits, protection against employment injury or permanent disability, sickness, death and old age benefits, and employment injury benefits. Despite these stipulations, wide variations are practised.

A recent study by Lee and Sivananthiran (1995) documents in some detail the variations between theory and practice. Their study looked at workers in the plantation, construction and sawmilling sectors. The discussion here relies on their findings.

The main (principal) employers in these three sectors use both their own workers who are employed directly as well as contract workers obtained through contractors. In the case of their own workers, the employers demonstrated a high degree of compliance with labour laws by providing most, if not all, of the benefits required by law. Benefits not usually provided were bonus and incentive allowances. Also frequently omitted were overtime, pay for work on rest days, and

19. Azizah Kassim (1996), 'An Overview of Migrant Workers in Malaysia', Table 4.

Table 11: Employers' perceptions on benefits provided to contract workers in plantations, construction and sawmilling, 1993/94¹

	Domestic contract workers		Foreign contract workers	
	No	Don't know	No	Don't know
Medical	50	40	38	33
Paid sick leave	50	40	43	33
Overtime pay	45	48	38	28
Paid public holidays	48	40	45	33
Paid annual leave	50	40	55	33
EPF	48	40	63	28
Socso	45	40	58	28
Cost of living	48	48	58	33
Annual bonus	50	48	53	33
Incentive allowance	48	50	55	33
Productivity allowance	48	48	55	33
Annual wage increment	45	48	55	33
Transport allowance	50	48	55	33
Meal allowance	52	48	58	33

Source: Lee KH and A Sivananthiran (1995), *Contract Labour in Plantations, Construction and Sawmilling in Malaysia*, Tables 5.11 and 5.16.

Note: 1. Main employers were responding to whether their contractors were providing the listed benefits. Sample-size: 40 main employers

termination/lay-off benefits.²⁰ However, for contract labour, whether foreign or local, the main employers passed over all responsibility for compliance to the contractor. While surrendering these responsibilities to the contractors, the main employers were aware that the contract workers were not given similar benefits.

Table 11 shows the responses of 40 main employers in the three sectors with respect to their awareness of whether their contract workers were receiving the stipulated benefits. Interestingly, there

20. Lee KH and A Sivananthiran (1995), *Contract Labour in Plantations, Construction and Sawmilling in Malaysia*, pp 43-44.

seems to be greater employer awareness about the conditions afflicting foreign contract workers than those of local contract labour. Whereas only a third (or less) of the employers were ignorant about the benefits received by foreign contract labour, the number increased to 40 per cent or higher with respect to knowledge about local contract workers. Among the employers who were aware of the plight facing contract workers (foreign and local), the majority knew that the workers were not getting most of the benefits due to them.

Despite the awareness of the plight of contract workers, the main employers did nothing to pressure or influence contractors towards greater compliance. Although most (85 per cent) of the main employers entered into written contracts with their contractors, these contracts did not have provisions touching on the welfare of contract workers. Neither did principal employers insist that the contractors have oral or written contracts with their contract workers on terms and conditions of employment.²¹ Of course, the main employers are not obliged by law to exert such influence and, indeed, one of the great attractions of using contract workers is the possibility of delegating such complications to the contractor!

The discrepancy in the treatment of direct and contract employees is also obvious among those employed by contractors. Data specific to the construction sector shows that while most contractors were providing directly employed workers with most of the statutory benefits, compliance was significantly lower for their contract workers (Table 12). Although all contractors provided direct employees with medical and sick leave benefits, and overtime payment, the number of contractors offering similar benefits to local contract workers was significantly lower. In fact, in every category of benefits, there was a significantly larger proportion of contractor compliance in the case of direct employees relative to local contract workers.

The data for foreign contract workers are not strictly comparable since they refer to whether or not the benefits are stipulated by contract. Yet they clearly show that virtually no benefit is stipulated to the foreign worker in the contract. While this does not mean that they do not receive any benefits at all, it does underscore the fact that their benefits can vary according to the whims of the contractors they serve.

A clearer picture emerges when we look at the responses of contract workers regarding the benefits provided to them in the construction sector (Table 13). It should be noted that this does not distinguish between foreign and local contract workers.

21. Lee and Sivananthiran (1995) pp 39-41.

Table12: Distribution of contractors providing benefits to workers in construction, 1993/94 (in percentages)

	Direct workers	Domestic contract workers	Foreign contract labour ¹
Medical	100.0	28.6	0
Paid sick leave	100.0	14.3	0
Overtime pay	100.0	57.1	7.9
Paid public holidays	92.0	21.4	0
Paid annual leave	92.0	14.3	0
EPF	92.0	14.3	0
Socso	92.0	35.7	0
Cost of living	0	0	0
Annual bonus	61.5	14.3	0
Incentive allowance	7.7	0	0
Productivity allowance	7.7	0	na
Annual wage increment	53.8	14.3	na
Transport allowance	7.7	0	na
Meal allowance	0	0	na
Sample size	13	14	13

Source: Lee KH and A Sivananthiran (1995), *Contract Labour in Plantations, Construction and Sawmilling in Malaysia*, Tables 6.10, 6.11 and 6.12.

Note: 1. Benefits stated explicitly in written contract.

na: Not indicated in source.

The benefit enjoyed by the highest proportion of contract workers is overtime pay. Even so, less than half of the workers reported having received it. Perhaps the most striking finding is that up to 90 per cent of the contract workers in construction did not receive 10 of the 14 benefits listed in the table.

The conclusions of the study by Lee and Sivananthiran reinforce the widely-held view that contract workers do not receive their due in terms of statutory benefits, when compared to directly employed workers in similar jobs. An interaction of forces contribute to this sad state of affairs. The problem arises because the main employer can pass on all responsibilities on the welfare of contract workers to their contractors. The contractors, in turn, are either

Table 13: Benefits enjoyed by contract workers in construction, 1993/94

Benefits	Percentage of workers receiving benefits
Medical	22.2
Paid sick leave	13.3
Overtime pay	43.3
Paid public holidays	15.6
Paid annual leave	7.8
EPF	8.9
Socso	8.9
Cost of living	0
Annual bonus	3.3
Incentive allowance	1.1
Productivity allowance	0
Annual wage increment	10.0
Transport allowance	2.2
Meal allowance	1.1
Sample size	90*

Source: Lee KH and A Sivananthiran (1995), *Contract Labour in Plantations, Construction and Sawmilling in Malaysia*, Table 7.15.

Note: 1. Includes both foreign and local contract workers.

unaware of the benefits that workers should receive or are unwilling to provide them fully, in order to reduce costs. The problem is compounded in the case of foreign workers because they are not fully informed of their rights. Besides, the illegal status of many immigrant workers and the negligible level of unionisation among contract workers in general put them at a disadvantage. Finally, the lack of enforcement by the relevant ministries has not helped matters.²²

Keeping in mind that contract workers form the bulk of the workforce in the housing subsector and indeed, all construction, the fact that they are inadequately protected takes on additional significance. In a sector already characterised with 'dirty, demanding and dangerous' work (as described by an

22. Lee and Sivananthiran (1995) pp 80, 90-91.

industry source), the denial of benefits stipulated by law further reduces its attractiveness to new job-seekers and compounds the labour shortage problem.

Health and safety standards

Safety standards

A direct negative impact of the relentless growth in construction activities in recent years is the incidence of accidents at work sites. Workers most commonly sustained injuries due to the collapse of scaffoldings, construction materials crashing down, cranes falling and floors crumbling. A Human Resources Ministry survey of 326 construction sites in Selangor and Kuala Lumpur showed that only 17 of them (or five per cent) had instituted satisfactory safety and occupational health precautions.²³

According to the Ministry's Workers Safety and Health Department, falls from tall buildings top the list of fatal accidents at construction sites.²⁴ Many accidents resulted because of non-compliance with safety regulations. In an inspection of 300 construction sites in the Klang Valley in March 1997, the department found that 59.2 per cent of the sites did not have protective railings, 58.1 per cent had unsafe platforms, 57.3 per cent lacked safe working procedures at tall structures and 56.9 per cent had unsafe scaffoldings. There were 20 fatal accidents in the first two months of 1997 in the Klang Valley sites, compared to 31 during the whole of 1994 and 64 in 1995. The main issues cited as contributing to this situation were the low level of commitment shown by employers to worker-safety and the non-adherence to safety regulations.

Despite the rapid rate of increase in industrial accidents, few employers take steps to protect their workers against industrial accidents. The report by Lee and Sivananthiran, which surveyed 14 principal employers in the construction sector, indicated that not enough was being done to prevent industrial accidents. For instance, only five of the 14 principal employers had taken rudimentary steps such as the provision of safety and industrial boots, safety helmets and safety gloves, to protect their workers. Such measures are grossly inadequate and raise the question of whether the developers are genuinely concerned with industrial and occupational safety at construction sites.

Under the Occupational Safety and Health Act 1994, any establishment employing 40 or more workers must have a joint

23. *New Straits Times*, May 24, 1997.

24. *The Star*, March 28, 1997.

management-employee safety committee to ensure compliance with the provisions of the Act. The offenders of this particular ruling often claim it is very difficult to form such committees.

Most of the occupational accidents are caused by construction workers who lack training, skills and experience. For example, many of the accidents resulting from falling construction materials involved tower crane operators who were not even required to have a licence to operate the crane. Without set procedures to test the skill level of the operators, only experienced operators should be allowed to operate the cranes. However, as such skilled and experienced operators are in short supply, safety is compromised by the employment of inexperienced operators with little skill. To reduce accidents caused by untrained crane operators, it is imperative for the government to make it compulsory for crane operators to be trained and certified. To facilitate this, the government should make full use of the training centre set up by the National Institute of Occupational Safety and Health. The centre is currently designing the curriculum and training courses for crane operators.²⁵

Another aspect of construction safety is the stability of buildings. Since the 1994 Highland Towers collapse which claimed 48 lives, there have been several reports of parts of buildings falling, retaining walls collapsing, beams crumbling and so forth. Although many of these mishaps can be attributed to the lack of supervision of the contractors and site supervisors, local authorities responsible for approving building plans and ensuring that construction projects adhere to specifications, must share some of the blame. However, the local authorities claim they are hampered in their supervisory role by a lack of technical personnel.

Inadequate safety standards in the construction sector also result because of the tendency of different parties in the sector to absolve themselves of their responsibilities towards safety. The Occupational Safety and Health Act, 1994 is quite specific in stating that employers are required to ensure the safety, health and welfare of all their employees at work. The Act also specifies employee responsibilities such as taking reasonable care for safety and health, co-operating with the employer, using protective equipment deemed necessary by the employer, and complying with measures pertaining to occupational safety and health instituted by the employer. There is clearly a need to educate all parties involved in contract labour, which forms the bulk of labour. Each party must be made fully aware of his own responsibility and accountability.

25. *The Star*, June 29, 1997.

It is worth noting that another Act pertaining to the construction sector – the Building, Street and Drainage Act 1974 – only holds the consultant engineers, contractors and site supervisors responsible for site safety and building stability. Clearly, the developers must also shoulder some responsibility for, in the final analysis, they are the principal employers.

Besides the two Acts mentioned above, the construction industry is also governed by the Factories and Machinery (Building Operation and Work of Engineering Construction Safety) Regulations 1986. This Act contains very stringent conditions to ensure the safety of scaffolding. The regularity with which scaffoldings have collapsed suggests that enforcement of these regulations is lacking.

Health regulations

Construction sites, besides being known for their numerous fatal accidents, have also been identified as major breeding grounds for mosquitoes, particularly the aedes mosquito which spreads the dreaded dengue fever. The main problem is that construction workers do not habitually clear their work areas after the day's work, thus leaving behind large puddles of stagnant water which become breeding grounds for mosquitoes. Under the current Destruction of Disease Bearing Insects Act 1975, it is an offence to be found 'breeding' aedes mosquitoes. However, the prevailing fines – RM1,000 for first offenders and RM2,000 for subsequent offenders – are not sufficiently hefty to be an effective deterrent.

Occupational and skill composition

Breakdown by occupation

Table 5 indicates the occupational categories in the housing subsector in 1992. Building workers (or those directly involved in construction) accounted for the bulk of the workforce (93 per cent), while managerial and technical workers made up a mere four per cent of the total. Among the building workers, labour is categorised as being skilled, semi-skilled and unskilled.

A comparison of immigrant and resident workers in the housing subsector shows a clear dichotomy (Table 14). Immigrant workers are largely unskilled and semi-skilled building workers. In 1992, immigrants accounted for only 0.6 per cent of the managerial, technical, supervisory or general workers, while they comprised one-third of the unskilled building workers, 21 per cent of the semi-skilled workers and 10 per cent of the skilled workers in residential construction.

Table 14: Number of building workers¹, by skill composition and citizenship, in housing, 1992

	No of immigrant workers	%	No of resident workers	%
Skilled	2,816	12.2	25,741	31.7
Semi-Skilled	8,439	36.6	31,308	38.6
Unskilled	11,818	51.2	24,053	29.7
Total	23,073	100.0	81,102	100.0

Source: *Annual Surveys of the Construction Industries* (various issues)

Note: 1. Full-time, paid employees only.

Skills of building workers

In terms of building workers in residential construction in 1992, there was a bigger proportion of unskilled workers among the immigrants relative to residents (Table 14). Slightly more than half of the immigrant workers were unskilled compared to less than one-third of their local counterparts. While only 12 per cent of immigrants were skilled, nearly a third of the residents were similarly qualified. Clearly, immigrants are not a direct source of skilled workers.

Changes in composition of workers' skills

A different picture emerges when comparing the changing skill-composition of immigrant building workers, relative to resident building workers in the construction sector. The proportion of skilled and semi-skilled workers among immigrants has risen between 1988-1992, with a concomitant decline in the proportion of unskilled workers (Table 15). During the period, the growth rate of skilled workers among immigrants was over four times faster than the rate registered by resident workers. The difference in the growth rate among semi-skilled workers was even more dramatic in favour of the immigrants. In short, there was an upgrading in the skill-composition of the immigrant building workers during this period, and it was occurring at a more rapid rate than was evident among the resident workforce.

What factors account for this? One possible factor is that more skilled immigrant workers were brought in to the country. However,

Table 15: Number of building workers¹, by skill composition and citizenship, in construction, 1983-92

	Immigrant workers					Growth
	1983	1986	1988	1990	1992	
Skilled	2,952 (11.7)	1,793 (8.4)	801 (5.4)	2,358 (8.1)	9,122 (12.8)	13.4%
Semi-Skilled	5,051 (20.0)	3,383 (15.8)	2,780 (18.6)	8,005 (27.4)	25,474 (35.8)	19.7%
Unskilled	17,268 (68.3)	16,265 (75.9)	11,363 (76.0)	18,878 (64.6)	36,566 (51.4)	8.7%
Total	25,271	21,441	14,944	29,241	71,162	12.2%

	Resident workers					Growth
	1983	1986	1988	1990	1992	
Skilled	68,436 (28.2)	55,416 (29.8)	45,990 (30.1)	70,337 (30.4)	96,395 (32.3)	3.9%
Semi-Skilled	82,650 (34.8)	64,553 (34.7)	54,894 (35.9)	82,471 (35.7)	107,797 (36.1)	3.0%
Unskilled	86,239 (36.4)	65,815 (35.4)	51,945 (34.0)	78,365 (33.9)	94,128 (31.6)	1.0%
Total	237,235	185,784	152,829	231,173	298,320	2.6%

Source: *Annual Surveys of the Construction Industries* (various issues)

Note: 1. Full-time, paid employees only.

industry sources dispute this. A second possibility is that since official policy discourages unskilled foreign workers, more foreign workers are being reported as semi-skilled or skilled – a practice that can carry on because enforcement authorities lack the capability to check these claims. A third factor, verified by industry sources, is that immigrants who came in with no experience in construction are acquiring skills on-the-job and gradually raising their overall level of

skills.²⁶ Abdul Rashid observes that Indonesian workers, who form the bulk of the foreign workers in construction, have earned a reputation for diligence, hardiness and the desire to learn.²⁷ Despite their lack of background in the building trades, they have quickly acquired basic construction skills, especially bar bending, carpentry and concreting. Many have risen to become supervisors while others have established themselves as 'subcontractors' to subcontractors. Thus, many immigrants will not only be repatriating capital back to their home countries when they return, but also skills acquired here.²⁸ An ironic observation that can be made is that during the recession of the 1980s, Malaysian-trained workers were putting their skills to use in more developed economies like Taiwan, Japan and Hong Kong; while in the current boom period the country is financing the training of workers for poorer countries like Indonesia and Bangladesh.

The demand dimension

It is a tricky exercise to estimate the demand for labour in both construction and housing activities because of a lack of reliable data on immigrant workers who constitute a major component of the workforce here. We have therefore based our estimates on the data provided in official documents, after some adjustments to account for the under-enumeration of foreign workers.

To account for the under-enumeration of immigrant workers, we have assumed that for every immigrant reported in the *Annual Surveys*, there is another immigrant worker who has gone unreported. This assumption is based on 'informed guesses' of industry contacts. All estimates of labour demand are based on these adjusted figures. Although this assumption may have still understated the actual number of illegal immigrant workers before 1996, we feel it is a reasonable one in view of the fact that we are using the adjusted employment series to forecast labour demand *after* 1997. Given the current propensity towards a stricter enforcement of immigration laws, it is anticipated that the number of illegal immigrant workers will probably decline in the post-1997 period.

26. If immigrants are largely illegal workers, they will be part of the workforce indefinitely – or until they are discovered.

27. Abdul Rashid (1996) pp 6-8.

28. Narayanan (1992) p145.

Forecast of labour demand

To forecast the demand for labour in the short term (till the year 2000), we run the following regression,²⁹ using data for the time period 1985-92 (see Table 10).

$$\text{EMP} = \beta_0 + \beta_1 \text{VA} + \epsilon$$

where EMP is the number of workers employed and VA is the value added in RM million. The data are adjusted employment figures sourced from the *Annual Surveys*.

The results are as follows:

Construction sector

$$\text{EMP} = 105024 + 53.58 \text{VA}$$

(8.57) (18.96)

$$\bar{R}^2 = 0.981 \quad F = 359.5 \quad \text{D-W statistic} = 1.2796^{30}$$

(t statistics are in parenthesis)

Housing industry

$$\text{EMP} = 26714 + 68.68 \text{VA}$$

(4.65) (11.67)

$$\bar{R}^2 = 0.951 \quad F = 136.2 \quad \text{D-W statistic} = 1.413^{31}$$

(t statistics are in parenthesis)

Estimated labour demand in construction sector

The estimated regression coefficients in both the equations are significant at the one per cent level of significance. Value added had a significant and positive impact on employment. By substituting the official forecasted

29. A rigorous estimation of labour demand would require a simultaneous equation model. Our objective is simply to derive a rough estimate of labour use, which has been found to be correlated with value added (Lim and Anuwar, 1990).

30. The null hypothesis of no serial correlation cannot be rejected at the 1 per cent level of significance.

31. The null hypothesis of no serial correlation cannot be rejected at the 1 per cent level of significance.

figures of value added in the construction sector for the years 1997 to 2000³², into the estimated regression for the construction sector, we derive the corresponding demand for labour³³ in the construction sector for the years, 1997-2000, which are 726,890; 790,294; 860,126; and 938,723 workers respectively. In comparison, the estimated labour demand for the year 2000, according to the Seventh Malaysia Plan, is 845,400, which is more than 10 per cent lower than our estimate (see Table 3).

Estimated labour demand in housing subsector

As no official estimated data on value added for the housing subsector are available for 1997-2000, we used our own estimates.³⁴ The estimated value added data are then substituted into the estimated regression equation for the housing subsector in order to arrive at the labour demand for 1997-2000. These are 205,112; 223,301; 243,334; and 265,881 respectively. The average ratio of this estimated labour demand in the housing subsector to the construction sector is 0.28, which corresponds to the average of the two employment ratios derived from the *Annual Surveys*.

Trends of labour demand in construction sector

Contract workers in all categories have grown at a higher annual rate than direct labour (see Table 16). The highest rates of growth were recorded among the skilled and semi-skilled contract workers. Between 1983-93, the former recorded an annual growth rate of 10.4 per cent while the corresponding figure for the latter was 9.3 per cent. The growth rate over the last three years was even stronger, with skilled, semi-skilled and unskilled contract labour increasing at annual rates of 13.6 per cent, 12.2 per cent and 16.3 per cent, respectively. To the extent that employment figures were underestimated due to the increased recruitment of illegal workers in the last few years, the actual growth rates of contract labour during 1994-96 were probably higher than our estimated figure.

32. *Economic Report* 1996, Table 2.2; *Seventh Malaysia Plan*, p52.

33. The value added data which was in 1978 prices were first converted into current prices by using the 1995 implicit GDP deflator (*Economic Report* 1996).

34. The estimates on value added in housing (in 1978 prices) were obtained by multiplying the average output ratio of residential construction to total construction by VA in the construction sector (using Tables 1, 9 and 10). The estimates were subsequently deflated by the 1995 implicit GDP deflator.

Table 16: Number of building workers by skill category and type of recruitment in construction

	Directly-employed workers			Contract workers		
	Skilled	Semi-skilled	Unskilled	Skilled	Semi-skilled	Unskilled
1983	21,633	23,872	30,996	49,755	63,829	72,511
1984	na	na	na	na	na	na
1985	21,504	24,869	29,884	45,842	57,514	67,095
1986	18,407	21,584	25,627	38,802	46,352	57,453
1987	14,639	17,294	20,422	29,350	37,890	41,006
1988	14,570	17,649	20,761	32,221	40,025	42,547
1989	17,757	21,693	26,755	40,875	47,482	57,672
1990	21,277	25,991	29,292	51,418	64,485	67,951
1991	25,380	30,690	34,275	63,202	79,088	77,688
1992	27,970	33,678	37,155	77,547	99,593	93,539
1993	29,120	35,325	38,053	81,522	99,476	105,108
Annual growth rate, 1983-93 (%)	6.1	8.1	4.2	10.4	9.3	7.7

Source: *Annual Surveys of Construction Industries* (various issues)

Table 16 shows that the proportion of contract labour in total building workers increased from 70.8 per cent in 1983 to 73.6 per cent in 1993.³⁵ Thus, the construction sector displays an obvious preference for contract workers. As a result, although construction is a major sector which faces a serious labour shortage, the number of vacancies reported to the Manpower Department of the Human Resources Ministry is relatively lower than for the other sectors. For example, between 1987-95, only an average of 3.6 per cent of all job vacancies in the economy were reported in the construction sector.³⁶

Labour demand in the construction sector by categories is estimated by first computing the proportion of the three general categories of skilled, semi-skilled and unskilled labour (whether employed directly or through contract) to total employment (using the *Annual Survey* data).

35. See also Lee and Sivananthiran (1995) p17.

36. Manpower Department, various publications.

Table 17 gives the ratios of the different categories of building workers to total employment. The highest average ratio was that of unskilled contract workers which was 22.4 per cent of total employment in the construction sector. Using these average ratios and multiplying the estimated labour demand in the construction sector, we obtained the estimated labour demand for the various categories of skills for this sector in the next few years, as presented in Table 18. The estimated figures are probably understated since the average growth rates of the ratios during 1983-93 were used. However, the growth in the ratios over the last few years has been much higher. Even so, the estimated labour demand far outstrips the internal sources of labour supply and points to the unavoidable reliance on immigrant labour to sustain the growth of the sector.

Trends of labour demand in housing

We used a similar procedure to estimate the labour demand by categories in the housing subsector. However, as the breakdown by categories of skills was only available for the years 1992 and 1993, we used a simple average of the two years to get an estimate of the various ratios of skill categories to *total employment* in the housing subsector. The ratios were: skilled contract labour, 21 per cent; semi-skilled contract labour, 28 per cent and unskilled contract labour, 24 per cent. These ratios were higher than the corresponding ratios in the construction sector. In contrast, the ratios in the directly employed categories were lower than those of the construction sector. This indicates that the housing subsector relies more on contract labour, which in turn, has a relatively higher immigrant component. Multiplying these ratios with the estimated labour demand for the housing subsector, we obtained the estimated labour demand in the housing subsector by categories of skills, as presented in Table 19.

Although there is no data to show which specific skills are in short supply, a Cabinet Committee Report on Training (1991) states that concreters, carpenters, bricklayers/masons, plasterers and paviours, painters and tilers were in critically short supply. It noted that there was a heavy reliance on foreign workers in these trades. Other tradesmen in short supply include bar benders, joiners, metal workers, drainage layers, plumbers, welders, glaziers, sheet and metal workers, machinery maintenance operators and wiremen.³⁷

Shortages of skilled and semi-skilled labour

Between 1997 and 2000, the estimated net increase in the demand for skilled and semi-skilled building workers in the construction sector is 111,322

37. Abdul Rashid (1996) p3.

Table 17: Percentages of building workers relative to total employment in construction sector, by skill category

	Directly-employed workers			Contract workers		
	Skilled	Semi-skilled	Unskilled	Skilled	Semi-skilled	Unskilled
1983	7.06	7.79	10.12	16.24	20.83	23.67
1984	na	na	na	na	na	na
1985	7.31	8.46	10.16	15.59	19.56	22.82
1986	7.36	8.63	10.24	15.51	18.53	22.97
1987	7.48	8.84	10.44	15.00	19.37	20.96
1988	7.23	8.76	10.30	15.98	19.86	21.11
1989	7.09	8.67	10.68	16.32	19.96	23.02
1990	7.00	8.51	9.59	16.83	21.10	22.24
1991	7.00	8.46	9.45	17.42	21.80	21.42
1992	6.58	7.92	8.74	18.23	23.42	21.99
1993	6.51	7.90	8.51	18.23	22.25	23.50
Average 1983-93	7.06	8.39	9.82	16.54	20.57	22.37

Source: *Annual Surveys of Construction Industries* (various issues)

persons (see Table 18). Can this demand be met by the output of the various public and private training institutions involved in building trades? During the Seventh Malaysia Plan period, the output of skilled and semi-skilled workers from both public and private institutions will only be 17,838. This is an insignificant increase over the output in the Sixth Plan period (see Table 20) and a mere 16 per cent of the estimated number required over the 1997-2000 period. Even if there were to be a dramatic surge in the enrolment of public training institutions over the next few years, an increase in the rate of mechanisation in the industry, and an increase in productivity, the dependence on immigrant workers to cover the shortfall in labour supply will remain. In particular, the shortfall in skilled and semi-skilled building workers in the short to intermediate term is too great to bridge with domestic sources of supply alone. This brings another dilemma to the fore. It is widely acknowledged in the industry that the current supplies of immigrant labour (from Indonesia and Bangladesh) are inexperienced, resulting in substantial time and resources being spent to provide on-the-job training.

Table 18: Estimated number¹ of building workers in construction sector by skill category (1997-2000)

	Directly-employed workers				Contract workers			
	Skilled	Semi-skilled	Unskilled	Total	Skilled	Semi-skilled	Unskilled	Total
1997	51,304	61,001	71,395	183,700	120,191	149,500	162,598	432,289
1998	55,779	66,321	77,623	199,723	130,675	162,540	176,781	469,996
1999	60,708	72,182	84,482	217,372	142,222	176,902	192,402	511,526
2000	66,255	78,778	92,201	237,234	155,218	193,067	209,983	558,268
Net increase	14,951	17,777	20,806	53,534	35,027	43,567	47,385	125,979
1997-2000								

Source: *Annual Surveys of Construction Industries* (various issues)**Note:** 1. Based on estimates of total labour demand in the construction sector using estimated regression equation and multiplying by average ratios in Table 12.

Table 19: Estimated number¹ of building workers in housing subsector by skill category (1997-2000)

	Directly-employed workers				Contract workers			
	Skilled	Semi-skilled	Unskilled	Total	Skilled	Semi-skilled	Unskilled	Total
1997	8,594	12,122	13,701	34,417	42,950	57,042	51,114	151,106
1998	9,356	13,197	14,917	37,470	46,759	62,100	55,647	164,506
1999	10,196	14,381	16,255	40,832	50,954	67,671	60,639	179,264
2000	11,140	15,714	17,761	44,615	55,676	73,942	66,258	195,876
Net increase 1997-2000	2,546	3,592	4,060	10,198	12,726	16,900	15,144	44,770

Source: Annual Surveys of Construction Industries (various issues)

Note: 1. Based on estimates of total labour demand in the housing industry using estimated regression equation and multiplying by percentages of building workers relative to total employment in housing by categories of skill in 1992 (the only year where such statistics are available in the Annual Surveys).

Table 20: Output of skilled and semi-skilled manpower from public and private institutions, 1991-2000

	1991-95	1996-2000	2000
Building trades (no of persons)	16,845	17,838	4,366
Average annual growth rate (%)	5.2	0.0 ¹	-
All trades ² (no of persons)	149,580	237,248	51,983
Average annual growth rate (%)	10.3	8.5	-

Source: *Seventh Malaysia Plan*, p118.

- Note:**
1. Negligible.
 2. Building trades include engineering, building, printing, skill-upgrading and others. Excludes commerce, agriculture, home-science and other 'soft-skills'.

Factors affecting skills development

Several factors hamper skills-development in the construction sector.

Low returns to investment in training

Unlike other sectors like manufacturing, there have been no internal efforts to increase the pool of skilled workers due to several considerations. The nature of construction makes employment with any one employer a short-term proposition. This makes it difficult for the employer to recover his investment in the training of employees and is a major disincentive to provide training. More recently, the large component of foreign workers, many of whom are illegal, further discourages investment in formal training. Overall, therefore, the private returns from the provision of training is well below the social returns to training, resulting in a gross under-investment in the training of human resources in the industry. This market failure has been addressed largely by public sector involvement in the provision of training in construction-related skills (CRS).

Problems affecting public institutions of training

In 1995, public institutions providing training in construction-related skills consisted of nine secondary technical schools, 69 secondary vocational schools under the Ministry of Education, 15 industrial training institutes

run by the Human Resources Ministry, the skills development institutes under Mara, and the youth training centres under the Ministry of Culture, Youth and Sports. On a smaller scale, there are also skill centres organised by several state governments. Altogether, public institutions accounted for 96 per cent of the total output of workers in the building trades in 1990. Their dominant role is expected to be maintained in the year 2000, when they will still account for about 91 per cent of the total output.³⁸

Several issues arise in connection with these establishments. First, they do not focus solely on the provision of construction-related skills; rather they provide training in these skills as part of a larger curriculum. Second, industry sources suggest that despite the long gestation periods involved in training, graduates from these formal institutions lack the necessary preparation to undertake tasks at the work site. This is because much of the training received is obsolete (for example, emphasising on the old systems of joinery and lack of exposure to power tools) and much time and effort is required to retrain these workers. There is thus a need to upgrade and update the curriculum of these institutions. Third, these institutions have been experiencing a growing disinterest in construction-related skills. Not only are they struggling to attract new candidates but as many as 70 per cent of their graduates eventually turn to activities unrelated to their training for employment. Table 20 shows that over the period 1991-95, the output of skilled and semi-skilled building workers trained by both public and private institutions increased only by an average of 5.3 per cent, about half the rate recorded by the output of workers of all trades taken together. Between 1996-2000, the rate of growth of the output of skilled workers is expected to stagnate.

There are several reasons why construction-related skills are unattractive to the school-leaver. With increasing affluence, these skills are increasingly perceived as being 'dirty, dangerous and demanding' (the three Ds), despite the scope for better overall earnings. The increasing educational attainment of school-leavers also allows them to choose from a wider range of job opportunities and construction-related skills do not rank highly in their choice of employment. To sum up, the poor image of construction-related skills and the demanding working environment in construction vis-a-vis other occupations have contributed significantly to its failure to attract new trainees. A contributory factor is the uncertain nature of the work in the industry which results in considerable career instability. Finally, there is no clear career path in many construction-related activities.

38. *Seventh Malaysia Plan*, p118.

Decline of apprenticeship scheme

A previously important source of internal training within the industry – the apprenticeship system – has broken down and is now virtually non-existent. The apprenticeship system in the building trades was common in the Chinese community, with skills transferred from father to son (or to kin). In situations where alternative jobs were scarce, the system nurtured itself since it provided an important means of livelihood for young job seekers. However, economic growth, rapidly rising incomes, and growing parental ambitions for their children to excel in more respectable or stable trades than their own, have seriously eroded the traditional foundations of the system. In a sense, the prevailing nature and image of construction-related skills in the midst of a rapidly changing job-scenario, was also responsible for it losing its attractiveness. The prolonged recession of the mid-1980s had triggered a mass exodus of Malaysian construction workers to higher-wage countries like Taiwan, Japan and even Thailand. This greatly reduced the supply of skilled primary workers and depleted the pool of expertise from which the apprenticeship system had drawn its sustenance. The ensuing vacuum was filled only imperfectly by foreign workers who themselves lacked skills.

Foreign labour

The migration of skilled local workers and the depletion of skills previously generated through the apprenticeship system combined with a generally buoyant economy since 1988 have worsened the woes of the industry, making it very dependent on foreign labour. Currently, foreign labour can be recruited from officially sanctioned sources – limited to Indonesia, Bangladesh, Pakistan and the Philippines for the construction industry. Workers from the Philippines, unlike the rest, are largely administrative and technical personnel. While these sources have provided a supply of workers, the skills shortage is not directly ameliorated because these workers lack construction-related skills. This has resulted in employers having to invest in quick methods of on-the-job training. The enthusiasm to master new skills, particularly evident among Indonesians, has allowed the industry to cope, although this has increased the cost of supervision substantially.

Although immigrants do acquire on-the-job skills, the training occurs in an informal setting under different contractors and in different sites. With expectations on the level and extent of skill acquisitions varying considerably, this has resulted in wide variations in the quality of expertise acquired. Another weakness of such informal training is that immigrants inevitably also pick up the art of ‘cutting corners’.

Lack of skills inventory mechanism

At another level, there is a lack of inventory of the types of skills available within the workforce because no serious evaluation of these skills has ever been attempted. This, in turn, calls for a body to perform the task of providing skills-accreditation. Matters have worsened with the influx of foreign workers – many of whom are brought in under skilled or semi-skilled categorisation to circumvent official disapproval of the use of unskilled foreigners, even though their actual levels of expertise have never been ascertained or evaluated.

Lack of labour substitution

In circumstances of labour shortages, it is reasonable to expect labour substitution to take place as much as possible, unless of course the availability of cheap immigrant labour dampens the immediate pressure to substitute labour. Interestingly enough, unlike in the plantations, the availability of immigrant labour has not inhibited the use of labour saving devices. Indeed, for the construction sector as a whole, the capital-labour ratio displays an upward trend for the period 1983-92, except for the recession years (Table 9). The explanation lies in the fact that construction has enjoyed a boom since the early 1990s (in contrast to the rubber market). The need to meet project targets has necessitated faster and more efficient means of completing certain tasks than can be achieved with manual processes alone, no matter how cheap.³⁹ The widespread use of heavy machinery to ease manual tasks like lifting, clearing, digging, concrete-mixing and so forth are clear examples.

Even so, there are limits to mechanisation, especially in the housing subsector, because many tasks call for manual dexterity and/or because of design differences. Hence, it is not surprising to find that the housing subsector remains labour-intensive as indicated by the low capital-labour ratio, and the high share of wages and salaries in output value. The capital-labour ratio of the housing subsector was RM3,400 per worker in 1992 (Table 10). The comparable figure for construction was RM10,500 per worker (Table 9), while in manufacturing it was RM15,500 per worker in 1985.⁴⁰ Additionally, the capital-labour ratio for the housing subsector, in contrast to construction, has remained fairly constant between 1983-92 and only dipped slightly in 1992 (see Table 10).

Despite the rapid rise in wages, the pressures to save on labour have not been felt very keenly in the housing subsector, probably because cheap foreign labour has kept wage cost as a proportion of total costs manageable.

39. Narayanan (1992) p145.

40. Lim Dand Anuwar Ali (1990), *Manufacturing - Employment and Manpower Implications*, p68.

Impact of labour shortage

Wages and costs

An immediate and visible impact of the labour shortage has been the upward pressure on wages. Clearly, labour demand has exceeded the supply available, even from foreign sources, resulting in an upward pressure on wages. Between 1983-1993, the annual nominal wage per worker in the housing subsector rose from RM6,129 to RM11,284, or at a rate of about six per cent per year (computed from data in *Annual Surveys*).⁴¹ In the post-recession period of 1988-93, the annual nominal wage per worker rose even faster – at about 12 per cent per year.

The labour shortage and the consequent use of immigrant labour have increased the cost of labour in several ways. First, the general shortage of workers implies the need to offer a higher basic wage rate and this, in theory, does not differ between a foreign or local worker of identical skills. Thus, using foreign labour does not necessarily reduce the wage cost. Second, employing legal immigrants involves transportation and accommodation costs, and levies. For building workers in 1992 this levy was initially RM 420 for a general worker, RM600 for a semi-skilled worker and RM900 for a skilled worker. However, the 1996 Budget raised the levy for unskilled (general) worker to RM840 and that for semi-skilled workers to RM1,200 in a bid to encourage the use of skilled foreign labour.⁴² Third, the use of foreign workers, most of whom lacked previous exposure to the building trades, increases substantially the cost of supervision to ensure that minimum quality standards are met. Indeed, wages and salaries have probably risen more significantly over the last few years, although this is not yet captured by the published data.

The share of salaries and wages in the cost of production during the period 1983-93 averaged 0.261 in the construction sector and 0.302 in the housing subsector (computed from Tables 9 and 10). These figures correspond closely to estimates provided by industry contacts of between 25 to 30 per cent.

Assuming that the cost of using labour has increased by 12 per cent and given that labour costs constitute 30 per cent of the total cost of a house, the 12 per cent increase will raise the cost of the house by about 3.6 per cent. The relatively low impact of rising wages on the cost of houses and the fact

41. In computing wage per worker we divided the total wages and salaries by the total full-time, paid employees. We did not use the adjusted employment figures.

42. *Seventh Malaysia Plan*, p38. If this indeed was the purpose of the hike in the levies, its impact was offset by an increase in the levy for skilled workers as well, which went up from RM900 a year to RM1,800 (see Zulkifly and Osman, 1996: 7). This makes unskilled labour still cheaper relative to semi-skilled and skilled workers.

that labour cost as a proportion of total costs has remained fairly constant in the housing subsector (see Table 10) may be factors explaining the continued labour-intensiveness of the housing sector. However, industry sources indicate that labour costs have been rising rapidly over the past two years, outpacing the increase in the cost of materials. This may well increase the impact of labour on total costs in the future and provide a greater impetus to find more avenues to reduce the use of labour.

Wage rate and productivity

Earlier discussion has highlighted the point that the construction sector and the housing subsector have remained labour-intensive, despite the tight labour market and the inevitable increase in wages. In both the construction sector and the housing subsector, the rise in real productivity appears to have exceeded the increase in real wage rate.⁴³ From 1983 to 1993 (Table 21), real wages in the construction sector increased at an annual rate of 3.6 per cent while real productivity (proxied here by the real value added per worker) increased by 4.7 per cent per year. The housing subsector, despite being more labour-intensive, showed a similar pattern, although the margin between the real productivity growth rate (4.5 per cent a year) and the real wage growth rate (3.7 per cent a year) was smaller. However, these findings have to be treated with caution because productivity may have been overstated.⁴⁴

A National Productivity Centre report in 1997 indicated that the productivity growth in the construction sector is a cause for concern. While the national average productivity growth was 6.6 per cent in 1995 and 5.7 per cent in 1996, the corresponding figures for the construction sector were 5.6 per cent and 2.1 per cent respectively. Although productivity growth in the sector is expected to increase to 5.4 per cent in 1997, it is still low compared to the other sectors. Rising wages and salaries without a compensating increase in productivity will undoubtedly contribute to increased prices in both the construction and housing industries.

43. Real productivity is obtained by deflating the value added per worker by the producer price index while real wage rate is obtained by deflating the wage rate by the consumer price index.

44. Note that the productivity figures here are overstated as they are based on *Annual Survey* data which understated the actual number of workers in the construction sector. Also, it does not reflect accurately the quality aspects of the house due to disequilibrium in the housing market. The excess demand has resulted in prices of houses increasing, regardless of quality. See subsequent discussion.

Table 21: Growth rates of real wages and productivity in construction and housing, 1983-93

Sector	Annual growth rate (%)			
	Wages	Productivity ¹	Real wages ²	Real productivity ³
Construction	6.5	6.7	3.6	4.7
Housing	6.7	6.6	3.7	4.5

Source: *Annual Surveys of Construction Industries* (various issues)

- Note:**
1. Proxied by value added per employee.
 2. Wages were deflated by CPI.
 3. Value added were deflated by PPI.

The construction sector outperformed the housing subsector in terms of contribution to productivity growth. This is not unexpected as non-residential and other civil engineering construction are usually more capital-intensive and the skill level required of workers is much higher.

Quality of housing

The labour shortage and the consequent increase in immigrant labour have had a negative impact on construction quality. Industry sources point out that most immigrant workers lack previous experience in construction. This observation is corroborated by previous surveys of immigrant workers in Kuala Lumpur which reported that the majority were farmers or fishermen who acquired construction skills only through their work in Malaysia.⁴⁵ Thus, shoddy workmanship is a real concern. However, the blame cannot rest entirely on immigrant workers. Tight supervision and an uncompromising approach to quality by contractors or developers can minimise shoddy work by up to 80 percent, according to industry contacts. Well-established developers have been building houses of acceptable quality despite their reliance on foreign workers. However, many contractors and developers tend to remain indifferent about supervision and quality control in their bid to cash in on the construction boom. The labour shortage has thus brought the need for stricter

45. Gill (1988); Azizah (1988)

supervision and quality control to the fore. Poor quality work is especially evident in situations where these aspects have not been given due attention – either because of insufficient means or the wrong attitude.

Attempts to complete rush jobs are particularly evident in the housing subsector. While the sale and purchase agreement often specifies a 24-month period for the completion of the project, contractors are only given half that time to meet the target. Houses can be completed in time only by extending work hours (resorting to overtime and night work) and accepting poor workmanship. Although the labour shortages have, on the surface, not adversely affected the delivery and completion of houses within the stipulated time, quality is often compromised.

The labour shortage apparently has no impact on the design of houses either since this is still dictated largely by consumer demand. However, the effect is often seen in the poor translation and execution of architectural designs into real structures. The ‘skills and knowledge gap’ acts as a constraint in the design of houses.

Potential output

The labour constraint has undoubtedly limited the potential output of the construction sector. Whereas this sector accounts for about 7-8 per cent of the GDP in economies like Japan and Singapore, the figure for Malaysia has averaged between 4-5 per cent, suggesting there is room for improvement. In the case of housing, industry contacts suggest that the output is only at about 70 per cent of the total, with the remaining 30 per cent shortfall due largely to labour constraints.

Reliance on foreign labour

As has been established in the foregoing discussion, a direct consequence of the labour shortage is the increased reliance on foreign labour. The impact of resorting to immigrant labour on housing quality, cost, delivery and completion time is similar to the issues discussed earlier.

However, the effect of foreign labour supply on the earnings of local workers merits some discussion. In the 1980s, the widespread use of immigrant workers (both legal and illegal) was cited as a factor resulting in the lower growth of wages in the construction sector, relative to the non-plantation sector.⁴⁶ The willingness of foreign workers to accept low wages and poor working conditions apparently depressed wages and had an adverse impact on locals in the industry.

46. Soon, Lee Ying (1991). ‘Wage Behaviour and Labour Market Adjustment in Malaysia’, p14.

For instance, an Indonesian manual worker in Kuala Lumpur worked for wages as low as RM12.50 a day, taking on two to three jobs outside construction to earn sufficient income.⁴⁷ More frequently, immigrant workers accepted RM14 to RM16 a day, relative to the RM20 to RM25 paid to a local Malay or RM25 to RM35 paid to a local Chinese.⁴⁸ Skilled Malaysians who earned between RM35 to RM40 a day in the early 1980s found themselves jobless even when they were willing to accept less (RM25 to RM30) in 1987. The demand price declined further to between RM15 to RM20 a day, not only due to the recession but also because of the availability of immigrant substitutes.⁴⁹

Developers claim that the argument that being cheaper, foreign workers dampen wages, is one that is of less relevance in the current situation. For one thing, the so-called 'New Policy' announced in late October 1991 allowed the use of foreign labour provided such workers are paid the same wages as local labour and enjoyed the same benefits as provided under labour laws. Contribution to the Social Security Organisation (Socso) scheme is also mandatory, as is the employment levy on foreign workers. Thus, it is difficult for a direct employer using foreign workers *legally* to enjoy significant savings by opting for foreign labour. However, breaches occur, given the difficulties of enforcing these well-meaning legislation.

An alternative is to use contract labour since contractors then become responsible for meeting these stipulations and their more informal employment terms allow them to escape the full weight of the law. Many smaller subcontractors are not legal entities and function within the informal sector. Even here, since the contractor has to pay for transport and repatriation of foreign workers, the workers' levy and provide accommodation, etc, he would have to pass these costs on to the end-user. Legal foreign workers are no longer cheap substitutes for local workers. The general viewpoint of employers in the industry now is that immigrants are employed not as a cost cutting strategy but simply because local workers are not available in sufficient numbers to meet their needs.

Interestingly enough, wage segmentation based on nationality persists (see Table 22) and is justified as being reflective of differences in skills. However, segmentation also suggests that despite the decline of opportunities to discriminate against immigrant workers in the current environment with greater enforcement, discrimination persists due to the

47. Gill (1988) p229.

48. Cited in Azizah (1988) p241.

49. Gill (1988) p229.

Table 22: Wage rates (RM per day) in selected cities, by skill level and citizenship, 1995

	Residents	Indonesians	Others
Georgetown, Penang			
Skilled	50 - 60	35 - 40	30 - 35
Semi-skilled	40 - 50	28 - 35	25 - 30
Unskilled	30 - 40	20 - 28	20 - 25
Kuala Lumpur			
Skilled	50 - 70	35 - 60	30 - 35
Semi-skilled	40 - 50	30 - 35	25 - 30
Unskilled	35 - 40	20 - 28	20 - 25
Johor Bahru			
Skilled	55 - 65	45 - 50	40 - 45
Semi-skilled	40 - 45	35 - 40	25 - 30
Unskilled	30 - 40	25 - 35	25 - 30

Source: Abdul Rashid Abdul Aziz (1996), 'Foreign Workers in the Construction Industry', p8.

lack of unionisation and effective representation of immigrant labour interests. It is evident that local workers, who predominate as supervisors or semi-skilled workers, command the highest wages. Even when performing tasks similar to those done by foreign workers, locals are frequently paid higher wages – this being justified by their longer service with the particular employer. Indonesians are preferred over Bangladeshis given their diligence. Others, such as workers from Myanmar, who are in less demanding trades like electrical works, plumbing and sanitary fixing receive rates between the range of those paid to the Indonesians and Bangladeshis.⁵⁰

Policy issues

Several initiatives have been made to address the pressing human resource needs of the construction sector, although some additional measures may be necessary, as highlighted here.

50. Abdul Rashid (1996) pp 7-8.

Establishment of industry board

In 1994, the Construction Industry Development Board (CIDB) was set up with the objective of promoting, stimulating, improving and expanding the construction industry. It is a self-financing statutory body with its primary source of finance coming from a levy of 0.25 per cent of the total contract sum payable by all contractors undertaking work in excess of RM500,000 under the Construction Industry (Collection of Levy) Regulations gazetted on June 13, 1994. It hopes to eventually have six offices in various regions in the country. The establishment of the Board provides an important platform for industry-wide participation in addressing the common problems facing the construction sector.

Increasing relevance of training

The Board has undertaken to work with existing training institutions to enhance the relevance of their training programmes, by tailoring short courses and offering flexible course options, and to increase the numbers of trainees. Currently, the co-ordination between the Board and these institutions is on an informal basis with institution representatives sitting on the Board's working committees.

Establishment of building academy

A major effort of the Construction Industry Development Board in addressing skills development is the setting up of a private training academy known as the Building Academy of Malaysia (Akademi Binaan Malaysia, ABM). The academy is a joint effort by the Board, a state agency and an established industry player (a construction company), which will also be equity holders in the institution. It is hoped that initially six regional branches of the building academy will be opened to serve different regions in the country. Similar academies have already been incorporated in Selangor, Johore and Trengganu and are expected to be operational soon.

The academy's primary objective is to complement existing training channels in two ways. First, whereas existing institutions focus largely on providing skills to prepare new entrants to the industry, the academy will provide opportunities for existing workers in the industry to undergo further training to upgrade themselves. Second, while existing institutions offer courses in addition to those specifically related to construction, the academy will devote itself entirely to construction-related skills. By doing so, it hopes to enhance specific skills at a more in-depth level than is currently possible.

In keeping with its intention to upgrade the skills of the existing workforce, the academy will offer short, modular courses in specific areas. The duration of these courses can be as short as six or eight days in order to minimise work disruptions caused by the absence of workers from work sites. Such short and specific courses will enable employers to reap the benefits from the training immediately, while keeping the cost of training low. These factors may also encourage employers to sponsor their workers for training fully or partially. Of course, industry workers can also pay their own way to undergo such training. The academy's courses are open to both foreign and local workers.

In a sense therefore the courses offered by the building academy are akin to on-the-job training, and are in fact better since on-the-job training is usually informal and haphazard with no real evaluation. Training provided by the academy is organised in a coherent framework according to established standards and provides mechanisms for evaluation. The impact of the academy on skill development and formation will be immediate but incremental, unlike those of current institutions, which require a longer gestation period and have a high probability of graduates dropping out of the skill area entirely. Such incremental skill acquisition is expected to benefit between 5,000-10,000 workers a year when the academy is fully operational. This suggests that it will make an appreciable difference in the general skill level of the construction workforce within a year. The impact will be even wider if trained personnel impart their knowledge to co-workers.

The main obstacle faced by the academy is the lack of trained instructors. There are two internal sources. First, there is a pool of experienced workers already in the industry who can serve as instructors. However, many lack the capacity to teach in a more formal setting. Second, there are trained instructors currently serving in the established training institutions. Being a private organisation, the building academy can afford to attract trainers with more attractive salaries and benefits. While this is tantamount to staff pinching, the practice can be ameliorated to some extent by the fact that current institutions, faced with dwindling enrolments, should have excess trainers.

The academy represents the first and only industry-wide effort to contribute towards skill-development. Although initiated by the government, the Construction Industry Development Board (to which the Building Academy of Malaysia serves as the training arm) is supported by the pooling of industry resources via the compulsory levy imposed on larger contract holders.

Provision of skills accreditation

When fully operational the Building Academy of Malaysia, also hopes to perform an important supplementary function that will address a serious

lack in the industry, that of a skill-accreditation mechanism. As one of its aims, it will provide accreditation for both private and public training centres in order to enhance the quality and productivity of the trainees. This accreditation will only be granted if the programmes of these institutions meet the Construction Industry Development Board's standards. Those undergoing training at these accredited centres will be immediately registered with the Board as skilled workers.

At the same time, the Board is also currently involved in an exercise to provide accreditation for 60,000 skilled workers and site supervisors who applied for registration with the Board between December 1995 and July 1996. Initially, registration was granted on the production of documentation from employers to substantiate the claims of applicants that they are skilled in a particular job. This was done to minimise any disruptions in the construction sector that may result from a strict implementation of skill requirements. An estimated 32,000 applicants (out of 60,000) have already been registered and recognised as skilled workers.⁵¹ However, the Board is moving into the next step of encouraging workers to undergo proper training at accredited training centres.

This accreditation exercise will provide an instant inventory of over 50 skilled and semi-skilled categories of workers in the construction industry (see Appendix 1). As an incentive for workers to register themselves with the Board, it is negotiating for automatic insurance coverage to be included in the accreditation fee.

The accreditation powers of the Board also have an important role to play with respect to verifying the skills of immigrant workers. Although the current immigration policy allows only foreign workers with skills to be employed, this provision is largely not enforced because there is no formal screening mechanism to check whether foreign workers in construction possess the relevant skills. The authorities rely largely on the assurances of agents or contractors and, in times of acute labour shortage, very little verification is given or sought. Not surprisingly, industry sources suggest that as many as 95 per cent of foreign workers lack exposure to construction-related skills.

Supply of trained immigrant labour

Since the construction sector must continue to rely on external sources of labour supply, initiatives are necessary to ensure that workers coming here really possess the skill levels they claim. At least three measures need to be

51. *New Straits Times*, March 7, 1997, p9.

explored. First, a government-to-government agreement needs to be negotiated with major labour-sending countries like Indonesia and Bangladesh to ensure that their workers receive some level of training in their home countries before being sent to Malaysia. This will help spread the cost of training between the sending and recipient economies, with benefits accruing to both. The recipient country will enjoy reduced expenditures on human capital investment while the sending economies will gain from the higher earnings of their citizens overseas due to their better skill-levels. Second, it is essential to ensure that foreign workers claiming to have particular skills be screened and accredited (for their own benefit and the benefit of the recipient economy) before being allowed to work. A body such as the Construction Industry Development Board should be charged with this task and screening should be made mandatory. Third, it is necessary to allow the import of workers from more countries with bigger pools of skilled construction workers. Countries like China may be worth considering.

The levy imposed on workers with different skills needs to be reevaluated. While the levy on unskilled and semi-skilled foreign labour was increased recently as a discouraging move, the levy on skilled labour still exceeds the levy on labour in the other two categories. There is thus a penalty on the use of skilled labour. To encourage the import of skilled workers the levy on them needs to be *reduced* vis-a-vis the other categories.

Quality of housing

Many factors influence the quality of housing, but the shortage of skilled workers has greatly undermined building quality. No doubt, the quality of housing will improve in the long term as measures to upgrade the quality and extent of training available to construction workers bear fruit. However, the shorter-term solution may lie in increased supervision and tighter quality control at the building site. Reputable developers have shown that such measures can yield acceptable quality and it only remains to convince other developers that they ought to do the same.

Two complementary measures can ensure that all developers pay sufficient attention to quality. First, the guarantee period on a completed house can be extended from the current one year to two years or longer. This guarantee should not only cover structural features of the house but also other crucial elements. The minimum quality standards to be met should be laid out after discussions with industry representatives. Second, on-site inspections to ensure that minimum quality standards are being met should be considered. However, the lack of personnel to put this suggestion into practice may undermine its practicality.

Simplifying immigration rules and procedures

Given the continued reliance on foreign workers, the rules regarding their employment need to be simplified. Currently, procedures and policies on immigrant workers lack standardisation because they vary with economic sectors and country of origin. Rules also change frequently. Malaysian policy on immigrant labour is considered 'to be utterly confusing to many, including some officials of the implementing agency and labour recruiters. Such confusion, accompanied by the lack of adequate mechanisms to enforce these rules and regulations, made it possible for many to continue bringing in illegal workers and employing them...'⁵² There is clearly a need to reevaluate our policies to ensure a smooth supply of *legal* workers quickly and with minimal expenses. Making procedures for procuring foreign workers unwieldy, lengthy and expensive will only encourage the use of illegal labour.

The impact of unexpected changes in rules may be illustrated with an example cited by industry sources. The import of foreign labour was frozen until after the latest registration exercise ordered by the Foreign Workers Task Force (under the Home Ministry) from August to December 1996. This resulted in the supply of workers falling immediately by between 30-40 per cent. In March 1997, barely three months after the exercise, the Task Force was dissolved and its duties and powers shifted to the Immigration Department. The resulting chaos was highlighted in the press and the department has to struggle to clear a backlog of some 6,000 applications for domestic maids and another 60,000 applications for workers in other sectors including construction.

Similarly, the strict enforcement of registration implies that employers have to meet the cost of legalising their workers. This can amount to a sizeable sum when the workforce is large.⁵³ Consequently, skills requiring big teams (20 to 30 workers), such as carpentry, bricklaying and plasterers, for example, will be adversely affected since contractors cannot meet the costs of legalisation. This is in contrast to skills requiring smaller teams (three to four workers) like plumbers and electricians where the impact of levies will be smaller. In the face

52. See Azizah (1995) p16, for a good review of Malaysia's changing stance with respect to immigrant labour.

53. The charges for legalisation include a guarantee bond, worker levy, fees for the visa and temporary employment pass. The cost of legalising an Indonesian construction worker in 1992 was as follows: RM705 for an unskilled person, RM805 for a semi-skilled person and RM1,185 for a skilled person (Azizah, 1995: Table 7). These charges will be even higher now given that levies for unskilled, semi-skilled and skilled workers were raised in 1996.

of strict enforcement, contractors are forced to release as much as half their workforce in trades requiring big teams because they cannot afford the costs of legalising all their workers.

Phased reduction in use of foreign labour

It must be emphasised that since industry dependence on foreign labour cannot be reduced in the short-term, policies facilitating legal recruitment should be in place during this period. However, a clear plan to minimise or phase out foreign labour in stages, over a realistic time-period, should be announced ahead in order to allow the industry to make the required adjustments gradually. Such a policy may provide the much-needed catalyst for the industry to actively invest in labour-saving techniques or processes.

Attracting new entrants

In the longer-term, the construction sector needs to seriously explore avenues to attract new entrants while working to reduce the use of labour. The former is best achieved by improving the image and working environment within the construction sector. This implies offering higher salaries and benefits, improved work-safety procedures, and instilling a sense of pride in construction work.

Ensuring full compliance with labour laws will constitute a major step in improving the working conditions in the construction sector. Several measures may be considered in this connection.

Lee and Sivananthiran point out that under existing laws the main employer's liability is limited to paying a month's wage to workers whose contractors abscond without paying them.⁵⁴ The main employers have been also required, since 1980, to pay termination and lay-off benefits to all workers including those hired on contract. In practice, the provision of benefits by the main employers is very limited and even then, poor enforcement limits the actual gain enjoyed by workers under these safeguards.

Since the nature of the industry makes it impossible to ensure compliance by the many contractors and subcontractors linked to a project, this task must be made the legal responsibility of the main contractor or developer. Thus, if contractors or subcontractors default in meeting statutory benefits, the burden must fall on the main developer; this will provide the latter with the motivation to ensure that the former complies with labour laws.

54. Lee and Sivananthiran (1995).

Making the main employers liable for compliance will limit the extent of surveillance necessary. Lee and Sivananthiran also suggest that a good database on contractors and contract workers is necessary to monitor and ensure compliance.⁵⁵ They suggest amending the legislation governing employment, Employees Provident Fund (EPF) and Socso to allow for the compulsory notification of contract labour and the total number of workers involved to enable the authorities to register all contractors. The practicality of this suggestion remains in doubt.

Efforts must be made to heighten the workers' awareness of their rights. The study by Lee and Sivananthiran found that only 27 per cent of local contract workers and one per cent of foreign contract workers reported that Human Resources Ministry officials had briefed them on their rights.⁵⁶ The corresponding figure for all workers was 11 per cent. There is a clear need to educate workers on their rights and to establish a single authority to whom they can turn if they were denied their rights. The task of educating workers should include all parties such as the Ministry, the trade unions, the main employers, the contractors and so forth.

The frequent occurrence of accidents due to non-adherence to safety standards is also damaging to the image of the industry. No efforts must be spared to increase awareness of safety standards among the developers, contractors, workers and all other parties concerned. Only a construction sector that is considered safe will be able to attract capable entrants to the industry.

Once again, the tendency of the developers to pass on the responsibility of safety to contractors and sub-contractors is an issue. If this is motivated by the need to minimise cost, the government should perhaps consider providing an incentive by making expenditures on safety measures tax-deductible.

While the relevant laws on site safety and building stability are quite explicit on the responsibilities of the various parties involved, each party pleads ignorance. To increase awareness of safety standards, more efforts should be channelled towards educating the parties concerned by holding seminars, providing training, publishing advertisements, distributing information pamphlets, producing TV documentaries and the like.

If all the above efforts fail, the law must be fully enforced with more attention paid to penalties. Various penalties that can be imposed include compound fines and stop-work orders. The latter is the most effective. Safety violation cases taken to court tend to move slowly. Instead, a stop-

55. Lee and Sivananthiran (1995) p90.

56. Lee and Sivananthiran (1995) p80.

work order will have an immediate and desired effect. Errant companies will waste no time in rectifying the situation so as to minimise the losses caused by work disruption. The stop-work order should only be lifted after the Department of Occupational Safety and Health is satisfied that the stipulated remedial safety procedures have been adhered to.

The propagation of mosquito-breeding grounds in construction sites has become a major public health concern. The fines on defaulters have proved to be grossly inadequate, just as the lack of manpower has limited on-site inspections. As in the case of safety violations, an immediate stop-work order would be more effective. Besides fogging and spraying, preventive measures such as installing pumps to remove water from basement areas, building barricades and maintaining a good drainage system must be undertaken.

Reducing the use of labour

The issue of reducing the use of labour applies particularly to the housing construction subsector where mechanisation has been more limited, relative to non-residential construction. One approach is to resort to more prefabrication and the use of modular designs. Under the modular system of construction, certain items (such as doors, windows wall panels, stairs etc) come in a few pre-defined sizes. These are then mass produced in factories and used on building sites. The modular system of building will result in standard modular components being used in constructing houses (or offices), although the layout of the building can still be varied. This will not only reduce the number of workers on the work site but also the cost of housing since many components can be mass produced.

Industry-supported research and development

In this connection, it may be useful to establish an industry-supported research and development (R&D) programme aimed at finding ways and means to reduce costs and the use of labour without compromising on quality. Whether the reduction in labour use can obviate the need for immigrant workers is doubtful. It has been pointed out that countries like Germany and Japan – ‘both industrial power houses... (and) leaders in the use of advanced technologies’ – continue to rely on foreign workers in their mature construction sectors.⁵⁷

57. Abdul Rashid (1996), p12.

Conclusion

The rapid expansion of the local housing industry has brought two challenges to the fore – the inability to attract new local entrants and the diminishing capacity to generate and sustain a pool of skilled workers. This chapter highlighted the major consequences of these constraints and outlined how the housing sector has coped with them thus far. One important consequence is the large-scale dependence on immigrant labour, both legal and otherwise. However, this is neither an adequate nor permanent solution. Measures to reduce the use of labour, increase new local entrants and increase the supply of trained workers in the longer term will have to be considered seriously for effective solutions to be found.

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Appendix 1: Categories of skilled construction workers and site supervisors

Skilled construction workers

- | | |
|--|---|
| 1. Plasterer | 27. Specialised equipment installer |
| 2. Tiler | 28. Wireman |
| 3. Painter | 29. Wireman nil |
| 4. Joiner | 30. Chargeman |
| 5. Glazier | 31. Chargeman nil |
| 6. Bricklayer | 32. Gas pipe fitter - industrial |
| 7. Ceiling fixer | 33. Gas pipe fitter - building |
| 8. Roofer | 34. Formworker |
| 9. Waterproof works worker | 35. Scaffolder |
| 10. Plumber (building) | 36. Welder |
| 11. Carpenter | 37. Metalworker |
| 12. Excavator operator | 38. Drywall installer |
| 13. Blocklayer | 39. Sign maker |
| 14. Pavior | 40. Hard landscaper |
| 15. Ironmonger | 41. Soft landscaper |
| 16. Sanitary fitter | 42. Draughtsman - civil and structural works |
| 17. Barbender | 43. Draughtsman - architectural works |
| 18. Concretor | 44. Draughtsman - M & E works |
| 19. Steel structure fabricator | 45. Truck mounted, wheeled and crawler crane operator |
| 20. Timber structures erector | 46. Concrete pumping equipment operator |
| 21. Plumber (water reticulation) | 47. Mobile elevating work platform operator |
| 22. Stone (rubble) mason | 48. Piling rigger |
| 23. Drain-layer | 49. Tower crane operator |
| 24. Airconditioning (building installer) | |
| 25. Airconditioning (industrial installer) | |
| 26. Fire-fighting installer | |

Construction site supervisors

- | | |
|-------------------------------------|----------------------|
| 1. Architectural and building works | 5. Electrical works |
| 2. Structural works | 6. Mechanical works |
| 3. Civil and infrastructure works | 7. Maintenance works |
| 4. Building services | 8. General |

Source: Proposed Amendments to the Third Schedule, Section 2 and Subsection 32(2), *Construction Industry Order 1997*.

Appendix 2: Summary of benefits assured to all workers under existing laws*

Paid medical benefits

Medical attention at the expense of the employer though it is unclear who should bear the cost of prescribed medication expenses.

Paid sick leave, if hospitalisation becomes necessary, of up to a maximum of 14 days in the aggregate in each calendar year if the employee has been employed for less than two years; 18 days for two but less than five years; and 22 days for employees with five years or more.

Maternity benefits

Maternity allowances and paid leave for 60 days, for a maximum of 5 periods of confinement. The maximum allowance payable is RM6.00 per day.

Rest day

One rest day per week of work.

Overtime rate

Overtime rate equals to one-and-a-half times the normal hourly rate if work is done beyond the normal 8 hour work-day.

Paid public holidays

10 paid gazetted public holidays.

Paid annual leave

Annual leave of eight days for every 12 months of continuous service with the same employer for those who have worked for a period of less than two years. If the length of continuous service is between two but less than five years with the same employer, annual leave increases to 12 days for every 12 months of continuous service. If the length of continuous service is between five years or more with the same employer, annual leave increases to 16 days for every 12 months of continuous service.

Employment injury

This is provided through two schemes to which all establishments have to contribute, regardless of employment size. Workers earning more than RM2,000 a month are excluded from the schemes.

The first, an employment injury scheme provides some protection against employment injury leading to disablement or death. Protection comes in the form of cash benefits, medical care and benefits-in-kind. Persons suffering injury get cash payments for disablement, whether permanent or of a temporary nature. Cash is also paid out to dependants in the event of the death of the insured.

The second, an invalidity pension scheme provides protection against invalidity due to diseases or injury from whatever cause. Workers receive an invalidity pension or grant, supply of artificial limbs and other vocational rehabilitation. However, the amount of compensation paid is negligible; most

claimants have received RM200 or less and daily disability compensation can be as low as RM8.

Termination and lay-off benefits

10 days wages for every year of continuous service with employer for a period of less than two years. For employees with two but less than five years of service, the amount is the equivalent of 15 days wages for every year of service, and 20 days wages for 5 years or more.

The act makes it mandatory for enterprises with 40 or more workers to have joint management-worker safety committees to ensure compliance with the law. Offenders can be fined a maximum of RM50,000 or be imprisoned for up to five years.

Old age benefits

This is assured via the Employees Provident Fund (EPF) - a contributory scheme required of all workers except civil servants entitled to pension. Employees contribute 10 per cent of the monthly wage to the fund with the employer adding another 12 per cent. Employees are entitled to full benefits upon reaching the age of 55 years.

Right to form trade unions

The Trade Unions Act allows seven or more workers to form a trade union although the Minister of Human Resources can waive this right in specific industries or instances. Foreign workers can join the union but cannot hold office in it.

Occupational safety and health

Under an act that took effect in early 1994, workers are afforded protection against health risks and poor working conditions. It covers all sectors of the economy. Employers are required to identify all risks and take precautions, including the training of workers. Employees, on the other hand, are required to use safety equipment and co-operate with the employer.

Note: Summarised from Lee, KH and A Sivananthiran (1995), *Contract Labour in Plantations, Construction and Sawmilling in Malaysia*, pp 21-25.

Building Materials: Ensuring Stable Supplies and Fair Pricing – The Government Viewpoint

Mohd Adzib Mohd Isa

The construction sector in Malaysia grew at an average rate of 13.3 per cent per annum during the Sixth Malaysia Plan period with a 4.4 per cent share of gross domestic product (GDP) in 1995. For the Seventh Malaysia Plan period, the construction sector is expected to grow at 10.2 per cent per annum with its share of GDP expected to be at 4.8 per cent by the end of the plan period in the year 2000.

With the buoyant growth expected in the sector and to ensure that the construction sector continues its contribution to the overall economic development of the country, reliable and adequate supply, consistency in quality, timely delivery and competitive price of building materials are crucial. Among the basic building materials essential to the construction industry are cement, carpentry and joinery timber, aggregates and crusher run, floor and wall tiles (ceramic and marble), bricks, reinforcement and structural steel, sand, sanitary ware and fittings, roofing materials, pipes and glass. Supply and demand figures for some of the building materials are shown in Table 1.

Currently only two building materials come under the purview of the Control of Supplies Act 1961 – cement and reinforcement steel. Due to the extensive use of these two items in the construction industry, the government

Table 1: Supply and demand for building materials

	1996		1997		1998		1999		2000	
	Demand	Supply	Demand	Supply	Demand	Supply	Demand	Supply	Demand	Supply
Ordinary portland cement ('000 tonnes)	14.8	13.0	17.1	14.9	20.4	21.6	24.0	26.5	28.3	26.5
Reinforcement steel ('000 tonnes)	1.1	1.57	1.28	1.57	1.4	1.57	1.5	1.57	1.6	1.57
Structural steel ('000 m ³)	0.34	0.19	0.36	0.19	0.38	0.19	0.41	0.19	0.43	0.19
Sawn timber ('000 m ³)	4.4	13.9	4.7	14.0	5.0	14.0	5.4	14.0	5.9	14.0
Plywood ('000 m ³)	0.65	4.8	0.70	4.8	0.74	4.8	0.78	4.8	0.82	4.8
Sand ('000 m ³)	6.0	n.a	6.2	n.a	6.4	n.a	6.7	n.a	6.9	n.a
Aggregates and crusher run ('000 m ³)	36.9	48.0	38.5	48.0	39.7	44.5	40.8	48.0	42.0	48.0
Ceramic wall and floor tiles ('000 m ²)	40.7	61.6	43.9	75.4	46.1	75.4	47.8	75.4	49.8	75.4
Marble wall and floor tile ('000 m ²)	1.0	1.34	1.1	1.34	1.2	1.34	1.3	1.34	1.38	1.34
Sanitary ware and fitting ('000 pieces)	1.5	4.7	1.6	4.7	1.8	4.7	1.9	4.7	2.1	4.7
Clay bricks ('000 pieces)	1.6	2.5	1.7	2.5	1.79	2.5	1.8	2.5	1.9	2.5

Source: Arthur Andersen, 'Study on Demand and Supply of Building Materials'.

had to impose some form of control over price, supply, import and export activities. These are among the items classified as scheduled items under the Control of Supplies Act. Supply, demand and prices of other building materials such as clay bricks, sand, timber and plywood, etc, are monitored by the government through the Special Panel on Building Materials. The role of the government is to ensure that supply is sufficient to meet demand and that, at the same time, prices are fair to both the producer and the consumer.

Cement

The cement industry is regulated by both the Ministry of Domestic Trade and Consumer Affairs, and the Ministry of International Trade and Industry. Monitoring and enforcement of all major aspects of manufacturing and distribution are carried out by the Ministry of Domestic Trade and Consumer Affairs, while import and export control and issuance of manufacturing licences are regulated by the Ministry of International Trade and Industry.

There are currently nine major cement manufacturers with a total installed clinker capacity of 10.4 million tonnes and cement grinding capacity of 14.6 million tonnes. Of the nine manufacturers, five are integrated with both clinker and grinding capacity while the remaining four only have grinding capacity. Most of the cement plants are located near the source of raw materials to minimise handling and transportation costs.

The manufacturing operating efficiency of most manufacturers is currently about 80 per cent. However, the existing production capacity of the industry will increase in stages with the implementation of several new and expansion programmes already approved by the government. Three new plants are expected to start operation in late 1997. Production of cement is expected to reach 14.5 million tonnes in 1997 and about 21.6 million tonnes in 1998. The government has allowed liberal importation of cement since 1995 to ease local shortages. About two million tonnes of cement are expected to be imported in 1997.

Although cement consumption per capita increased significantly during the 1990 to 1995 period, consumption in Association of South East Asian Nations (Asean) countries is still considered low – about 150 kg in Indonesia and 580 kg in Malaysia, compared to 1,190 kg in Taiwan and 1,170 kg in Korea. Cement consumption per capita is relatively high in Singapore at about 950 kg in 1995.

An administrative price control has been imposed on cement since 1972. Prices are fixed based on cost plus a reasonable margin taking into

consideration the distance between the plants and the destinations. Within the country, the price of cement varies by location from RM194 to RM239 per tonne. Because of this control, Malaysia's cement price has been very stable compared to other neighbouring countries. The government-regulated price, which had been in force since March 1981, was revised only in 1995. Following numerous requests from manufacturers, and after taking into account the need for continuity in supply through expansion of existing plants, the government agreed to a 10 per cent price increase from August 1995.

Under the old system, cement prices were controlled only at retail levels, leaving the distributors and retailers to negotiate their own prices with manufacturers. However, to ensure an adequate supply, especially at retail levels, and to prevent supply and price irregularities, the government has also been regulating the distributors' price of cement since October 1996.

There is no formal price review mechanism. Informal price reviews are usually initiated by the manufacturers who would submit reasons and justification for the proposed revision. The request will be studied by the Ministry of Domestic Trade and Consumer Affairs, which will then forward it – together with comments and views from the Ministry of International Trade and Industry, and the Ministry of Finance – to the Cabinet for final approval.

Distribution of cement is also regulated through the issuance of licences so as to ensure a fair distribution to all parts of the country. All levels of trading from manufacturing, wholesaling and retailing are licensed by the Enforcement Division of the Ministry of Domestic Trade and Consumer Affairs under the Control of Supplies Act, 1961.

In a move to ensure future stability in supply, the government has encouraged the expansion of existing plants and also the setting up of new plants. Cement is a highly capital intensive industry requiring substantial capital investment. The cost of expanding an integrated line of 1.5 million tonnes is estimated to be about RM750 million. Therefore, the government gives Investment Tax Allowance in respect of qualifying capital expenses for new integrated cement plants. New manufacturers may also apply for pioneer status.

The nine manufacturers dominate the market with five of them accounting for about 80 per cent of market share. APMC on its own accounts for 25 per cent of market share followed by CIMA (16 per cent) and Kedah Cement (16 per cent). With Southern Cement, Negri Sembilan Cement and Pahang Cement scheduled to be operational in 1997, and with expansion programmes undertaken by the existing manufacturers, the

production of cement is envisaged to be sufficient to meet demand from 1998 onwards.

Import and export activities are also regulated by the government. Since 1995, imports have been liberalised as local production could not keep up with increasing demand. To maintain standards, imported cement has to adhere to MS 522:89 standards set by the Standards and Industrial Research Institute of Malaysia (Sirim) and the guidelines set by the Construction Industry Development Board (CIDB). No permit is required for cement imported into Peninsular Malaysia but import permits from the Ministry of International Trade and Industry are needed for Sabah and Sarawak. Currently cement is exempted from import tax. Exports are closely regulated through permits issued by the Ministry of International Trade and Industry.

Although cement has been identified as one of the fast track products under the Asean Free Trade Area (AFTA) agreement, the Malaysian government has excluded it from this category and put it under the temporary exclusion list to protect the local industry. However, the temporary exclusion list will be phased out by January 2001. The goal to achieve AFTA is through the implementation of the Common Effective Preferential Tariff (CEPT) scheme, whereby the existing tariff rates of the Asean countries were agreed to be reduced to a range of zero to five per cent within a time frame of 10 years. AFTA will enhance inter-Asean trade by creating a barrier-free market by reducing tariffs on a wide range of products to a maximum of five per cent only.

Within the Asean region, there is a high demand for cement with an average growth of about 12.3 per cent from 1990 to 1995. To meet the growing demand, most of the Asean countries are building up their supply capacity. From 1998, with the planned expansion, Malaysia, Indonesia, the Philippines and Thailand are expected to have excess supply. This excess supply is expected to be exported, especially in 1998 and 1999. The main challenge facing the industry is competition among neighbouring producers in getting new markets for the excess supply envisaged from 1998. Besides promoting economic integration, the formation of growth triangles in the Asean region also enhances the region's attractiveness as an investment location and market for producers.

Steel

Steel reinforcement bars are primarily used in load bearing beams and columns, and slabs for reinforcement purposes on building structures. The housing sector has remained the single largest user of reinforcement bars.

There are three common types of steel reinforcement bars, namely, mild steel round bars, high tensile deformed bars and commercial quality bars.

The five major rolling mills are Perwaja, Amsteel, Southern Steel, Antara and Malayawata, which together account for over 85 per cent of steel reinforcement bars produced in Malaysia. The current rolling capacity for bars and wire rods is about 2.9 million tonnes while production is about 2.3 million tonnes. Demand for steel bars is about 2.7 million tonnes. The five major rolling mills produce quality and large diameter bars of 12 mm or more. There are about 16 other smaller rolling mills which concentrate on smaller diameter products. A small percentage of bars and wire rods are exported while certain grades of steel, especially the smaller size bars, are imported.

Reinforcement steel bar is also a scheduled item under the Control of Supplies Act, 1961. Prices are controlled administratively due to the strategic importance of steel to the construction industry. Price control is important for the protection of the steel industry as it is still in the development stage. Like in the case of cement, there is no formal price review mechanism. The manufacturers normally put up a proposal for price revision. The Ministry of Domestic Trade and Consumer Affairs will study the request and, together with views from the Ministry of International Trade and Industry, and the Ministry of Finance, forward the recommendations to the Cabinet for approval. The government determines the price of steel according to sizes. The last price revision was in 1989. The price range for steel bars is as follows:

- Mild steel bars of (10 mm to 32 mm) are priced between RM1,189 to RM1,085 per metric tonne.
- High tensile deformed bars (10 mm to 32 mm) are priced between RM1,229 to RM1,124 per metric tonne.
- Commercial quality bars (9 mm to 24 mm) are priced between RM1,189 to RM1,072.

Licensing is needed for all levels of trading, that is, manufacturing, wholesaling and retailing.

To ensure protection of local industry, imports are also controlled. An import permit from the Ministry of International Trade and Industry is required for all imports. Exports are also regulated through permits.

To ensure continuity of supply due to increasing demand of steel in the construction sector, the government provides various forms of assistance for the development of the industry such as Investment Tax Allowance and pioneer status.

The increased usage of structural steel is also being encouraged in the construction industry, but unlike reinforcement steel, prices of structural steel are not controlled by the government. Domestic

consumption of structural steel by the housing sector is still minimal. Most of the structural steel consumed by the commercial and residential sector are for piling purposes. There are currently no major manufacturers of structural steel locally.

Other building materials

In 1992, the government set up a Special Panel on Building Materials to ensure that the supply of building materials is sufficient to meet the demands of the construction industry and also to provide a forum for the government, manufacturers and users of building materials to meet and solve any issue relating to building materials. This panel is represented by the public sector, basically the relevant government agencies, and also the private sector involved in the construction industry. This panel meets regularly, especially in times of supply difficulties, to:

- Collect and compile information on prices of building materials;
- Study the demand situation of the building materials;
- Study the supply situation and problems faced by manufacturers;
- Receive and study consumer complaints pertaining to supply;
- Put forward recommendations to the government; and
- Undertake any other matter related to the construction industry.

The building materials currently under the purview of this panel are cement, steel, bricks, timber, plywood, sand, ceramic and marble tiles, glass, wire and wire products, paints and other materials. Since its inception in 1992, this panel has acted as the co-ordinating body between manufacturers, distributors and consumers, especially in regulating the supply and demand situation in the market. Besides the panel, working groups and associations for the various building materials like the Malaysian Iron and Steel Industry Federation, Malaysian Construction Materials Distributors Association and the Cement and Concrete Association meet regularly with the Ministry of Domestic Trade and Consumer Affairs to monitor the supply and demand situation.

The demand and supply situation for some of these building materials is discussed here.

Sawn timber

Demand for sawn timber is expected to grow at a rate of 6 per cent per annum until the year 2000. Local production seems sufficient to meet the forecast domestic demand. By the year 2000, consumption is expected to reach 5.9 million m³ whereas production capacity of local millers is estimated to be 14 million m³

by the year 1997. About 60-70 per cent of sawn timber produced is consumed by the construction sector where it is used as foundation piles, structural component, roofing and ceiling. Within the construction sector, the commercial, housing, industrial and infrastructural sectors are the main users of sawn timber. There are more than 1,000 sawmills throughout the country. A large number of these mills are concentrated in Sabah and Sarawak as these two states have vast areas of forest. The price of sawn timber varies by species and quality, and is determined by supply and demand. Logging and forestry are considered state matters and each state has complete jurisdiction over its own resources.

Plywood

The supply of plywood is expected to be adequate to meet domestic demand. Demand is expected to grow at a rate of about 7.5 per cent per annum. Domestic consumption of plywood is forecast to be about 823,000 m³. Local production capacity is estimated to be about 4.8 million m³ in 1996. The surplus capacity in the domestic market will encourage more exports. The use of plywood in the construction sector is mainly for framework, flush door and internal partitioning. The commercial building and housing sectors are major users of plywood in the construction sector. There are about 120 plywood mills in Malaysia. The larger plywood mills are also found in Sabah and Sarawak. Plywood prices are not fixed and fluctuate according to supply and demand in both domestic and overseas markets. The problem faced by the domestic market is in getting quality plywood as good quality plywood is normally exported.

Aggregates and crusher run

Demand is expected to grow at a rate of about 4.7 per cent until the year 2000. In view of the ongoing projects and the increase in demand for housing projects, demand for aggregates and crusher run is expected to be on the rise. Supply is expected to be about 48.6 million m³ in the year 2000 while demand is expected to be around 42.1 million m³. Aggregates is a major raw material for producing concrete while crusher-run is used for road and highway construction. The infrastructure and housing sectors are the main users of aggregates and crusher-run. These two materials can only be obtained from quarry operations. There are more than 200 quarries in the country. Quarrying licences are issued by the various states and operators have to pay royalties to the states for materials extracted. The price of quarry material is determined by free market forces. There are also no import and export duties for aggregates and crusher run.

Wall and floor tiles

There is excess capacity for the production of wall and floor tiles in the domestic market. Production capacity for ceramic tiles is expected to increase to 75.4 million m² in the year 2000 while demand is expected to be about 49.8 million m² with an annual growth rate of 8.6 per cent. There are about 18 licensed ceramic wall and floor tiles manufacturers. The prices of tiles are not controlled, hence they are very competitive due to the abundant supply in the market. The ceramic tile industry is protected as the government imposes tariffs on imported tiles and encourages export. Ceramic tiles has also been identified as one of the items under the Accelerated Tariff Reduction Product through the CEPT scheme. The existing tariff rate for ceramic tiles will be reduced at a faster pace and buyers in the construction industry will have more competitive prices in future.

The domestic demand for marble wall and floor tiles is forecast to grow at a rate of 10.2 per cent per annum. Demand is expected to be about 1.4 million m² by the year 2000. Based on planned expansion, local supply will be able to meet demand but a slight shortage in supply might occur in the year 2000 if there is no further expansion.

Clay bricks

Domestic demand for clay bricks is forecast to grow at 6.7 per cent annually to reach about 2.0 billion pieces in year 2000. Production capacity is also expected to increase to 2.5 billion pieces at the same time. The local industry is not envisaged to encounter any shortages except some localised shortages in certain areas due to high transportation costs which deters movement of bricks between states. The robust growth of the construction sector has increased the demand for bricks especially with the increased emphasis from the housing sector. The residential sector is the major consumer of clay bricks. There are about 300 manufacturers of clay bricks in the country with five major ones. Based on installed capacity with planned expansion, there should be sufficient supply to meet demand.

Construction sand

Demand for construction sand is expected to increase further with increased activities in the construction sector. Domestic demand is expected to grow 3.9 per cent annually reaching about 7.0 million m³ in the year 2000. Due to scarcity of data on the total amount of sand that can be extracted, it is difficult to say whether there might be a shortage. Construction sand is mainly used for producing concrete on site, plastering works and for levelling floors before tiling.

Being a natural resource sand is regulated by the respective states. To undertake sand extraction, individuals or companies need to apply for permits from their respective land offices. It is estimated that there are more than 800 permit holders in the country. The price of sand varies from state to state and usually fluctuates depending on the cost of transportation. There have been local shortages of sand in areas where construction activities are high due to state regulations that prevent free movement of sand from state to state. There is a need to control sand extraction for environmental protection as sand is an exhaustive material. The government has encouraged the use of more imported sand.

Sanitary wares and fittings

Domestic demand is forecast to grow at an average growth rate of 9.8 per cent per annum. Malaysia is self sufficient in that local capacity is sufficient to support demand. However, demand for some specific high quality sanitary ware is usually met by imports. Production is forecast to increase from 2.3 million pieces in 1994 to about 4.7 million pieces in the year 2000. With the additional expansion capacity, supply is forecast to be sufficient to meet demand. The sanitary ware industry is dominated by nine producers, with four major producers capturing 90 per cent of market share. The customer segments for sanitary ware are housing, infrastructure, commercial and industrial. About 25-30 per cent of local production is exported.

Standards and quality

Ensuring standards and quality of products are important in the success of the industry. Good quality cement and steel are needed for the structural setting of a building while finished products such as paint, tiles, roofing materials and sanitary wares contribute to the final finishing of a building. There should be no compromise on quality in the construction industry as this can have adverse effects in terms of the safety aspect.

Currently, with available capacity which has enabled an increase in local production for many of these building materials, there is a need to export products. The local market is limited and, for the industry to expand, new markets have to be continuously sought. Due to high consumer expectations, in order to be competitive manufacturers must be perceived to be quality producers. In a competitive environment, the important factors that determine access to the market are price and quality of the product. Quality of products and production could be improved through investment in modern technology, training, upgrading of employee skills and creating

awareness of quality requirement and standards. With the implementation of AFTA, to stay ahead of competition from other Asean countries, industries will have to improve quality while maintaining prices. Local suppliers must ensure that their products are comparable or better in quality to be competitive and to capture the market.

The Construction Industry Development Board was set up in 1994 by the government to promote the development and growth of the construction industry. The CIDB together with Sirim is responsible for determining the standards for products and manufacturers are required to adhere to standards set. Hence, there should be more emphasis on standards and quality.

Database

Based on feedback from the various sectors in the construction industry, there is perceived to be a need to establish a database for building materials so as to continuously monitor the supply, demand and price situation. Accurate, consistent and comprehensive data on building materials are crucial to enable appropriate planning and development of the construction and building materials industries. Currently, statistical data on local production, import and export is not standardised. As an initial step towards establishing such a database, the government commissioned a Study on Supply and Demand of Building Materials in 1994. This study undertaken by Arthur Andersen was completed in 1996. This study on most of the basic building materials identified covers the supply, demand, price and projection up to the year 2000. Data on domestic production, exports, imports and prices of 15 building material dating to 1980 have also been compiled in the study. As this is the first study undertaken for building materials, it will form the basis for future studies to be undertaken to improve data collection and compilation for the various building materials.

Conclusion

The ability of the building materials industry in contributing to the sustainable growth of the construction industry is of great importance and poses a challenge to the industry. Besides government support and incentives, wherever possible the building material manufacturers themselves need to perform satisfactorily to ensure the continued development and growth of the industry.

One of the most important factors for success is the quality of the end-product. Quality is of utmost importance in all building materials. There is also room for further upgrading of capacity as the

operating efficiency of most building material manufacturers has yet to reach optimum level. Manufacturers should also aim towards stabilising prices of their products to ensure a steady market in a competitive environment.

With the implementation of the CEPT scheme under AFTA, the domestic construction and services industries should benefit from abundant supplies and choices, hence price competitiveness. However there is a continuous need for local manufacturers, distributors, builders, contractors and retailers including transporters to co-operate so as to ensure the well-being and development of the building materials and construction industries.

Building Materials: Ensuring Stable Supplies and Fair Pricing – The Industry Viewpoint

Yeow Yoon Foo

Overview of housing development

Alongside the objective of increasing house ownership, the building of low and medium-cost houses has been a priority issue for the government. Under the Sixth Malaysia Plan (1991-95), a total of 647,460 units of houses – about a third of which were low-cost houses – were built by the public and private sectors. A total of 76 per cent of the targeted 343,800 low-cost housing units was completed. The private sector completed 217,079 low-cost housing units – 100.1 per cent of its target. The public sector achieved 32 per cent of its target of 126,800 low-cost housing units. The remarkable achievement in low-cost housing during the Sixth Malaysia Plan was attributed mainly to:

- Strong economic growth;
- Co-operation and support from the private sector;
- The government's strong emphasis on creating affordable housing; and
- Easier access to bank loans for developers and buyers.

In the Seventh Malaysia Plan (1996-2000), a total of 555,820 units of low-cost houses will be built. Of this number, 380,000 units of

Table 1: Gross domestic product by industry origin (RM million in 1978 prices)

Sector	1990	2000	Average growth rate (%)	
			OPP1 achievement	OPP2 target
Agriculture & forestry	14,829	20,820	4.4	3.5
Mining & quarry	7,688	8,910	4.9	1.5
Manufacturing	21,381	58,010	10.3	10.5
Construction	2,788	5,470	6.4	7.0
Electricity, gas & water	1,511	3,910	9.7	10.0
Transport, storage & communications	5,489	14,200	10.2	10.0
Wholesale & retail trade, hotels & restaurants	8,700	19,640	6.5	8.5
Finance, real estate & business services	7,650	16,490	7.3	8.0
Government services	8,459	13,080	7.5	4.5
Other services	1,656	3,400	6.8	7.5
(-) Imputed bank charges	4,020	13,710	15.5	13.0
(+) Import duties	2,972	5,560	5.8	6.5
GDP at purchaser's value	79,103	155,780	6.7	7.0

Source: *Second Outline Perspective Plan (OPP2) 1991-2000, Malaysia.*

houses are expected to be built by the private sector, while 170,000 units are targeted to be built by the public sector and 5,820 units by the Employees Provident Fund. In addition, a total of 116,449 units of low-cost houses have been approved for construction under the Low-Cost Housing Development Fund. The target set for the Seventh Malaysia Plan has taken into consideration the demand from the poor and lower income groups, who are finding it increasingly difficult to buy a house. The building of more low and medium-cost houses for the lower income group continues to be a priority.

To accelerate the provision of low-cost houses, the government has established three special funds to ease the housing problem faced by the lower income group: A RM600 million fund for housing for the hard-core poor; a fund to accelerate the construction of low-cost houses; and the low-cost housing development fund.

Table 2: The construction sector growth and GDP contribution, 1984-96

Year	Economic growth		Construction sector share of GDP
	Overall	Construction	
1984	7.8	4.2	5.2
1985	-1.0	5.7	5.0
1986	1.2	-14.0	4.0
1987	5.4	-11.8	3.0
1988	8.9	2.7	3.2
1989	9.2	11.6	3.3
1990	9.7	19.5	3.6
1991	8.0	14.6	3.8
1992	7.8	11.2	3.9
1993	8.3	11.2	4.0
1994	9.2	14.1	4.2
1995	9.5	17.3	4.4
1996	8.2	9.0	4.5

The National Housing Company with a start-up capital of RM1 billion has been established to help developers to speed up the construction of more low and medium-cost houses. Another sum of RM974.6 million has been set aside to provide housing for public sector employees in 1998. The fund would cover housing projects for the armed forces, the immigration, customs, prisons departments, teachers in rural areas and loans for the states under the low-cost housing programme. The provision of an annual special building allowance of 10 per cent on qualifying expenditure for the purchase or construction of buildings for employee accommodation to the manufacturing sector in the 1994 Budget is now extended to the other approved service sectors.

To ensure full implementation of planned targets under the Seventh Malaysia Plan, continued co-operation between the public and private sectors is necessary. The success of the plan is dependent on the following:

- Making available abundant land at low premiums for low-cost residential development;
- Speedy project approval by the relevant authority;

- Better controlled distribution of low-cost housing units to deserving people;
- Adequate supply of building materials and labour at fair prices and rates;
- Cross-subsidy from higher cost residential development; and
- Good construction practices and the use of advanced technology or construction methods to speed up the construction process.

Role of construction industry

The construction industry in Malaysia plays a major role in national development. As envisaged in the Second Outline Perspective Plan (OPP2) (1990-2000), it is expected to grow at an average of seven per cent per annum. The sector's contribution to the gross domestic product (GDP) will remain at around 4.8 per cent throughout the period. Large infrastructure projects including the RM20 billion Putrajaya Administrative Centre, which is due to be completed in 2005, and many other township projects to be undertaken during this period are expected to significantly contribute to the sector's growth. The GDP by industry for the Second Outline Perspective Plan and the construction sector growth and GDP contribution for 1984-96 are shown in Tables 1 and 2.

The construction sector is internally competitive and, being highly labour-intensive, has a relatively low productivity rate in comparison to other sectors. The GDP per worker for the construction sector is about half of that of the other services sector. The construction costs are relatively high and turnaround time is relatively slow.

The inefficiencies in the construction industry are contributed mainly by the following factors:

- Shortages in manpower supply, both quantitative and qualitative;
- Lack of advanced technologies in construction processes;
- Financing difficulties;
- Lack of national standards of specifications;
- Deficiencies in materials; and
- Deficiencies in intermediate services.

Building material industry

For the construction sector to continue contributing to the overall economic development of the country, there is a need to ensure the productive and

efficient growth of the building material industry. Reliable and adequate supply, consistent quality, timely delivery and competitive prices of building materials are crucial to the sustainable growth of the construction sector. It is also one of the important contributing factors towards the achievement of the target set for low-cost housing development under the Seventh Malaysia Plan.

The composition of average expenditure in construction relies heavily on materials and labour. A study undertaken by the Asian Development Bank and the Economic Planning Unit in 1992/93 showed that about 43.8 per cent of the average cost of expenditure in the construction sector comes from materials and supplies, while salaries and wages constituted only about 18.8 per cent of total expenditure.

Success factors

Five major factors contribute to the success of the building material industry – human resources, production management, marketing management, regulatory factors and technology.

Human resources

Human resources, the key determinant of the success of any industry, is affected by three factors – availability, skills and productivity rate of manpower. These three factors are closely linked to each other. Assuming all other resources are available, human resources must be present to contribute to the production process of the industry; and the manpower available must have the necessary skills to achieve the productivity required. The extent of the effect of the human resources factor on the building material industry depends very much on the intensity of manpower required in the production process. The findings of a survey by Arthur Anderson Management Services in 1994, which reviewed 14 basic building materials, showed the human resources factor to be a critical success factor for the building material industry (see Table 3).

Since the building material industry in Malaysia is comparatively more conservative and the production processes adopted more labour-intensive, the acute shortage of local labour both quantitatively and qualitatively in terms of skills is most apparent. The liberalisation of foreign labour, which is aimed at overcoming the shortage, has created a double edged effect. While it has helped the construction industry, it has also hampered the move towards using or exploring less labour intensive production techniques. With the sizeable number of foreign workers available, productivity is expected to remain low for a long period of time.

Table 3: Critical success factors for the building material industry

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	Average mean
HUMAN RESOURCES															
Manpower availability	3.4	4.0	3.9	3.7	3.4	3.6	4.3	2.8	2.4	3.2	3.7	3.5	4.7	3.0	3.6
Skills of manpower	3.7	4.1	4.0	4.0	3.6	4.1	3.3	2.5	2.2	3.5	2.7	3.5	4.7	3.3	3.4
Rate of production	3.9	3.1	3.9	4.3	3.6	3.8	3.7	2.5	2.2	3.6	2.7	4.0	4.3	3.1	3.4
PRODUCTION MANAGEMENT															
Quality	3.6	3.7	3.9	4.3	4.1	4.5	4.3	3.0	2.3	3.2	2.7	4.0	4.7	3.3	3.7
Machinery down time	4.1	3.8	3.8	4.0	3.5	4.1	4.0	3.2	2.3	3.9	3.3	4.0	4.3	3.0	3.6
Raw material lead time	3.6	3.7	3.6	3.7	3.0	3.8	4.3	2.5	3.0	2.6	2.7	3.0	4.0	3.5	3.4
Capacity utilisation	4.0	3.6	3.4	3.3	3.5	4.3	4.0	2.7	2.5	3.3	3.3	4.0	4.3	2.9	3.4
Optimal inventory level	3.9	2.8	3.5	4.0	2.9	3.3	3.3	2.5	2.0	3.1	2.0	3.0	4.0	2.2	3.1
MARKETING MANAGEMENT															
Price sensitivity	3.7	3.6	3.9	4.5	3.8	4.4	3.3	2.8	2.0	3.6	3.3	3.5	4.3	3.3	3.7
Efficient distribution network	4.1	2.9	3.8	4.0	3.8	4.6	4.3	3.0	1.8	3.3	3.0	4.0	4.7	2.8	3.6
Adequate transport infrastructure	3.9	2.8	3.6	4.3	4.0	3.5	3.7	3.0	2.5	3.6	3.0	4.0	4.7	2.8	3.5
Attractive terms of payment	3.1	2.6	3.8	4.3	3.1	3.5	2.7	3.0	3.0	3.1	3.3	3.5	4.0	2.9	3.3
Extensions of discounts	3.0	1.8	3.8	4.0	3.1	3.4	3.0	1.8	2.0	2.5	3.3	3.5	4.3	2.0	3.1
Margins at different distribution network	3.4	2.2	2.5	3.5	3.3	3.4	3.0	2.3	2.0	3.0	2.7	3.0	4.0	2.1	2.8
REGULATORY															
Price control	4.1	3.7	3.9	4.0	3.4	3.9	3.7	3.0	2.0	3.3	2.3	3.0	2.3	3.0	3.4
Tax incentives	3.7	3.5	3.9	4.3	2.7	4.1	4.0	3.4	1.0	2.8	2.7	4.0	3.0	3.1	3.4
Licensing	2.7	3.2	3.8	4.3	2.8	3.6	3.0	2.7	3.3	3.6	2.3	3.0	2.7	3.2	3.2
Regional trade blocs/agreements	3.3	3.0	3.5	3.3	2.3	3.9	3.7	3.5	2.0	1.7	2.3	2.5	3.0	2.7	3.0
TECHNOLOGY															
Advancement	3.0	2.9	3.3	3.3	3.4	3.9	3.0	3.0	2.0	2.3	3.0	3.5	4.0	2.0	3.2
Up-to-date technology	3.4	3.1	3.5	3.7	3.1	3.9	3.3	3.2	2.0	2.4	2.7	3.0	4.0	2.2	3.1
Integrated	3.3	3.0	2.7	3.3	2.7	3.3	3.3	2.5	1.0	2.2	2.3	3.0	4.0	2.1	2.8

Source : Survey results from MDTCA-AA, Supply and Demand of Building Materials Study 1994

Notes: Mean rank rating scale 1= not critical, 5 = extremely critical

A = Ordinary / Portland cement B = Timber for formwork / plywood C = Reinforcement steel D = Structural steel E = Clay and cement roofing tiles
F = ceramic wall and floor tiles G = Marble floor and wall tiles H = Clay and cement bricks I = Construction sand J = Aggregates and crusher-run
K = PVCU pipes L = Concrete pipes M = Sanitary ware and fittings N = Carpentry & joinery timber/sawn timber

There is no doubt that foreign labour is contributing towards GDP growth. The presence of foreign labour has helped to suppress wage increases and consequently helped to maintain the low inflation rate in the country. On the other hand, income remittances by foreign workers have had a strong negative impact on the country's balance of payment. The presence of these workers has also created many social problems. Steps are being taken by the government to regulate such employment. A more permanent solution to overcome the labour shortage is to improve and increase manufacturing productivity by maximising manpower utilisation through training, automation and use of advanced technology.

Production management

Production management involves the maximum utilisation of all resources with the objective of producing at the lowest cost, within the shortest time, at the quality required. It also encompasses the material procurement and inventory control system which deals with the management of raw materials for the manufacturing process.

With the current international trading system moving towards liberalisation, deregulation and the breaking down of trade barriers, greater competition is expected. The quality of locally-manufactured products must be comparable to that of foreign imports. Besides fulfilling the local requirement, quality products of international standards must be achieved in order to meet the challenges ahead.

An efficient production management system will ensure that all the resources – manpower, machinery, materials and capital investment – are fully utilised to produce quality products at the fastest possible time with minimal down time. The production management system also ensures that proper material management and inventory control of raw materials are maintained, including material requirement scheduling and wastage control.

Marketing management

When a product is manufactured, there is a need for a distribution network to bring the product to the customers, whether local or foreign. Market intelligence is required to plan the establishment of a distribution network for the product. Advertising and promotion are marketing tools used to create product awareness along with any marketing plan or strategy adopted in an open market environment.

Sensitivity to the pricing of a product depends very much on the product itself. In a situation where there is intense competition in an open market, price can be very sensitive to supply and demand forces. However,

the price sensitivity can be checked through government intervention with strict price controls when the need arises. The success of the building material industry does not only rely on the local market. With the liberalisation of the international market, manufacturers must consider international marketing efforts. Besides an efficient distribution and marketing network, a proper and adequate transportation network or infrastructure is required to ensure delivery of the building materials to the right place at the right time.

Regulatory factors

Licences and permits. In the process of supplying and/or manufacturing building materials, licences and permits may be required before the actual processes can take place. Timely application and approval of these licences will ensure the timely implementation of the programme. To control and monitor the number of permits issued, there is a need to have a centralised approval body to ensure better control and maintain even distribution of the supplies.

Tax incentives. Tax incentives and controlled pricing are measures taken by the government to regulate the cost of manufacturing and the prices of materials as and when the need arises. Tax exemptions are often granted for the importation of raw materials to enable the manufacturers to be more competitive in pricing, both locally and internationally. To encourage expansion or upgrading of production capacity to meet demand, tax incentives may be granted for the importation of additional or new plant and machinery for the manufacturing process. This will help the manufacturers or new investors to set up additional or new plants to increase production capacity.

Price control. The government does not allow prices of essential materials, such as cement and steel, to fluctuate according to demand and supply forces. Prices are controlled and regulated by the government to avoid price hikes and yet allow reasonable profit margins to the manufacturers.

Technology

To ensure the continuous growth and competitiveness of the building material industry, the methods and technology applied in the manufacturing process must be subject to review and improvement from time to time. Research and development, whether undertaken by individual organisations or centralised through the pooling of resources, should be encouraged to develop new technology or materials to increase efficiency in manufacturing.

Efficiency in terms of higher productivity and/or better quality products may be achieved either through the transfer of technology or the use of our own technology. This will result in better value for our products. At the same time, an efficient production process will help to reduce unnecessary lead time and ensure better planning and management of the material procurement process.

The extent of influence of the above factors on the success of the building material industry is summarised below.

Building material price determination

It is to be expected that housing developers and those undertaking mega projects would compete to obtain building materials and labour. Projects such as the massive highway construction projects, the Light Rail Transit Systems One and Two, and the Kuala Lumpur International Airport at Sepang, have created a higher demand for some of the basic building materials like cement, steel reinforcement, aggregates, timber and bricks, etc. As a result, shortages and/or irregular supplies of these materials are experienced. Steps must be taken to avoid any or further snags in the supply of the necessary building materials or this could lead to a price hike.

In considering ways of getting value for money or fair prices of building material supplies for the construction industry, an understanding of how prices of materials are determined and maintained is important. Steps are to be taken to ensure that the demand for the necessary building materials for the construction of low-cost housing units is met and stabilised.

What is 'price'? Price is a measure of value for a unit of a commodity or service that expresses its worth relative to other goods or services. The best and reasonable price or correct price is not necessarily the lowest price, for pricing is only one of the variables one must consider before making the decision to purchase.

Price determination by suppliers

Prices are determined differently under different situations, whether in monopolistic or competitive scenarios.

Monopolistic situation

The monopolistic situation results when there is only one supplier of the needed goods. This could happen through ownership of the single source, such as a mine, or the exclusive legal protection of a patent or copyright.

Should the supplier's price be exceedingly high, there will be a tendency for the buyer to seek substitutes or to make modifications in design to lessen the reliance or necessity of those goods. In an open market scenario, the monopolistic situation can be negated or lessened through time as profitability will attract the entry of competition into the market.

Competitive situation

In a competitive situation, two or more suppliers offer favourable terms to supply the same or identical item. There are two forms of competition: Perfect and imperfect.

Pure or perfect competition exists when there is a large number of independent suppliers and buyers competing for identical commodities, dealing with each other yet retaining the privilege of entering or exiting from the open market at any time. In perfect competition, the price is usually determined by the supply and demand forces in the industry.

Normal or imperfect competition exists when there is a large number of sellers of similar products, but each has its own distinguishing features which are used by suppliers as persuasive arguments to influence the buyer's decision.

The oligopoly form of the imperfect competitive market exists when each of the limited number of suppliers is strong enough to influence the market, but not strong enough to disregard the reaction from his competitors.

Factors influencing price

Suppliers facing a limited number of competitors may react differently in pricing. Also, the supplier's price is influenced by the number of prospective buyers that exists. Price may be influenced through psychological factors, one of which is the prediction and anticipation of future supply-demand relationships. When confidence level over the future of the demand and supply relationship is high, there is a tendency towards higher pricing. However, in an atmosphere where pessimism prevails, there may be a decline in the pricing. Another psychological factor is the confidence on the bargaining power one has over the price. The third psychological factor is the practice of haggling over every price quoted.

Establishment of price

As is common in many other industries, the market for building materials in the construction industry varies from an almost pure

competitive market to oligopolistic and monopolistic. Prices of materials are established by two approaches: The cost approach and the market approach.

Cost approach

In the cost approach to pricing, material prices are established by adding a certain amount of cost allowances over the direct material costs. The amount allowed is supposed to be sufficient to cover indirect costs, indirect overheads and a certain margin for profit. In the normal open market condition, the cost approach of pricing offers opportunities for sourcing and seeking low-cost suppliers; for making comparisons among lower cost manufacturing alternatives; and the ability to question the amount of margin maintained by the manufacturers over the direct costs. To be able to obtain fair and competitive prices, comparison through normal cost analysis appears to be the most practical tool.

Market approach

In the market approach, prices are set by the supply and demand forces in the market. Equilibrium of the supply and demand situations of a particular material determines the price of the material. If demand is high relative to supply, prices are expected to rise. When demand is low relative to supply, prices should decline. However, pure or ideal competition in absolute terms does not really exist even in the open market situation. Hence, prices of materials may not necessarily drop even at times when supply exceeds demand. Controlled pricing by the government, product differentiation of similar or identical materials created through marketing strategy, product positioning and aggressive advertising and promotion are some of the contributory factors in such a scenario.

Factors affecting prices of building materials

Even when prices are determined by either the cost or the market approach, the cost of the building material is the determinant in establishing price. In turn, the cost of building materials is generally dependent on the efficiency and quality in production including the economies of scale and the availability of resources such as raw materials and labour.

Foreign sourcing

There are a number of ways of getting around the market pricing. One is to seek the same product in a different market where the price is lower. This often means purchasing from foreign sources. With the world moving towards globalisation, international trade is on the increase with multinational firms growing through the creation of new markets. This has further precipitated the transfer of technology across national borders while generating new technologies. Substantial differences between markets may well disappear, except for freight and tariff differentials, hence making imports of building materials economically viable.

Benefits and risks of foreign sourcing

The obvious advantage of foreign sourcing is that the supply base is broadened. Cost and quality benefits can also be achieved when there are additional choices of supply sources. Timeliness and dependability of supplies can be maintained through efficient material sourcing. New technologies can be explored at perhaps the same price if not more competitively.

However, some of the problems that may arise in the importation of materials are:

- Standards and quality may vary from country to country;
- Difficulties in dealing with differences in culture and communications;
- Stiff payment terms and conditions;
- Long lead time which can be affected by variable shipping schedules, unpredictable custom clearance requirements, etc;
- Higher holding cost which may result from having to maintain additional inventories to cope with the long lead time; and
- Higher overhead costs of foreign sourcing.

Problems of foreign procurement

The current accounts deficit is indicative of an economy that is living beyond its means in terms of foreign exchange earnings and spending. This may also mean that support facilities are unable to keep pace with the rate of economic growth.

The construction sector contributes significantly to the current account deficit, since the sector is not only highly import intensive but also tends to divert resources from the trade sector. A large amount of current account deficit in the balance of trade is caused by the dependence on foreign building materials. Contractors and developers, particularly foreign contractors who

have been awarded with some of the country's mega infrastructure projects, have the tendency to source building materials from their countries of origin. In 1993, a total of RM600 million was spent to import some 14 items of basic building materials. These materials include ordinary portland cement, reinforcement steel, structural steel, timber, roofing tiles, ceramic floor and wall tiles, marble floor and wall tiles, clay bricks, sand, aggregates and crusher-run, PVCu, cast iron and concrete pipes, sanitary ware and fittings, carpentry and joinery timber. The extent of the import and export of five of these basic building materials is shown in Table 4.

Unless measures are taken to minimise imports, the construction sector will continue to add to the deficit in the balance of payment. Counter trade may be an alternative to overcome or minimise the effect of importation of building materials on the foreign exchange.

Self production

Make or buy is another question determining the decision on foreign sourcing. If access to raw materials, technology and labour skills is not severely restricted, one alternative is to produce products or materials to suit our own requirements to avoid excessive market prices. A careful study must be conducted to establish a set of industry standards or specifications of materials suitable for local conditions and requirements. Resources such as the raw materials used will be economised for the production of such building materials to meet national specifications and standards, hence achieving savings in the cost of production.

However, such an attempt may restrict the opportunity for the local materials or products to be exported due to the variance in quality in meeting international standards, especially in a time of trade globalisation. It is not uncommon, though, for products to be produced to suit the requirements or standards of any specific conditions or environment. The manufacture of Proton cars is an example with export models with varying specifications produced to suit the needs and requirements of the various destination countries.

Import substitution

Attempts should be made to ensure an ample supply of relevant building materials locally. An effective way to offset part of the country's current account deficit is through import substitution. Steps should be taken to discourage importation of building materials that are readily available locally. Import substitution emphasising the policy of 'buy Malaysian first'

Table 4: Import and export of basic building materials (1980-93)

Year	Import/Export	Ordinary portland cement		Reinforcement steel		Timber for formwork		Structural steel		Clay bricks	
		(tonnes)	(RM '000)	(tonnes)	(RM '000)	(m3)	(RM '000)	(tonnes)	(RM '000)	('000 pieces)	(RM '000)
1980	Import	0	0	240,829	211,739	18,131	8,036	80,099	67,742	4,504	815
	Export	-	-	1	6	434,000	278,690		1,557	2,947	386
1981	Import	0	0	93,757	76,531	30,777	16,947	79,183	61,021	4,515	836
	Export	0	0	5,25	5,97	469,000	308,178	232	278	214	21
1982	Import	0	0	353,082	246,840	32,554	19,665	112,432	85,091	9,128	1,649
	Export	21,000	2,809	142	245	469,000	274,413	247	288	44,533	8,478
1983	Import	0	0	81,640	62,022	31,604	21,798	75,168	50,111	9,419	1,751
	Export	9,000	1,312	81	197	550,000	307,589	716	754	58,325	12,154
1984	Import	0	0	71,290	62,177	39,972	22,277	201,168	133,251	9,816	1,552
	Export	0	0	2,888	1,780	401,000	224,066	746	676	87,507	12,053
1985	Import	0	0	54,511	51,213	9,424	5,150	54,833	39,802	18,735	2,035
	Export	0	0	5,933	3,586	363,000	192,781	2,045	1,493	48,791	5,399
1986	Import	0	0	37,055	32,297	3,069	1,878	87,020	61,441	13,273	1,260
	Export	0	0	53,953	1,558	452,000	282,654	3,096	2,151	26,964	3,978
1987	Import	0	0	20,276	27,044	2,436	1,509	73,160	56,950	6,291	631
	Export	377,000	30,464	138,004	81,751	718,000	392,818	6,039	4,021	42,339	6,264
1988	Import	32,968	10,267	34,362	38,020	2,575	1,728	88,337	83,410	1,140	114
	Export	415,000	36,885	284,853	206,207	819,000	520,768	3,589	3,426	57,552	8,402
1989	Import	27,331	8,056	45,798	57,007	1,522	1,398	135,229	155,734	998	195
	Export	237,000	23,962	166,023	163,755	915,000	663,265	2,144	2,791	161,569	15,081
1990	Import	156,699	32,962	62,115	76,941	3,376	3,557	212,406	238,653	6,997	1,114
	Export	133,000	16,219	149,851	152,061	1,017,000	862,956	5,309	6,766	209,091	11,569
1991	Import	93,999	24,621	150,632	189,118	8,732	5,693	252,037	290,343	11,590	1,388
	Export	65,000	9,490	39,177	42,176	1,169,086	990,903	4,641	7,480	87,536	14,045
1992	Import	75,925	19,740	108,303	127,698	11,599	8,733	247,307	230,785	12,181	1,417
	Export	40,940	5,866	150,654	134,191	1,669,971	1,360,949	16,347	20,016	240,650	21,805
1993	Import	39,147	12,111	145,146	168,417	32,217	40,780	286,997	278,797	24,781	299
	Export	11,918	1,890	314,066	235,745	2,420,690	2,659,950	10,536	15,835	229,935	14,329

Sources : Cement import: Statistics Department Malaysia (Figures for 1980-87 aggregated to analysis); Cement export 1982-91: Cement and Concrete Association of Malaysia; Cement export 1992-93: Statistics Department Malaysia; Reinforcement steel, structural steel and clay bricks - Import and export: Statistics Department Malaysia; Timber for formwork - Import and export: Malaysian Timber Industry Board

should be seriously considered and enforced. Although the government has established the policy of sourcing and using 60 per cent of local building materials for its construction projects, this practice has not been taken seriously by some contractors and developers. This could be partly due to the inavailability or shortage of the materials locally, necessitating the import of such materials.

The government should also establish controls at source by imposing conditions or specifications, when awarding contracts, requiring the priority, if not compulsory, use of local materials. Alternatively, the imposition of tariffs or duties is another form of controlling imports of 'unwanted' or 'unnecessary' materials and products. Such control on imports will only be practical if the supply of local materials concerned is sufficient to meet the demand.

To ensure quality and competitiveness, research and development efforts should be encouraged with the objective to make local building materials comparable, if not better, than foreign materials.

Implementation of new technology

The country has been facing an acute quantitative and qualitative labour shortage. The liberalisation of foreign labour has resulted in the construction industry continuing to use labour intensive production techniques for construction as well as in the manufacturing of building materials. There has been a heavy reliance on foreign technology. The manufacturing of construction materials or products must be productivity driven rather than input driven. Hence, we must start producing our own technology to improve productivity and to lower production cost. To achieve this, we should explore the use of less labour-intensive production methods and, whenever possible, spend more resources on research and development to improve our own technology or to create cutting-edge technology.

Industrialised modular and prefabricated systems

The construction industry has to keep abreast with new technology to be more competitive. Industrialised modular construction systems are needed to construct houses at lower costs and with standardised quality. The standardisation of elements and fittings of houses will ultimately lead to an increase in efficiency, better quality and less wastage of time and materials.

Large units of composite prefabricated building components can also be considered part of the industrialised modular construction system. Components will be able to be 'interchanged' or used for housing units or designs among housing projects. As a result, production of modular

components can then be further 'mass produced' like other ordinary building materials but in much larger and composite forms. Economies of scale can be achieved, leading to more competitive production costs on such modular building components.

When considering such large components of prefabricated units, a misconception exists about using pre-cast or prefabricated concrete components. In actuality, an industrialised modular system of that nature may not necessarily be made of a single material like concrete. Through research and development other alternatives, equivalent in quality if not better than, existing building materials can be developed for such construction methods and components.

The Standards and Industrial Research Institute of Malaysia (Sirim) has conducted studies on the modular system of construction for many years. It is understood that the Construction Industry Development Board (CIDB) and Sirim have decided to jointly conduct further study and research into the modular system of construction for low-cost houses.

Improving productivity and efficiency

With the implementation of the planned mega projects and the targeted housing development under the Seventh Malaysia Plan, the demand for building materials is expected to increase. Accurate forecasts and projections of the materials required to fulfil the construction needs should be conducted to enable plant and manufacturing expansion and investment programmes to be implemented.

The government should take steps to encourage and assist building material manufacturers to expand and upgrade their existing plant capacity as well as to promote new investment in the manufacturing of relevant building materials. Attempts should be made to encourage manufacturers to invest in high technology plants and/or manufacturing processes to increase productivity, hence lowering the cost of production. An ample supply of the necessary building materials that are efficiently produced will help to stabilise and control prices of these materials.

Besides implementing advanced technology or methodology in production, efficiency in building material production is also achievable through the pooling of resources of smaller building material manufacturers through mergers or acquisitions; and through the maximisation of production capacity to enable economies of scale and lower production costs. If expansion or implementation of new ventures is not immediately possible, reviews should be conducted to determine the level of shortages and allow the import of materials to supplement the local capacity.

Exemption of import tax

Another way to achieve competitive building material prices and to lower the local production cost of building materials is by granting exemption or concession from import duties or other tariffs on some of the building materials, raw materials and component parts required in the production process. In the case of building materials, the rationale behind the policy is based on the assumption that the materials required for construction are either not available locally or in insufficient quantities to meet the demand. For raw materials or component parts for the manufacturing of the necessary building materials, the exemption from duties is essential to assist the local manufacturers in lowering their cost of production and to enable them to be more competitive. The benefits derived from the lower cost are assumed to be passed down to the construction industry in the form of lower and fair prices.

Product substitution

Besides improving productivity to create additional supplies to meet the demand, product substitution with similar building materials or products should be considered to prevent a monopolistic or oligopolistic market situation. The ability to recognise the trade-offs and to effect design and usage modifications to take advantage of trade substitution is a determinant of such possibility and flexibility. To achieve this, new technologies, methods or raw materials can be adopted or used.

Contract purchasing

Long-term contracts or orders for any particular material either in the form of 'bulk order' or 'project order' may act as an inducement for the supplier to ignore market conditions and confirm material prices throughout the duration of the project. Such contractual bulk or project orders will help to stabilise material prices.

Establishing performance specifications

It is common practice that the works specifications required under building controls by the relevant approving authority specify the necessary building materials to meet local regulations, building control and/or the building by-laws. The government should consider creating flexibility in the approval process by specifying the performance requirements of any particular building elements so as to allow alternative products which can fulfil the same function and meet the necessary technical or design requirements.

Besides providing an alternative with different kinds of building materials, this will provide opportunities for manufacturers to study and conduct research into other kinds of equivalent materials to fulfil the same functions.

Infrastructure and transportation

Supply bottlenecks faced by the building material industry also result from the infrastructure and transportation facilities. Good infrastructure attracts and stimulates foreign and local investments. It also helps to lower operation costs, hence resulting in competitiveness in building material prices.

With a good infrastructure system, the government should consider allowing cross-state sales of some building materials like sand and aggregates to diffuse and even out the localised building material shortage. The cost of transportation and distribution can be further lowered if the government can consider increasing the permissible loading capacity of trucks within reasonable limits. Such steps will alleviate the problem of shortage of trucks for the distribution of materials and help to achieve savings in the overall cost of building materials.

Government influence on pricing

In recent years, the government's role in establishing prices of building materials in the construction industry has changed dramatically. The role of the government has been two-fold. Besides playing an active role in determining prices of specific building materials by establishing ceiling prices, production quotas, and instituting various forms of price/wage controls as part of an anti-inflationary battle, the government also determines the ways in which developers, contractors, traders and manufacturers are allowed to behave in agreeing on prices. The price control role varies with economic, political, and international conditions. The government also helps to monitor and prevent any party from imposing too onerous or demanding conditions or prices on the other or preventing price collusion or cartel or price fixing so that competition can be maintained and price stabilised.

Controls on export of materials

Among other things, prices of building materials are determined by and based on the demand and supply equilibrium. Another way of creating additional supply of building materials, besides increasing production, is to control the export of some of the building materials and components. To enable this, the government should set quotas for local consumption or supply before allowing exports. Such a move may have

an effect on the balance of trade with the reduction in foreign exchange. However, it should achieve overall savings taking into consideration the imports that would have resulted from the short supply of such building materials in the local market.

Material management system

An efficient material management system will ensure that building materials are procured and delivered to the right place at the right time in the right quantity. With proper scheduling, this can be achieved and material procurement carried out in advance giving sufficient or necessary lead time to the manufacturers to schedule or plan production. Such moves will cushion the unnecessary abrupt demand for these building materials which may be the cause of price hikes.

Inventory management and wastage control

Construction wastage has been taken for granted and little done towards achieving an efficient wastage control on site. To demonstrate the value of materials that could be saved, let us consider the total value of low-cost housing units targeted for construction during the Seventh Malaysia Plan.

A total of 672,269 units of low-cost houses have been planned. Let us assume the cost of construction of these low-cost houses to be at an average cost of RM13,500 per unit. As mentioned earlier, the cost of building materials constitutes 43.8 per cent of the total cost of construction. The value of building material usage for low-cost housing would thus work out to approximately RM4 billion. At an average five per cent wastage factor for construction, the total cost of wastage is approximately RM200 million.

This example demonstrates clearly that an efficient inventory and wastage control in construction can create substantial savings. Such savings is equivalent to the value of material supply for another 33,823 units of low-cost houses. Although this may not be significant compared to the overall value, a saving in cost still remains as a fact that should not be ignored.

Conclusion

The building material industry is generally conservative. Resistance to change prevails and most of the production processes and methodologies have not changed much. To ensure that local producers can be more productive and competitive, and to ensure ample supply of necessary building materials, the government should continue to promote produc-

tion improvement, the application of advanced technology and less labour intensive production by offering the necessary tax incentives and other forms of assistance. This will help to ease the acute labour shortage problem that the country currently faces.

The building material industry needs a large market to take advantage of lower production costs achieved through economies of scale. Capital investment per unit cost will be lower and be more justifiable when new methodology and technology in production processes are applied. Without a larger market and scope for further growth, there will be no incentive for manufacturers and producers to upgrade and expand their current capacity. In the past, industries were competing merely on low-cost strategies. In the face of regional and international challenges, with the breaking down of trade barriers and globalisation, the building material industry has an opportunity to broaden its base to the wider but more competitive international market. Hence, the building material industry needs to be committed to become more efficient and productive to compete on price and quality, as well as focus on alternative winning strategies.

While encouraging the export market, measures must be taken to monitor the magnitude of exports to ensure that the local market is not disrupted. Non-price control action such as quota setting for export is required to ensure sufficient supply to the local market.

Attempts by the government to intervene and break up any cartel or price fixing practices among suppliers and manufacturers should continue. One way which may be effective in such attempts is for the government or related organisations to venture into manufacturing activities which would help to break the chain of such price-fixing.

In addition, the government should assist in the setting up of regional central buying houses for the main materials such as cement, steel reinforcement and the like with proper material management with the aim to:

- Regulate the demand and supply situation of these materials;
- Control importation of these materials; and
- Establish data information on the sources of these building materials.

Benchmarking should be attempted by the local building material manufacturers. The Federation of Malaysian Manufacturers could also collect data and information on the development of the building material industry of other countries to determine their best practices and standards. Benchmarking will help the building material industry to learn from others' best practices and standards. Subsequently, the industry can conduct further study and research to adopt the most suitable approach.

The construction industry also has an important role in the development of the building material industry. If the industry is fully committed to promote any product, the designing and approving authorities must make every attempt to recommend its use. The relevant persons or associations will need to educate potential end users on its advantages over current practices. This applies also to the use of prefabrication and the modular system in the construction industry. Both the prefabrication building system and the industrialised modular system require not only the use of modern technology and methodology, but commitment from both the manufacturers and end users for their success. The government and private developers can play an important role by putting pressure on the local manufacturers to modify and upgrade their current facilities to meet these requirements to achieve cost effectiveness of these systems.

The government with the support of the private sector is able to and, if necessary, set policies and regulations or intervene to alleviate supply bottlenecks, to ensure reliable supply of these building materials in terms of consistent quality, adequate quantity, timely delivery and competitive pricing.

Housing Delivery System: The Industry Viewpoint

Lawrence Chan

Introduction

Malaysia is embarking on an ambitious path of development that is targeted to enable it to attain developed nation status by the year 2020. Part of the agenda for this development plan is the provision of adequate and affordable housing for all sectors of the population which is expected to reach 23.26 million by the end of the decade.

Of the housing programmes under the various national development plans, the most commendable results were achieved during the Sixth Malaysia Plan (1991-95) period when 647,460 housing units were completed against a target of 573,000 units, thus making up 113 per cent of the plan target. This achievement was possible because the nation was going through a cycle of high growth and prosperity which boosted the effective demand for housing and real estate.

Under the Seventh Malaysia Plan (1996-2000), a total of 800,000 units of houses are expected to be built, with the private sector playing an increasingly important role in meeting the housing needs of the

population. About 570,000 units or 71.3 per cent of the total targets under the Seventh Malaysia Plan will be undertaken by private developers.

For the Seventh Malaysia Plan target to be achieved, an important premise is sustainable economic growth. Another key factor is the efficiency of the system to complete and deliver housing units to potential buyers. There are many players involved in the housing process. Each and everyone of them will have to play their roles effectively to establish an efficient delivery system to meet the national housing targets set for the plan period and to ensure that the people have access to adequate and affordable housing.

Housing production process

On a macro level, the housing production process in Malaysia may be divided into eight stages following the acquisition/purchase of land by the developer, namely:

- Schematic and layout submission
- Planning submission
- Building approval submission
- Tender document
- Tender stage
- Construction stage
- Certificate of fitness for occupation
- Issuance of strata title (subdivided building)

The following chart illustrates the stages involved in the housing development process for Kuala Lumpur. There may be variations in the details of the stages of development from state to state but the broad framework would apply.

Role of major players

The major players involved in the housing production process are (a) the government, (b) the developers, (c) the professionals/consultants, (d) the financiers, and (e) the builders.

Each of these key players plays a very important role in the various stages of the housing production process. But more important than their individual roles is the degree of co-ordination and the checks and balances in the relationships of these players that would determine the efficiency of the delivery system.

Role of the government

The various government departments at both federal and local levels have a big say in the approval procedures of the various stages of the development process. In fact, their role is so pivotal that much of the efficiency of the delivery system depends on their speedy and timely handling of applications and issuance of approvals.

From the first stage when the developer has purchased the land on which development is to take place, the role of the government is paramount to ensure the smooth progress of the project and to expedite delivery of housing units through the various stages of land conversion/subdivision, layout plan submission, planning submission, building approval submission to approvals for issuance of certificates of fitness for occupation. The government machinery is involved at every stage of the process.

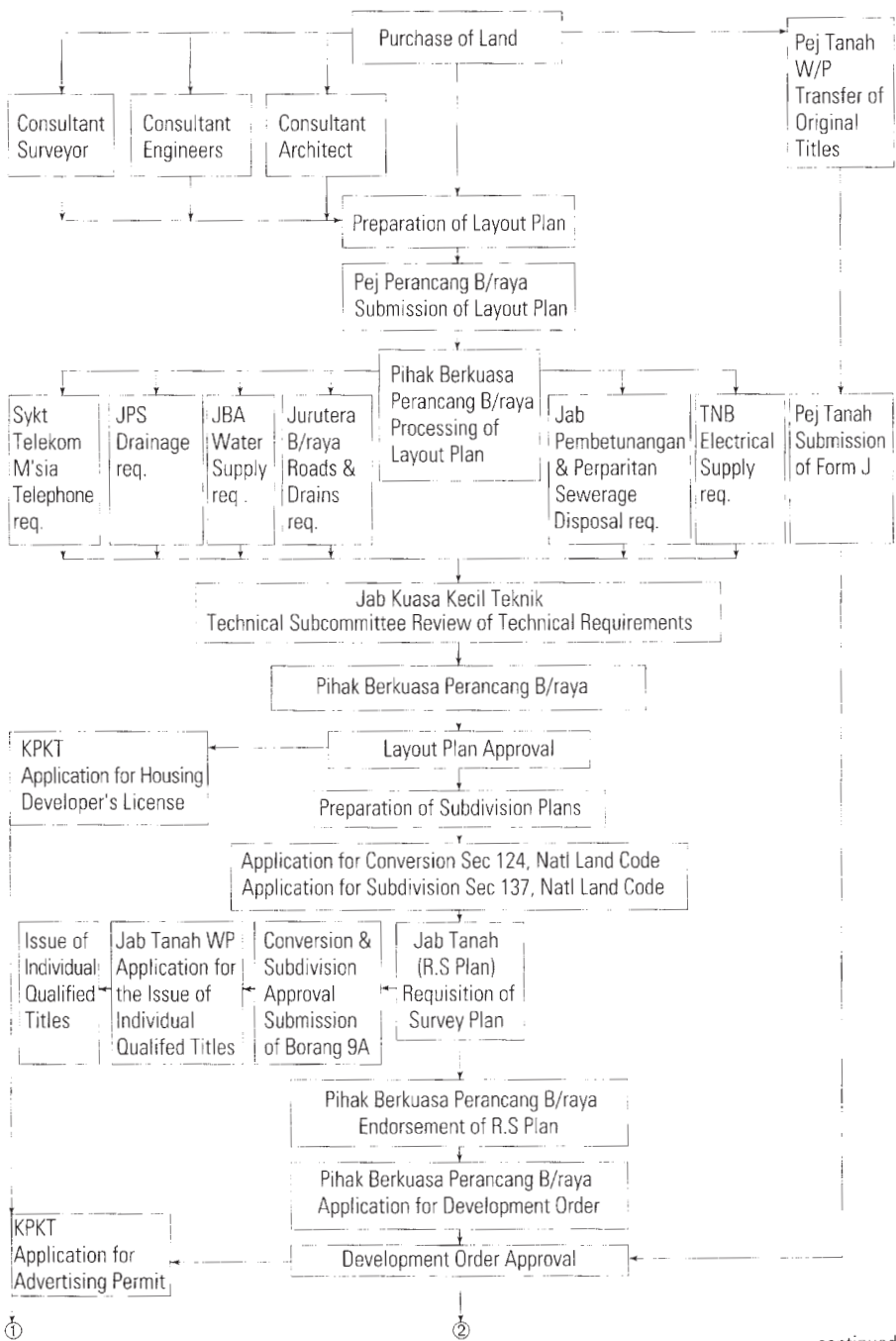
In addition, the government also formulates policies and regulatory requirements to ensure orderly growth and implementation. These range from policies targeted at creating financial accountability and discipline, such as the introduction of the Housing Development Account ensuring that all loan disbursements conform to designated use, environmental protection guidelines and regulations.

Role of the developers

The developer is basically an entrepreneur whose role is to oversee the whole housing production process to ensure that the housing projects undertaken are of good quality, and are successfully marketed and sold. The developer is responsible for harnessing the financial resources required by the project as well as ensuring that the necessary submissions for approvals are carried out, from land matters to building approval submissions to obtaining certificates of fitness for occupation. The developer would require the services of professional consultants – architects, engineers, surveyors – to assist him in the task of making the submissions for approval to the various authorities. In addition, he would also engage builders or contractors to undertake the physical construction of the housing project.

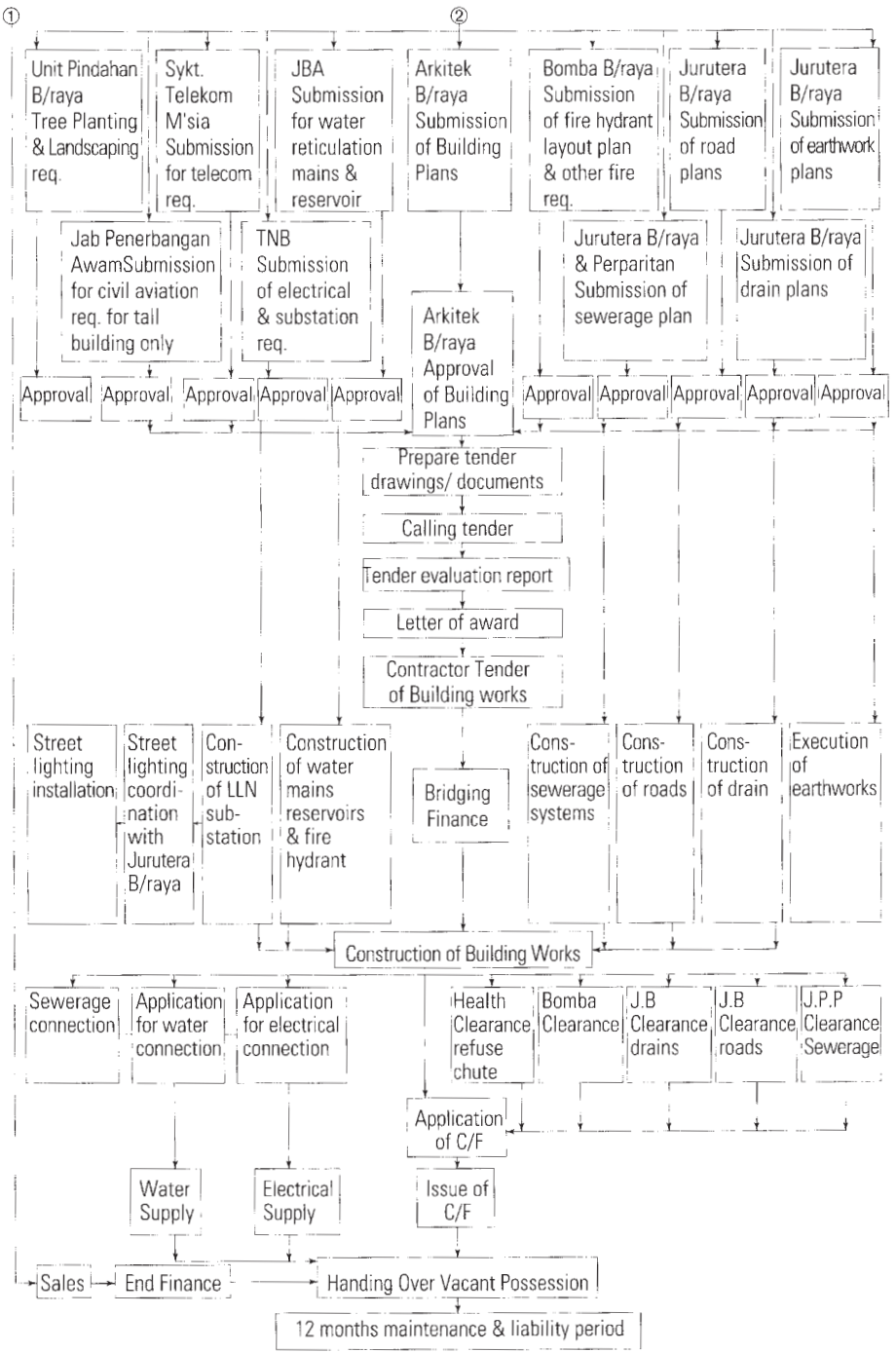
Being the business co-ordinator for the whole building process from beginning to end, the developer may reap the benefits from a successful project but he also bears the most risk. He has to comply with the law requiring the delivery of housing units to purchasers within the time-frame specified contractually – 24 months from the

Chart 1: Housing development process for Kuala Lumpur



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date of the standard sale and purchase agreement for landed housing, and 36 months for subdivided units.

Role of the professionals

The professionals involved in the housing process include architects, town planners, quality surveyors, consultant engineers, land surveyors, landscape designers, etc.

In most cases, the consultant architect has overall responsibility for co-ordinating the professional input and submissions for the project and is the key person to liaise with the authorities, the other consultants and the builders regarding technical aspects, on the developer's behalf. He is also the authorised signatory certifying the satisfactory completion of the various stages of housing development projects. Only on his certification of the satisfactory completion of a certain stage of work, may financial payment be redeemed from the purchaser or the lending institution.

The town planner is engaged by the developer to prepare the layout plan for the project in accordance with the permitted land use, prescribed density or plot ratio and all other requirements, standards and guidelines of the respective local authorities or land offices. Such layout plans will be submitted to the relevant authorities for planning permission, land conversion, subdivision and amalgamation purposes.

The consultant engineers are responsible for the technical and engineering aspects of the project such as sewerage plans, structural and electrical (M&E) plans as well as ventilation and air-conditioning requirements.

All the consultants have to work in close co-operation and consultation with their client – the developer – in translating his requirements into technically viable solutions. At the same time, they have to oversee, on the developer's behalf, the work undertaken by the builder and ensure that the work complies to the specifications of the approved plans and contract. The role played by the consultants in ensuring the smooth and professional progress of the project is vital especially since, once the site is handed over to the builder for commencement of construction, only the project consultants are allowed to visit the site. Without proper authorisation, the developer not allowed on the site.

Aside from the business contract that these consultants have with the developer, as professionals they are bound by the regulations governing their respective professions in the country. If they run foul of their professional ethics, they may be barred from practising in their professional capacities.

Role of the financiers

Financing for housing development covers two aspects generally – bridging finance for developers to boost their initial or intermediate capitalisation for their projects and end-financing for purchasers to assist consumers in buying and owning housing units.

Commercial financial institutions, including banks and finance companies, provide both bridging and end financing while the Housing Loan Division of the Treasury provides housing loans for civil servants only.

The role played by financiers is pivotal in providing a healthy foundation for a vibrant housing sector. It takes an average of five to six years to proceed from land acquisition, to the conversion of the land for specific end purposes, and finally to approval and the launching of the project. Hence, the need for ‘bridging loans’. At the other end of the spectrum, consumers typically cannot meet the large cash outlay required to buy a house outright and financiers play a role in providing the necessary end financing plan to fit the consumers’ cash flow. This is especially important in low-cost housing where financiers are required to play a more socio-economic role in providing loans to low-cost housing purchasers at an interest rate of not more than nine per cent per annum.

Role of the builders

Builders in the housing chain comprise the main contractor and other nominated sub-contractors, the numbers of which will depend on the size and complexity of the project. Once the building plans are approved, the builders or contractors will be appointed via a tender process.

The role played by the builders is very specific to the contract between him and the developer. He has to complete the building work according to the terms of the contract and within the scheduled time frame. It is the builder’s responsibility to ensure that he has adequate manpower and materials to complete the job within the requirements of the contract.

Strengths and weaknesses of industry relationships

The housing development process in Malaysia is a complex one. As it is currently structured, there are many inherent weaknesses in the housing industry affecting the delivery system. Obviously, there are also some positive factors that have contributed to the achievements

of Malaysia's housing programs to date. Highlighted here are the most significant weaknesses and strengths from the perspective of the private sector developers.

Weaknesses

Long delays in approval process

One of the major areas of weaknesses in the housing development process in Malaysia is the long gestation period from land purchase to final delivery of housing units. This is largely attributable to the length of time required for the processing of applications and issuance of approvals at every stage of the development process.

One of the reasons cited by the authorities for the delays in processing and approving plans submitted is the shortage of staffing, particularly professional and technical staff. Developers and professional consultants have proposed the privatisation of procedures which require professional certification, where applicable, to professionals in the private sector to help expedite the process.

Another proposal to expedite the approval process is to computerise the information systems and streamline the approval procedures. This would enable the various departments involved in the approval process to have instant access to information on the status of any project and help reduce the problems associated with labour shortage and human error in misplacing files.

Developers have proposed to the government to set up one-stop agencies to accept and process building plans. At the local authority level, one stop centres should also co-ordinate the whole process of approvals and issuance of certificates of fitness. Unfortunately, although there has been verbal support for this proposal, it has not been implemented effectively at the ground level.

Labour shortage

The current manpower shortage that the nation is facing is also acutely felt in the housing industry, from unskilled workers to highly skilled and trained technical personnel. One of the proposals mooted was to have an institution looking after the training of semi-skilled and skilled workers for the construction industry. This has resulted in the establishment in 1994 of the Construction Industry Development Board (CIDB) whose primary role is to ensure the quality of workmanship in the construction industry through adequate supply of properly trained and accredited construction personnel.

Inconsistencies between federal policy and local implementation

Developers often face problems at the ground level when local government departments apply criteria or requirements that differ from federal guidelines. One such example is the case of some local authorities refusing to issue certificates of fitness to developers for not complying with low-cost housing quotas or Bumiputera sales quotas, despite the Cabinet decision that issuance of certificates of fitness should not be linked to criteria not related to technical and safety aspects.

Government housing financing for civil servants

Given that civil servants form a substantial percentage of house purchasers, particularly in the less developed states, the efficacy of the financing system becomes a vital factor in the housing delivery system. Unfortunately, bureaucratic delays in loan processing and approval, and release of funds for approved loans have caused developers to prefer selling houses to non-civil servants. In those instances, especially in states like Kelantan and Terengganu where potential buyers are mainly from the government sector, developers often complain of cash-flow problems arising from delayed disbursements.

Absence of modular building systems

Although the idea of introducing the modular co-ordination system in construction was introduced many years ago, till today it has not taken root in the construction practices of the country. With modular co-ordination the housing delivery system will definitely become more efficient since components can be systematically factory-built and installed on site. This will also provide some relief to the industry's dependence on labour.

Strengths**Stronger regulatory controls**

Valuable lessons were learnt from the recession of the mid-1980s during which the housing sector was very hard hit, leaving in its wake many abandoned housing projects. Some tough measures, such as the introduction of the Housing Development Account and amendments to the Housing Developers (Control and Licensing) Act 1966, were introduced to set the housing industry back on its feet again. With continuing dialogue and co-operation between the private and public sectors, the industry has become more disciplined. The government's responsiveness to the private sector's call for more transparency has enabled many problems to be resolved in the spirit of Malaysia Incorporated.

Increasing maturity and technical know-how

The increasing exposure of developers, architects, engineers and builders to technological advancements in building methods and design has helped the industry to keep up with growing consumer demand for better-designed houses and shorter delivery time.

Conclusion

As the country progresses, with the resultant growing affluence the demand for housing will not be felt in quantitative terms. In fact, the country has reached a stage of development where the objectives and expectations are beyond just fulfilling the housing targets. More and more, developers and all those involved in housing will be expected to produce housing that will reflect a higher quality of life.

We are already beginning to see the housing industry being challenged to pay heed to the preservation of the environment in the development process; to plan and design more innovatively taking into account local customs and culture; and to ensure that quality and safety are not compromised. Policies and regulations are being introduced by the government to require compliance by all the players in the industry.

Housing delivery today is not just about numbers. It is also about meeting expectations of a more educated and sophisticated population that is setting higher standards for a better quality of life. Whether or not these expectations can be met, and how quickly they can be met, would depend on the commitment and political will of the major players in the industry to meet these new challenges. It is pertinent to state that there must be unity of purpose among the various key players – the government, the public sector, the developer, the professional consultants, building material manufacturers, contractors and the financial institutions concerned – to achieve the housing targets in the true spirit of Malaysia Incorporated.

Housing Delivery System: Issues and Legal Perspective

A Gnanarajah

Introduction

In the 1950s and early 1960s many complaints arose from the then uncontrolled and free-for-all system of constructing houses. Taking advantage of the system, many dishonest and unscrupulous persons did not hesitate to capitalise on the opportunity to make some quick profits. As a result, innocent purchasers who were no match for these smooth-talking operators inadvertently fell victims to their illicit operations. Their over-enthusiasm and impatience to purchase property, ahead of what these smooth operators referred to as the impending stampede for houses which were purportedly to be built, caused the purchasers to make deposit payments which eventually disappeared into the pockets of these experienced jackals who would then disappear overnight. Another problem which besieged these innocent purchasers was the shabby workmanship in the construction of houses which were often built with inferior building materials. With the incessant and increasing number of complaints prevalent then, Parliament finally recognised the imminent need for legislation and the Housing Developers (Control and Licensing) Act 1966 was promulgated.

The principal aim and objective of the Act as set out in its preamble are:

An Act to provide for the control and licensing of the business of housing development in West Malaysia and for matters connected therewith.

'Housing development', as defined in the Act, means to develop or construct or cause to be constructed in any manner more than four units of housing accommodation and includes the collection of monies or the carrying on of any building operations for the purpose of erecting housing accommodation in, on, over or under any land; or the sale of more than four units of housing lots by the landowner or his nominee with the view of constructing more than four units of housing accommodation.

The Act is only applicable to residential housing development undertaken by a housing developer and does not apply to industrial, commercial or other properties. Section 24 of the said Act empowers the Minister of Housing and Local Government to make various subsidiary rules and regulations for the purpose of carrying out the provisions of the Act. Since then many of its provisions and rules have been amended and/or revised pursuant to subsequent legislation, the boom in the country's economy, and according to the growing needs and problems arising day to day in the housing industry.

These changes have been made to weed out unscrupulous developers and to ensure a proper and healthy development of the housing industry.

The major role players in the housing delivery process are the government, the purchasers, the developers, the professionals, the financiers and the builders. As Malaysia progresses and gains momentum on its path to achieve a developed nation status in conformity with Prime Minister Dato' Seri Dr Mahathir Mohamad's Vision 2020, which includes among its goals a house owning democracy for its projected population of 24 million, it must be remembered that at all times the guiding factor in accomplishing this vision must be an efficient housing delivery system. To attain this, efficient and effective co-ordination and co-operation among the industry's role players is essential. In other words, approvals from the relevant authorities must be obtained in accordance with the existing laws beginning from its inception stage until the end. Financing must be made available, houses of quality constructed and completed, and delivery of houses made to prospective purchasers in good time.

Some of the current problems inherent in the housing delivery system are highlighted in this paper. It is hoped that legislation will either be promulgated or existing legislation amended so as to solve and/or overcome these issues insofar as they affect the respective parties mentioned and identified here.

Delivery of houses without certificates of fitness

The law governing the delivery of houses to purchasers is found in Clauses 20 and 21 of the gazetted standard Sale and Purchase Agreement set out in Schedules G and H respectively of the Housing Developers (Control and Licensing) Act 1966. To understand and grasp the significance of this subject it is imperative to examine Clauses 20 and 21 of the said Act. Under Clause 20 vacant possession of the building to be constructed, to which water and electricity supply are ready for connection, shall be handed over to the purchaser within 24 calendar months from the date of the Sale and Purchase Agreement and, if the vendor fails to hand over vacant possession of the said building, to which water and electricity supply are ready for connection, within the said time, the vendor shall pay immediately to the purchaser liquidated damages to be calculated from day to day at the rate of 10 per cent per annum of the purchase price.

Clause 21 provides that:

- upon the issue of the certificate by the vendor's architect certifying that the construction of the building has been duly completed and water and electricity supply are ready for connection to the building; and
- the vendor has applied for the issuance of the certificate of fitness for occupation from the appropriate authority; and
- the purchaser having paid all monies payable in accordance with the Third Schedule and all other monies due under the Sale and Purchase Agreement; and
- the purchaser having performed and observed all the terms and covenants on his part under the agreement;

the Vendor shall let the purchaser into possession of the said property.

This Clause is subject to the express proviso that such possession shall not give the purchaser the right to occupy and the purchaser shall not occupy the building until such time as the certificate of fitness for occupation for the building has been issued. Upon the expiry of 14 days from the date of a notice from the vendor requesting the purchaser to take possession of the said property, whether or not the purchaser has actually entered into possession or occupation of the said property, the purchaser shall be deemed to have taken delivery of vacant possession.

In the case of subdivided buildings the relevant corresponding clauses are Clauses 22 and 23 of the Housing Developers Act 1966 and the time for handing over is 36 months.

These provisions cause tremendous problems to a purchaser. It is common knowledge that to prove the existence of a contract for the sale of a property, a Sale and Purchase Agreement is entered into between a licensed

housing developer and the purchaser upon the terms and conditions agreed therein. Now, imagine the purchaser being forced to take delivery of a 'building' under the Housing Developers Act 1966 subject to the following:

- Having paid the whole purchase price to the developer;
- Having paid all other monies owing to the developer under the agreement; and
- Having performed and observed all the terms and covenants contained in the Sale and Purchase Agreement.

Assuming all of the above stipulations have been complied with, the keys to the premises are then handed over by the developer to the purchaser together with a certificate by the architect of the project that the building is completed.

To all intents and purposes the law has been complied with to the letter. However, now note the proviso to Clause 21(1) of the standard Sale and Purchase Agreement which expressly prohibits the purchaser from occupying the building until the certificate of fitness for occupation of the building has been issued.

What is the effect of this proviso? The snowballing effect of such a provision means that the purchaser has to now commence payment of the instalments based on the loan taken for the said property as the full loan sum will have since been released by the bank to the developer. In addition, often the purchaser finds himself having to pay rental for premises elsewhere until the certificate of fitness for occupation has been issued. To top it all the purchaser is further burdened and inconvenienced because he has to himself ensure that his house is not damaged by vandals during the interim period because the developers have since absolved themselves from all responsibility and liability for the house from the time of delivery of vacant possession.

That may not often even be the end of the matter. There has also been a number of instances when the certificates of fitness for occupation of housing estates have been delayed for months and years because of non-compliance by the developers with various technical and other requirements of the relevant authorities. The standard reasons for the delay in the issuance of the certificate of fitness for occupation are:

- Incomplete drainage works;
- Incomplete sewerage works;
- Default and/or neglect in complying with landscaping requirements;
- Unpaid or partly paid development charges;
- Absence of approval by the relevant authority of alterations carried out;
- Non-compliance with Land Office requirements; and
- Default, neglect and/or unsatisfactory completion of road works.

It is certainly no fault of the purchaser that the relevant authority is unwilling to issue the necessary clearance in the light of non-compliance by the developer of technical requirements.

This being the case, it is absurd and unreasonable for the keys to the premises concerned to be handed over to the purchaser on the basis of the certificate issued by the architect of the project that the building has been completed. The handing over of the keys to the purchaser should mean that the purchaser can occupy the building immediately. If the handing over of the keys is merely to aid the developers in absolving themselves from responsibility and liability as well as to ensure that such handing over is within the 24 months period as required strictly by the law, then it would be best that this period be extended by one to three months to facilitate procurement of the certificate of fitness for occupation rather than the present practice of handing over the keys to the purchasers, thus making them wait endlessly and thrusting the responsibility for the building which cannot be occupied on the purchasers until the certificate is issued.

It is patently obvious that the present position favours the developer because there is no imposition of a statutory time limit within which the developer must obtain the certificate of fitness for occupation. This is clearly untenable. If the law and the regulations made thereunder have been enacted to protect the interests of purchasers, as has been reiterated by the courts of law time and time again, then such provisions should accurately reflect this or be amended accordingly.

Imposition of excessive administrative charges

This is a common problem faced by purchasers upon disposal of their property to a third party when the strata title to the property has yet to be issued by the relevant authorities. In such circumstances it has not been unusual for developers to impose varying administrative charges in sale and purchase agreements or deeds of covenant affecting the resale of property to a subsequent third party. In some documents it is expressly stated that the purchaser, when disposing the subject property should pay a 'reasonable' administrative charge. In others it specifies anything from one per cent to five per cent of the purchase price; and in some extreme cases a figure ranging from RM5,000 to RM15,000 has also been indicated.

There is no special provision in the Housing Developers Act 1966 in connection with the rights of a purchaser to assign his rights and interest under a sale and purchase agreement with a developer to a third party pending issuance of the strata title. In its absence a Deed of Assignment for the property endorsed by the developer is considered good security for a housing loan to be granted by the bank to the prospective purchaser. An undertaking that the developer surrender in due course the strata title deed together with a registrable memorandum of transfer will also be required by the prospective purchaser. Hence it has become customary for the deve-

loper to demand monetary payment, or what is now commonly referred to as an 'administrative fee', for these services. In short, it is a prerequisite to consent of the said assignment of rights to the third party.

While it is acknowledged and not denied that such a practice is not illegal, bearing in mind that the Housing Developers Act 1966 is silent in this regard, the writer is of the opinion that a small administrative fee, probably not exceeding RM500 would be fair and reasonable because it must be borne in mind that there is some administrative work involved in the processing of any request to resell property. However there should not in any instance be abuse and misuse by developers to demand such high administrative charges to seek financial gain from such resale.

It is the responsibility of the Ministry of Housing and Local Government to monitor and ensure that unfair and arbitrary practices of housing developers are not condoned. It is also strongly believed that the intervention of the Ministry and the imposition of a reasonable standard statutory fee to be imposed for and in respect of all sub-sales would curb such abuse in the future. In fact it is now current practice to stipulate in advance the administrative fee as a percentage of the purchase price payable at the very outset in the sale and purchase agreement between the developer and the original purchaser in order to avoid litigation in court. Unless positive steps are taken and/or existing legislation amended, developers will continue to benefit from these alleged lacunas in the law.

Responsibility for defective construction and collapse of buildings

Who should bear the responsibility? The background to the promulgation of the Street, Drainage and Building Act 1974 was that the Town Boards Enactment and the Municipal Ordinance of the Straits Settlements were outdated and did not include provisions for a number of important matters. When the collapse of the Jalan Raja Laut flats happened in Kuala Lumpur in 1968, a Royal Commission of Inquiry was set up. To everyone's horror the law was found to be deficient and ineffective to take appropriate action against the culprit or culprits responsible for the collapse. Again, when during the course of the construction of the foundation of Belmont Centre (now Promet Building) in Kuala Lumpur, Jalan Tangsi collapsed and cracks occurred in the adjoining Fitzpatrick Building, no action could be taken against the person or persons responsible because the law did not contain provisions for the institution of legal action in such cases. In both cases the culprits responsible for such irresponsible action should have been prosecuted. But this was not the case and they were allowed to go scot-free due to lack of legal provisions in the existing legislation.

Against this background the Street, Drainage and Building Act 1974 was enacted. Almost all local authorities in the country have since adopted this Act for implementation.

It is expressly provided for in the Act that no one can carry out construction activity of any kind without prior written approval of the relevant authority. Failure to comply with these provisions could result in conviction and the imposition of a fine. The sections relating to buildings are contained in Part V of the Act (Sections 70-90). In this connection and for ease of reference, material parts of Sections 70 and 71 which are important for the purposes of this subject are reproduced below:

Section 70

- 70(1) No person shall erect any building without the prior written permission of the local authority.
- 70(2) Any person who intends to erect any building shall submit to the local authority such plans and specifications as may be required by any by-laws made under this Act.
- 70(13) Any person who -
- (a) commences or resumes the erection of a building in contravention of subsection (9);
 - (b) deviates from any plan or specification approved by the local authority without the prior written permission of the local authority;
 - (c) erects a building in contravention of this Act or of any of the by-laws made thereunder; or
 - (d) fails to comply with any lawful order or written direction of the local authority or with any term or condition attached by the local authority to any modification or waiver of any of the requirements of any by-law,
- shall be liable on conviction to a fine not exceeding RM10,000 and shall also be liable to a further fine of RM250 for every day during which the offence is continued after conviction.
- 70(17) Where the erection of any building is commenced or carried out in respect of any building, it shall be presumed, until proved to the contrary, to have been commenced or carried out by the owner of the land whereon such building is erected and he shall be liable therefor.

A first reading of Section 70(17) gives the impression that the person liable for the illegal building would be the owner of the land/building whereon the illegal building is erected. This is not the case. It imposes liability on the owner of the land only where the 'actual culprit is unknown or cannot be traced'.

Now let us take a look at Section 71 which expressly provides that when any building or part of a building fails, whether in the course of construction or after completion, or where there is any failure in relation to any earthworks or part of any earthworks, whether in the course of the carrying out of the earthworks or after completion thereof, and the cause of such failure is due to any one of more of the following factors:

- misconstruction or lack of proper supervision during construction;
- misdesign or miscalculation; or
- misuse;

then the person responsible for:

- such misconstruction or such lack of proper supervision;
- such misdesign or miscalculation; or
- such misuse,

shall be liable on conviction to a fine not exceeding RM50,000 or to imprisonment for a term not exceeding 10 years or to both.

Section 71 has obviously been included to achieve a specific purpose, that is, that of enabling the local authority to take appropriate action against the person or persons responsible for the 'failure of a building' or for 'failure of earthworks operations'. In the absence of a judicial decision in regard to Section 71, it is not possible to give an interpretation with certainty. However, it is contended that if a 'building fails' or if 'earthworks fail' due to 'misconstruction', 'lack of proper supervision', 'misdesign' or 'miscalculation' or 'misuse', then the person or persons responsible for the same could be prosecuted.

Taken cumulatively, the effect of Sections 70(1), 70(2), 70(13), 70(17) and 71 and based on the above decision by Justice Ong Hock Thye, one would reach the conclusion that if a person 'erects a building' or 'deviates from an approved plan' the person or persons who may be liable to be prosecuted could in all probability be the architect, the engineer, the contractor or anyone responsible for the same. The building owner or the landowner would be liable only if the actual offender is 'unknown' or 'cannot be traced'. The architect, engineer or contractor or any other person would be liable only if there is sufficient evidence to substantiate the fact that they were the ones actually responsible for the 'erection' or 'deviation'. This will preclude the owner of the land from being held responsible for any act or acts of which he is innocent of any wrongdoing and simultaneously exculpate any other person held responsible without sufficient evidence.

Building by-laws

In drafting the uniform building by-laws, the background scenario was the same – the collapse of the Jalan Raja Laut flats and the need to take action

against the person or persons responsible – the ultimate objective being the construction of buildings equipped with higher safety standards.

The power to make by-laws is expressly provided in the Streets Drainage and Building Act. The Minister, in the case of the Federal Territory, and the state authority, in all other states, have the power to make by-laws for and in respect of numerous matters as set out in Section 133 of the said Act.

The Building (Federal Territory of Kuala Lumpur) By-Laws 1985 and the Uniform Building By-Laws which contain identical provisions state *inter alia* that all plans for building submitted to the commissioner for approval shall:

- (a) be deposited at the office of the commissioner together with the necessary fees;
- (b) bear a statement showing for what purpose the building is to be erected and used;
- (c) bear the certificate of the qualified persons in the plans for which they are respectively responsible;
- (d) have a stamped copy of the relevant site plan approved by the commissioner;
- (e) be submitted by a qualified person notwithstanding that the commissioner may return the same said plan, drawing or calculation if he is of the view that it is beyond the competence of the qualified person submitting it and in which case no erection or continued erection of that building shall take place unless that qualified person or any person duly authorised by him undertakes the supervision of the erection of that building; and
- (f) be signed by the qualified person and by the owner or his agent.

The qualified person submitting the plans shall be responsible for the proper execution of the works and shall continue to be so responsible until the completion of the works unless, with the agreement of the commissioner, another qualified person is appointed to take over and provided that the erection of the building has not commenced.

‘Qualified person’ is defined in By-Law 3 of Building (Federal Territory of Kuala Lumpur) By-Laws 1985 and By-Law 2 of the Uniform Building By-Laws to mean any architect, registered building draftsman or engineer.

‘Architect’ is further defined in the same by-law as meaning any person who is registered as an architect under the law relating to the registration of architects and who under that law is allowed to practise or carry on business as an architect.

‘Registered building draftsman’ is defined as meaning any building draftsman who is registered under the relevant law.

‘Engineer’ is defined as meaning a person who is registered as a professional engineer under any law relating to the registration of engineers and who under the law is allowed to practise or carry on the business of a professional engineer.

Section 21(1) of the same Act further makes provision for the setting out of the building upon completion. Among its provisions, the qualified person is required to give written notice to the commissioner certifying that the setting out has been carried out in accordance with the approved site plan and that, if there has been any deviation from the approved plan, he will undertake to submit the required amended site plans for approval before the completion of the building. Finally the qualified person is required to certify that he accepts full responsibility for ensuring that all town planning and building requirements are complied with.

Section 22 further provides that as soon as the excavation for the foundation of a building has been completed, the qualified person shall give written notice to the commissioner informing him of the fact and certifying that the nature of the soil conditions as exposed by the excavations are consistent with the design requirements and conform with these by-laws.

Section 23(1) makes provision for the issuance of the certificate of fitness for occupation of a building. It shall be given when the qualified persons, during the course of the work, have certified that they have supervised the erection of the building and that to the best of their knowledge and belief the building has been constructed in accordance with these by-laws and any conditions imposed by the commissioner and that they accept full responsibility for those portions which they are respectively concerned with.

The essence of the above by-laws are that:

- (a) Only a qualified person is permitted to submit plans;
- (b) The plans must have a certification of the qualified person of their respective responsibilities;
- (c) No erection of a building shall take place unless the qualified person or any person duly authorised by him undertakes the supervision of the erection thereof; and
- (d) The qualified person shall be responsible for the works and shall continue to be so responsible until completion unless there has been a change of the qualified person or persons as approved by the local authority.

Unlike the old forms in the Municipal Building By-Laws of 1958, there are prescribed forms in the Building (Federal Territory of Kuala Lumpur) By-Laws 1985 and Uniform Building By-Laws which expressly provide for acceptance of responsibility by the submitting persons. Surely this is intended to impose legal responsibilities on these people.

The purpose in raising this issue is to bring to light and to emphasise that, while the law imposes responsibility on some ascertainable and definite persons, no action of any kind is taken by the local authority against any person or body of persons when a building collapses. If that is going to be the case then this in itself raises the next question.

What are the safeguards for the public? Many people have highlighted this problem in the past. Conservationists have raised it. Even the Ministry of Science, Technology and Environment has set up committees to study the problem considering the massive development projects being carried out and allowed in highly precarious areas. Yet no one has paid attention to this issue. Prevention no longer seems to be better than cure. The tragic collapse of the Highland Towers condominium in Selangor serves as an excellent example of this very sort of problem.

The Highland Towers condominium comprised of three blocks of 14-storey buildings. Block 1 suddenly toppled over and collapsed without any warning whatsoever on December 11, 1993, causing a loss of 48 lives. Following the tragedy, the Ampang Jaya Municipal Council (Majlis Perbandaran Ampang Jaya) set up a committee to investigate the stability of the adjacent Blocks 2 and 3. Their task was to look into the following:

- To investigate the cause of the collapse of Block 1;
- To identify the parties responsible for the said collapse;
- To recommend actions that could be taken against those parties responsible; and
- To assess the fate of Blocks 2 and 3.

In its findings the investigation committee reported that the most probable cause for the collapse of Block 1 was due to the buckling up and shearing of the rail piles foundation induced by the movement of soil, inadequate drainage, improper supervision of construction, the developer and consultants not following the due approved process required etc, from which it was further inferred that Blocks 2 and 3 could face similar inherent weaknesses.

Subsequently under Section 83(1) of the Street, Drainage and Building Act 1974 notices were issued to certain parties namely Highland Properties Sdn Bhd, the developer of the Highland Towers condominium, its former residents and purchasers of certain units of the said condominiums by Ampang Jaya Municipal Council. They in turn sought to institute legal proceedings in court to quash the said notices *vide* an order of *certiorari* in *Dr Benjamin George & 3 Ors v Majlis Perbandaran Ampang Jaya & 2 Other Cases* (1996) 2 CLJ 843.

Another good example is the construction of the Venice Hill condominiums sometime in March 1996. Complaints were received from the Taman Mudun residents in Cheras who were worried about their safety with the hilltop structure looming over them. They feared a recurrence of the Highland Towers tragedy. In fact the roof of one of the houses was badly damaged as a result of the blasting works conducted. The residents in turn proposed that the developer in question compensate them with a house each to enable them to vacate their homes. Much was said then about

the need for technical committees to be set up to study the safety aspects of the said condominium. The outcome is not known. It is obvious that many have put forward suggestions and there is no doubt that many more will be made in the days ahead. But how much has been seen to be done or will be done is an entirely different matter.

It has been reiterated time and time again that the Street, Drainage and Building Act 1974 contains inadequate provisions to cover situations such as these – where it is not the construction of the building itself that is under scrutiny but the surrounding environmental factors which, through the evolution of time, cause irreparable damage to existing structures and sometimes even result in loss of lives. Surely it need not be stated that development of land must be planned well in advance and must be made in conjunction with its environment. Yet, this does not seem to be the case.

What is the solution to the problem? It is impossible for one to foretell and to put on paper all the problems and difficulties that may be faced. The list is by no means exhaustive. This issue deserves close scrutiny and study by all experts concerned in its field. It is admittedly by no means an easy task. Specialist committees need to be formed and the difficulties faced in the past raised, mooted and thoroughly addressed. The dangers reasonably foreseeable must be envisaged and steps taken to prevent their occurrence. Only then can sensible workable laws be accordingly amended, drafted and subsequently enacted in Parliament.

Local authority responsibility in collapse of buildings

While the local authorities have a definite role to play in view of their acceptance and approval of plans and specifications, the law has not placed any legal liability on them. In fact responsibility has been expressly excluded. Section 95(2) of the Street, Drainage and Building Act 1974 provides as follows:

- 95(2) The state authority, local authority and any public officer or officer or employee of the local authority shall not be subject to any action, claim, liabilities or demand whatsoever arising out of any building or other works carried out in accordance with the provisions of this Act or any by-laws made thereunder or by reason of the fact that such building works or the plans thereof are subject to inspection and approval by the state authority, local authority, or such public officer or officer or employee of the state authority or the local authority and nothing in this Act or any by-laws made thereunder shall make it obligatory for the state authority or the local authority to inspect any building, building works or materials or the site of any proposed

building to ascertain that the provisions of this Act or any by-laws made thereunder are complied with or that plans, certificates and notices submitted to him are accurate.

This provision has been necessitated largely due to the fact that local authorities do not have the resources and the qualified manpower to check thoroughly what has been submitted by a professional person. They are often in no position to adequately supervise all building operations on site. Their function can at most be regarded as a moral obligation to check whatsoever they can without accepting any legal responsibility.

Section 95(2) is inconsistent with the other provisions enacted. Local authorities have a definite role to play and must perform their functions without negligence or default. 'Exclusion clauses' of this nature are looked upon as an ouster clause circumventing the jurisdiction of the courts and in turn render all other provisions effectively useless. It must be remembered and understood that unless all parties concerned, and that will include the local authorities, are made accountable for their own actions then and only then can the enacted laws be seen to operate effectively.

Maintenance and upkeep of condominiums

The maintenance and upkeep of condominiums are and will continue to be difficult and massive problems in the country if nothing is seen to be done to solve them. Before the final issuance of individual titles, the developer is obliged to maintain the common property of the condominium. Normally the developer carries out his obligations and enforces his rights by a 'Deed of Mutual Covenant' or a 'Management Agreement' signed between the developer and the purchaser of the unit at the time when the Sale and Purchase Agreement is executed. Under the terms contained in this document, the purchaser is obliged to pay a maintenance fee of such amount as may be decided by the developer for the proper maintenance of the common areas.

One problem is the collection of maintenance fees from all the purchasers of the units in the condominium on a regular monthly basis. The purchaser may not be the occupant. Instead it may be occupied by a tenant if it is tenanted or it may be locked up. A number of purchasers do not pay the fees on time or at all, and the developer faces a serious problem. When they are not able to collect fees they are not in a position to provide proper and effective maintenance. Some developers cut off the water and electricity supply to force the purchaser or the occupier to pay up; but this is arbitrary and does not always produce results although it is provided for expressly in the Deed of Mutual Covenant or Management Agreement.

Other developers engage lawyers to send legal notices and often even these legal notices are blatantly ignored. Some developers take the defaulting purchasers to court but this is costly and can often become a prolonged affair. If developers themselves face this problem, what more the management corporation which is the body taking over from the developer when the strata titles to the individual units have been issued.

One way to avoid this problem is to collect a 'lump sum' upfront at the very outset when the Sale and Purchase Agreement is executed, place the money in a fixed deposit account or other trustee investments and thereafter use the income therefrom to pay for the maintenance of the common property. This arrangement would help alleviate the heavy burden of collecting maintenance fees monthly from purchasers. The management corporation or, for that matter any agency or company, can then proceed with ensuring maintenance and proper upkeep without any subsequent financial dilemmas.

Another alternative is to entrust the maintenance of common areas in condominiums to a statutory body properly constituted by an Act of Parliament and with proper by-laws to collect fees and carry out the maintenance. This method will not only ensure that condominiums are always kept in clean and proper condition but also add towards preserving a conducive environment.

However, this should not be taken to mean that the local authorities can then take their time or delay the issuance of strata titles. It is suggested that a time limit be imposed and strata titles issued within the said time frame to reduce problems in connection with the maintenance and upkeep of condominiums.

Bumiputera quota

It has become a standard condition for local authorities approving Development Orders to impose a requirement to sell 30 per cent of all units in a development to Bumiputeras. Normally the developers offer a five per cent discount on the selling price to the Bumiputera purchasers. While most developers have no objection to the sale of 30 per cent of the units to Bumiputera purchasers the problem that often arises relates to the units that are not sold despite repeated offers and advertisements in newspapers. In one case there was a condition requiring the developers to sell about 120 out of 400 units to Bumiputeras. These units were priced at RM300,000 and above. The developer advertised numerous times in a number of newspapers offering the units to Bumiputeras. The number of Bumiputera takers was only 12. The cost of advertising in the newspapers exceeded RM290,000. The developer applied to the local authority for the release of the Bumiputera

units but the local authority took an extremely long time. Almost six months lapsed before the local authority permitted the developer to release 50 per cent of the Bumiputeras units for sale to others. At the time of the release the building was 80 per cent completed. The balance 50 per cent of the Bumiputera units were allowed to be released only upon full completion and upon proof of further advertising.

It is unreasonable to delay the release of Bumiputera units for such inordinate lengths of time, especially when the units are priced in excess of RM300,000. As highlighted above, the development at the time of the 50 per cent release was about 80 per cent completed and one can imagine the extremely high holding costs incurred by the developer as a consequence of the local authority's actions. The parties who are in actual fact benefiting from this are the financiers. The losers are almost certainly the subsequent buyers because henceforth the developer will undoubtedly increase the price of the units concerned when they are eventually put on the market and sold to non-Bumiputeras. This again may mean that the units will not be sold with ease as prices will now reflect the high holding cost borne by the developer. This is an unsatisfactory practice. While it is acceptable that a Bumiputera quota be imposed at the time of the making of the Development Order, such quota, subject to advertising in local newspapers, should be automatically released six months from the official date of launching so that developers need not be burdened financially to hold the units until 100 per cent completion before release for sale to non-Bumiputeras.

The other alternative is for the government or any of the statutory bodies to step in at the time of the launching of sales to buy up the Bumiputera units and hold them for sale to Bumiputeras. In fact it is further proposed that to reflect the racial composition of our multi-racial population, every housing development should have a quota for each race. Only when the units are not taken up within a fixed time frame should such quotas be released to the public at large.

Difficulties of low-income purchasers in loan applications

This is a perennial problem faced by low-income purchasers when purchasing low and medium-cost houses. The problem is faced by taxi drivers, gardeners, watchmen, hawkers, small tradesmen, squatters, etc. When these people wish to purchase a house, for example, costing anything between RM50,000 and RM100,000 they will be required to pay the usual 10 per cent downpayment at the time of the execution of the Sale and Purchase Agreement. Many of them usually possess this sum of money. At

some later stage they will be required to raise another 10 per cent or 20 per cent depending on individual ability and, in some cases, family support. This in effect means that they will require a loan sum amounting to approximately 70 per cent or 80 per cent of the total purchase price. In retrospect this does not seemingly impose a difficulty. However, when the taxi drivers or gardeners, etc, go to the banks or financial institutions, the institutions in turn and in accordance with their policies, will request for a number of documents such as:

- Statement of salary and security of employment;
- Income Tax Returns Form J;
- Bank statements; and/or
- Other documents bearing some proof of eligibility in support of the application.

To this group of people, these documents are normally unheard of and mean nothing to them. Frequently they do not own or possess such documents and consequently their loan applications are either not even considered or are often rejected. To illustrate their plight a particular story comes to mind.

A few years ago I had a gardener whom I will refer to herein as Linga. I met Linga by chance in a shopping mall in Old Klang Road. He was uneducated and spoke mainly Tamil with only a smattering knowledge of Bahasa Malaysia. We talked and I soon discovered that he had some experience in gardening. He seemed in need of work and so I requested him to tend to the gardens in my house, for which I paid him according to work done.

One day he told me he wanted to wash cars in a housing estate somewhere in Old Klang Road. He identified the housing estate and asked for my assistance. I contacted the management, visited them and they agreed to allow him to wash cars in the housing estate subject to payment of a fee and a monthly charge for use of water. Linga agreed and commenced the job. A few months went by and soon the number of cars increased. He then employed a couple of boys to help him. By this time he owned a new motorbike. A few months later he purchased a van to transport his workers.

Months later, he approached me seeking assistance to buy an apartment unit near Old Klang Road for about RM40,000. He told me that he had sufficient money to pay the downpayment but that when he had applied for a bank loan, the bank had rejected his application on the grounds that he had no secure job and no evidence of so-called steady income. He had gone from bank to bank only to be turned away. This industrious man was totally shattered and frustrated. Finally, upon my intervention and with great difficulty, a bank approved his application for a loan.

The purpose in relating Linga's story is to highlight the serious difficulties faced by the lower income group in getting loans to buy low or medium-cost houses. If the aim of our country is to head towards a house-owning democracy and towards achieving developed nation status, then it is the collective responsibility of everyone concerned, including financial institutions, to facilitate and assist low income earners in purchasing such immoveable property without imposing stringent terms and conditions especially if the loan requested is for a first house purchase. While documents bearing proof of income tax returns and income are important undoubtedly, the non-production of Form J should not result in a complete frustration of an applicant's attempt to buy a first house. After all, a bank should positively respond in all fairness simply because the applicant normally pays 20 per cent or 30 per cent of the total purchase price for the property and the property is in itself either assigned or charged to the bank. In the event of default in payment of monthly instalments the bank can always commence foreclosure proceedings in respect of the property concerned to recover the loan sum.

Housing Delivery System: An Academician's Perspective

Goh Ban Lee

Introduction

In a recent survey conducted by a news magazine to find out more about Asian values, respondents from Hong Kong, Indonesia, the Philippines, Singapore, Taiwan, Thailand and Malaysia were asked what they most aspired for. They placed the highest priority on buying a home or other property compared to travelling, having a premium credit card, buying a car and gaining membership in a prestigious club.¹ The report noted that seven out of 10 Southeast Asians polled (72 per cent) ranked home ownership as their first choice in the list of things to which they aspire.

To most Malaysians, the results of the survey, while interesting, are not surprising. The aspiration to own one's home is reflected in the pride and enthusiasm of house owners in showing guests around newly acquired houses. This attitude is recognised by the government. In the national

1. *Time Money Monthly*, 'Asians and Their Money', September 1 1997 pp 8-9.

development plans, the provision of adequate housing is one of the top priorities. In order for the aspirations of Malaysians and the vision of the Malaysian government to be realised, the housing delivery system must be efficient and effective. Any shortcoming in the delivery system will impede access to adequate housing for certain sections of Malaysians and result in a built environment which is not commensurate with the country’s economic status.

Although housing production in Malaysia has kept pace with household formation in recent years, housing is still an important agenda largely because poorer Malaysians are still inadequately housed or face difficulty in finding adequate houses which meet their affordability levels. It is apparent that although many Malaysians have access to houses, the quality of housing, in terms of workmanship and quality of human settlement, does not meet expectation.

The housing industry

The current Seventh Malaysia Plan (1996-2000) calls for 800,000 new housing units to be built to ensure that Malaysians are adequately housed. Although this works out to an average of 160,000 units per year, there is no certainty that the present delivery system is capable of meeting the target. As shown in Table 1, the performance of the housing industry fluctuates from one plan to another. In the Third

Table 1: Housing in Malaysia - Programmes and performance, 1991 to 2000

Malaysia Plan period	Planned	Built	% of target
1971-1975*	-	259,810	-
1976-1980	482,800	484,190	100.3
1981-1985	923,300	406,070	44.0
1986-1990	701,500	300,928	42.9
1991-1995	573,000	647,460	113.0
1996-2000	800,000	-	-

Sources: Malaysia Plans (various years)

Note: * The Second Malaysia Plan (1971-75) does not have a housing target.

Malaysia Plan (1976-80), the housing industry built 484,190 units, which was very close to the targeted number. However, in the Fourth and Fifth Malaysia Plans from 1981-90, the industry delivered less than 50 per cent of the targeted number of houses. The Sixth Malaysia Plan period from 1991-95 was good for the housing industry – it built the largest number of houses in any five-year period with 647,460 units, which was 113 per cent of the target.

The current target of 800,000 housing units in five years thus calls for a more robust delivery system. Out of the 800,000 units, 235,000 units (29.4 per cent) must be low-cost houses and 350,000 units (43.8 per cent) low medium-cost units with the rest medium or high-cost houses. Unless the delivery system is able to produce the number of low-cost and low medium-cost houses, even if it is able to bring about a total of 800,000 new housing units by the year 2000, a relatively large section of Malaysians will still face inadequate housing conditions.

Low-cost housing

In the history of development planning in Malaysia, the planners have been well aware of the importance of building houses catering to the needs and affordability of low-income families (Table 2). The current Seventh Malaysia Plan target of 235,000 units of low-cost houses, defined as houses which sell for not more than RM25,000 each, is to cater to those whose income is between RM500 to RM750 per month.

At present, low-cost houses are built by several developers and through various processes. Out of the 235,000 units, the public sector is expected to build 95,000 units while the private sector is targeted to build 140,000 units. Within each sector, there are different categories of developers, each with their own methods of building the low-cost units and who thus face different issues in the process of delivering the houses.

Public sector low-cost housing

As early as the 1950s till the 1970s, the planners were very clear that the government was responsible for building houses for the lower-income families. Relatively large sums of public funds were allocated to build public low-cost houses. From 1956 to 1965, the government allocated about RM42.6 million to build 10,551 units of houses to cater to the housing needs of the poor. It further built 22,522 units from 1966 to 1970 (Table 3). Indeed, even by the early 1970s, it was

Table 2: Low-cost housing - Programmes and performance

Malaysia Plan period	Total no of houses planned	Low-cost house		Low-cost house	
		Planned	% of Total	Built	% of Target
1981-1985	923,300	376510 *	40.8	125,460	33.3
1986 -1990	701,500	495,000	70.6	164,396	33.2
1991-1995	573,000	343,800	60.0	261,386	76.0
1996-2000	800,000	235,000	29.4	-	-

Source: Malaysia Plans (various years)

Note: *Does not include institutional quarters for government servants, houses built by co-operative societies and houses by individuals and groups.

Table 3: Public Low-cost housing - Programmes and performance, 1956-2000

Malaysia Plan period	Planned	Built	% of Target
1956-1960	-	2983	-
1961-1965	-	7568	-
1966-1970	-	22,522	-
1971-1975	-	13,244	-
1976-1980	62,200	26,250	42.2
1981-1985	176,500	71,310	40.4
1986-1990	42,880	26,172	61.0
1991-1995	24,430	10,669	43.7
1996-2000	29,000	-	-

Source: Malaysia Plans (various years)

still acknowledged by the planners that the government was solely responsible to provide housing for the poor. As stated in the Second Malaysia Plan (1971-75), 'The government will place emphasis on housing for low-income groups, as such ventures do not appeal to private developers, whose activities mainly cater for the middle and higher income groups'.² To match this intention, RM1,719 million was allocated under this plan to build public housing, as houses for the lower-income groups were then referred to.

Public housing, later renamed public low-cost housing, is different from other programmes in the provision of houses for the lower income groups because it is meant for the public at large. Although each state has its own criteria of eligibility for low-cost houses, the fundamental one is low income. Other conditions of eligibility are marital status, state residents and non-possession of a house. Most state governments have a continuous registration system and, in most cases, allocation of houses in a certain scheme is based on a fixed ethnic quota to ensure the implementation of government economic policy and fair ethnic mix.

The attractiveness of public low-cost housing is that those who are allocated houses do not have to pay a lump sum for them. They do not even have to have a 10 per cent down payment as commonly required in buying a house in Malaysia. When the houses are completed, they are only asked to pay the monthly charge of about RM150 per month to be allowed to take possession of the house.

The agencies charged with building public low-cost housing are the state governments and local authorities with subsidiaries from federal government loans. The National Housing Department, which was established in 1974, provides supervisory and technical expertise on request. As a general rule, to keep costs down, the maximum size of public low-cost housing is 51 sq m for apartments and 69 sq m for other types of houses such as cluster terrace houses and low-cost medium density compact houses.

The public low-cost housing programme reached its peak in the Fourth Malaysia Plan (1981-85) when 71,310 units were completed. Since then, the number of such houses had been decreasing. More significantly, the government has never been able to fulfil the number expected by its own planners. The best record was in the Fifth Malaysia Plan period (1986-90) when it was able to build 61 per cent of its allocated target.

2. Second Malaysia Plan, 1971-75, p257.

The reasons given for the shortfalls are administrative delays, including problems of identifying suitable sites and preparation of tender documents.³ Lately, the planners at the federal government level have acknowledged that the fixed ceiling price of low-cost houses contributed to the slow implementation of the public housing programme.

The low achievement by the public sector was mainly due to unsuitable project sites as a result of competing demand of more suitable land for other uses and high infrastructure and construction costs. These factors contribute to the increase in the cost of the house exceeding the fixed price of RM25,000. As the loan to state governments to implement low-cost housing was based on this fixed price of RM25,000 per unit, they had to subsidise the difference between the actual cost and the selling price and were thus discouraged from implementing the programme. As a result, during the plan periods, only 57.9 per cent of the loan provided was utilised by the state government.⁴

The government has not come up with new concrete ideas on how to increase production of low-cost houses by the public sector. The only clear-cut policy seems to be to shift the burden of building low-cost houses to the private sector. For instance, in the Fourth Malaysia Plan, the public sector public low-cost housing programme was to build 176,500 units while the private developers were to build 90,000 units. In the Fifth Malaysia Plan, the public sector public low-cost programme was allocated only 45,800 units while the private housing developers were to build 370,400 units. While this may solve the problem of responsibility of building low-cost houses, it does not mean that the adequate number of houses will be built until the government investigates fully the causes for the inability of building low-cost houses, especially by the public sector. The underlying causes of failure to meet the targeted number must be fully understood, otherwise the same problems will be encountered whether the houses are built by the public sector or the private sector.

However, the government has attempted to ease the burden of the private sector slightly by creating several funds, including the RM500 million Low-Cost Housing Fund to provide soft loans to private developers to build low-cost houses. It has also established the National Housing Company with an initial capital of RM1 billion provided by Petronas, the national petroleum company. The company,

3. Fifth Malaysia Plan, 1986-90, p522.

4. Seventh Malaysia Plan, 1996-2000, p558.

launched on October 9, 1997, will either build low-cost houses or buy them from developers and resell them to the public at the government-controlled price.

While such funds may contribute to more low-cost houses being built, what is urgently needed is a thorough investigation on the low-cost housing question. Is the RM25,000 ceiling realistic? Is it the main obstacle in building more low-cost houses? What is the magnitude of shortage and where? Do those who register for low-cost houses genuinely qualify for them? What are the obstacles in the process of building low-cost houses? Can the processing of the myriad applications be made faster and less cumbersome? Are the existing standards and specifications realistic? Is the allocation of houses efficient and transparent? Unless these questions are answered and firm decisions made, the delivery of public low-cost housing will remain problematic.

In addition, the government has also established a Housing for the Hard-core Poor Foundation with an allocation of RM600 million contributed by both the public and private sectors. This fund is to be used by state governments, local authorities and state economic development corporations to build low-cost high-density flats, meant only for rental to the very poor in major urban areas who face acute housing problems. The Seventh Malaysia Plan states that 35,000 units will be built under the scheme. Up to May 1997, 31 projects comprising 14,721 housing units have been planned and six projects with 2,249 units have been completed as of June 1997.⁵

Housing rehabilitation

Since adequate housing is not just a numbers game but should also reflect the quality of shelter, there is a realisation that the housing needs of the poor can be improved by upgrading their existing houses instead of building new ones. The government has thus established a scheme to rehabilitate dilapidated houses occupied by the hard-core poor. From 1991 to 1995, 36,000 houses benefited from such a programme. The focus of housing rehabilitation is in the urban fringes and the rural areas where assistance is in the form of supply of building materials to upgrade dilapidated houses, to build extensions, or to improve toilet facilities or water supply facilities. In the Seventh Malaysia Plan period, it is expected that 20,000 houses will benefit from such a programme.

5. *New Straits Times*, June 24, 1997, p1.

Site and services scheme

As part of the effort to provide adequate housing to lower income groups, the government has also implemented a 'site and services' scheme. Under this concept, officially introduced during the mid-term review of the Fifth Malaysia Plan, the government prepares the housing sites, builds basic infrastructure and core houses costing about RM10,000 each in Peninsular Malaysia and RM15,000 each in Sabah and Sarawak. The occupants are to complete the houses according to their needs and affordability. In some cases, the government only prepares the site and builds basic infrastructure such as water supply, electricity lines, roads and drains without the core houses. The occupants then build their own houses on the sites allocated.

Despite the many success stories of this form of housing delivery system in other countries, this programme has not met with overwhelming success in Malaysia. This is largely due to the difficulty of finding large tracts of relatively cheap land in and around urban areas. It is also possible that the implementing agencies are not efficient as reflected in the implementation of the public sector low-cost housing. Out of the 15,570 units planned for 1991-95, only 4,707 or 30.2 per cent were completed by the end of the plan period. In the Seventh Malaysia Plan, it is estimated that 15,000 units will be built under this scheme. Since the government has not made known the underlying causes of the lack of success nor proposed counter-measures to solve the problems of inability to meet targets set earlier, it is unlikely that the latest target will be met by the year 2000.

Land schemes

In rural areas, the main public sector strategy to help the poor gain access to adequate housing is by opening up land schemes, in which settlers are provided with houses together with 5-10 acres of cash crops, such as oil palm. The implementing agencies are specialised government bodies such as the Federal Land Development Authority (Felda), Federal Land Consolidation and Rehabilitation Authority (Felcra), Development Authority of Pahang Tenggara (Dara) and Johore Regional Development Authority (Kejora).

Despite its earlier success, the provision of houses through land schemes has now lost its importance. The number of houses targeted to be built under these schemes has decreased after the Fourth Malaysia Plan when such schemes were expected to build 110,010 units. Currently only 9,300 units are expected to be built in such land schemes and this may not even be achieved (Table 4). In the Sixth Malaysia Plan, only 8,075 were units built despite the planned target of 56,100 units.

Table 4: Housing through land schemes

Malaysia Plan period	Planned	Built	% of Target
1971-1975	-	41,965	-
1981-1985	53,100	36,770	69.2
1981-1985	110,010	34,980	31.8
1986-1990	57,500	32,056**	55.7
1991-1995	56,100	8,075***	14.4
1996-2000*	9,300	-	-

Sources: Malaysia Plans (various years)

- Notes:**
- * Until 1995, all houses planned under the land scheme were low-cost units. In the Seventh Malaysia Plan (1996-2000) out of the 9,300 houses planned, 8,000 are for low-cost units while 1,000 are for low-medium cost houses and 300 for medium cost ones.
 - ** Out of the 32,056 units built, 31,827 were low-cost and 229 units were classified as medium-cost.
 - *** Out of 8,075 units built, 7,517 were low-cost and 558 units were classified as medium-cost.

There are many reasons for the diminishing role of land schemes. The recent shift of development planning priority to the urban economy plays a part. Another reason is the lack of success of the regional development authorities, which were once hailed as the dynamic locomotives to achieve regional economic balance and eradicate poverty in the rural areas. Indeed, the government has proposed that five out the seven regional development authorities be closed.⁶

Despite their diminished role, the land schemes have helped thousands of poor Malaysians in the rural areas to have access not only to adequate shelter, but also economic livelihood. The recent rapid rate of urbanisation has brought some land schemes to within commuting distance from major urban centres. As a result, some residents of these schemes have suddenly found their housing lots and their smallholdings transformed into valuable properties worth millions of ringgit. They have become 'instant millionaire villagers'.

6. New Straits Times, June 24, 1997, p1.

Institutional quarters

The government's concern for adequate shelter is also reflected in its direct involvement in providing housing to its employees, particularly those in uniformed services such as the armed forces, customs, fire services and immigration. Others who are usually provided with housing, generally referred to as government quarters, are government employees serving in rural areas where adequate housing facilities are not available. These include teachers and health personnel. In the urban areas, there are also government quarters for manual workers, whose salaries may be too low for them to have access to houses built by private developers. Public employees allocated government quarters are charged minimal rentals. Incidentally, those who are not allocated government housing are given housing subsidiaries, the amounts of which vary according to their ranks.

In the Seventh Malaysia Plan, the government proposes to build 102,700 housing units under this scheme, which is 44.7 per cent of the total number of houses under the public sector category. However, it is important to note that none of the houses proposed is of the low-cost type. A total of 93,000 units (90.6 per cent) are low medium-cost units while 9,700 units (9.4 per cent) are medium-cost.

In other housing programmes undertaken by the public sector, the ability to meet the target has fallen short of expectations (Table 5). During the best of times, such as the Sixth Malaysia Plan, the public

Table 5: Institutional quarters - Programmes and performance, 1971-2000

Malaysia Plan period	Planned	Built	% of Target
1971-1975	na	24,240	-
1976-1980	41,300	20,560	49.8
1981-1985	58,500	25,450	43.5
1986-1990	27,000	11,284	41.8
1991-1995	32,600	18,776	57.6
1996-2000	102,700	-	-

Sources: Malaysia Plans (various years)

Note: The figures shown here do not necessary mean low-cost houses only.

na - not applicable

sector could only complete 57.6 per cent of the number planned. Equally significant, as can be seen in Table 6, the completion rate for the low-cost category was only 27.3 per cent while that of medium-cost was 94.1 per cent. Even in the high-cost category it was only able to build 141 out of the planned 300 units. The possibility of the present target being achieved would be higher if the government were to form partnerships with private housing developers using the turnkey method to build the number targeted, especially in view of the fact that the houses planned are not low-cost ones.

Role of private developers

The private sector is now expected to play an increasing role in the delivery of low-cost housing. This is accomplished in two ways — by building low-cost houses and selling them direct to the buyers or by building them for the government on turnkey basis.

The track records of private developers in building low-cost houses have been inconsistent. Although the private developers have been building more and more low-cost houses since 1981, their performance has been below expectations. For example, in the Fourth and Fifth Malaysia Plan periods, they were able to build only 21.3 and 24.0 per cent of their targeted numbers respectively (Table 7).

Their lack of success in building low-cost houses is even clearer in the Special Low-cost Housing Programme (SLCHP), launched in 1986 and planned for completion in 1989. Originally planned for 240,000 units in three years as part of the anti-recessionary measures, the programme attracted very favourable response from private developers who registered to construct a total of 334,600 units, or 94,600 units more than the original

Table 6: Institutional quarters - Programmes and performances, 1991-95

Malaysia Plan Period	Low-cost	Medium-cost	High cost	Total
Planned	17,60	14,700	300	32,600
Built	4,800	13,835	141	18,776
% Built of target	27.3	94.1	47.0	57.6

Source: Seventh Malaysia Plan

Table 7: Low-cost housing by private developers - Programmes and performance, 1981-2000

	Total units planned	Targets for developers		Units built by private developers	
		No	% of total	No	% of Target
1981-1985	285,810*	90,000	31.5	19,170	21.3
1986-1990	495,000	370,400	74.8	88,877	24.0
1991-1995	343,800	215,700	62.7	212,003	98.3
1996-2000	200,000**	137,000	68.5	-	-

Sources: Malaysia Plans (various years)

Notes: * Figure does not include the 31,000 units of houses classified under Institutional quarters for government servants.

** Figure does not include the 35,000 units of housing for the hard-core poor to be built under Housing for the Hard-core Poor Foundation.

target. However, by the end of the three-year period, it was clear the housing industry just could not deliver despite the incentives given. Only 83,940 units were built – 35.9 per cent if based on the original 240,000 units target or only 24.1 per cent if based on the 334,600 units registered to be built. The reasons cited were unsuitability of sites, financial and management problems of developers, including misuse of funds collected from house buyers, incomplete construction and delays in getting plans approved by government departments.⁷

In the Sixth Malaysian Plan, the success rate of building low-cost houses by private developers jumped to 98.3 per cent, or 212,003 units out of 215,700 planned. However this rather impressive rate should be seen in the context of the completion of 164.7 per cent of medium-cost and 399.8 per cent completion of high-cost housing targets. Nevertheless, it is clear that the private developers can deliver more low-cost houses than any single category of housing developers. They built 212,003 units of public low-cost houses compared to only 46,497 units by the public sector as a whole.

The 212,000 units built comprised 80,678 units of ordinary low-cost housing and 131,325 units of low-cost housing under the Special Low-cost

7. Sixth Malaysia Plan, 1991-95, p364.

Housing Programme. In fact, if the production of the ordinary low-cost housing units only were considered, the private developers' success rate would be impressive indeed. They built 80,678 units from 1991-95 when they were expected to build only 44,080 units. This is 183 per cent of their allocated target.

Pure business considerations alone were not likely to be the factor behind the production of low-cost houses since the selling price of a low-cost house is pegged at RM25,000. The main reason is more likely to be attributed to the policy of requiring private developers to build 30 per cent low-cost houses in projects above certain sizes, which vary from place to place. On Penang Island, for instance, housing projects in urban areas exceeding 150 units are subject to the policy whereas in rural areas, the threshold is 100 units.

Developers can appeal for waivers by giving a variety of reasons such as high land cost and incompatibility with surroundings. Apparently some appeals have been successful. Non-compliance with the low-cost policy has attracted strong criticisms despite the private developers' respectable record in the production of low-cost houses during the Sixth Malaysia Plan. The popular perception is that they have not done enough and thus they are often criticised by national leaders. In one instance, Deputy Prime Minister Dato' Seri Anwar Ibrahim had said:⁸

They should be able to build the low-cost units although the profits will be lower as they make bigger profits in condominium projects.

For example, developers make a clean profit of RM600,000 for every RM1 million in a project involving condominiums. I am sure they can afford to bear making only RM1,000 for each low-cost house.

Comments have also been made in other newspapers:⁹

A large part of the solution to the present woes will thus lie in properly carrying out what has already been so carefully and prudently planned in recent past. Perhaps the most significant planning measure has been the policy of shifting more of the building and supply of low-cost housing to the private sector. The failure to consistently and methodically implement the measure to compel developers to set aside a percentage of their project for low-cost housing has been one of the largest factors behind the shortfall. There have been so many exemptions, and too little enforcement to close the loophole and forbid developers any easy way out.

8. *The Star*, September 11, 1996, p1.

9. *New Straits Times*, May 5, 1997, p10.

In view of their performance, at least in the Sixth Malaysia Plan period, such criticisms are not fair to the private developers. In the very buoyant property market period of 1991-95, they actually built more public low-cost houses than their planned target. Without taking into consideration the units built under the Special Low-Cost Housing Programme, 80,678 units of public low-cost houses in the Sixth Malaysia Plan represents about 23.8 per cent of the total medium and high-cost houses built during the same period. Although this is less than the 30 per cent requirement under the low-cost housing policy, it shows that many developers did comply.

There is little doubt that the delivery system of low-cost houses by the private developers is not very efficient. This is largely the result of expecting an unnatural behaviour to function efficiently and effectively. Private housing developers venture into the housing business to make profits for themselves and their shareholders. The production of low-cost housing is not profitable. Indeed some claim that it is a money-losing activity. Business ventures that are demanded by mandatory orders cannot be efficient and sustainable. At its best, a reasonable number of low-cost houses are built but at the expense of the housing industry as a whole because prospective developers often delay their projects, hoping that their appeals for waivers will be granted. At its worse, the number built is so small as to cause a letdown to those who are waiting for low-cost houses while the housing industry also suffers as delays or denial of appeals can lead to abandonment of proposals.

Role of co-operatives

Co-operative societies are private sector housing developers. However, they are different from private developers because they do not operate under the Housing Developers Act and are not bound by its rules and regulations. Furthermore, most of the houses built are for members although some co-operatives have sold houses to the public after having served the housing needs of their members-in which case, they would come under the Housing Developers Act.

On the whole, co-operative societies in Malaysia do not play a very significant role in the delivery of houses. In the development planning of the country, they have been expected to contribute between two to three per cent of the total number of houses. In the Seventh Malaysia Plan, they are expected to build 3,000 housing units or 1.9 per cent of the total number of houses targeted. The co-operatives are expected to build a total of 15,000 units with 8,000 medium-cost units (Table 8). Although the targets are not very daunting, it is doubtful if they can be achieved. Even during their best years, that is, from 1991 to 1995, they managed to built 89.7 per cent of the number expected compared to the

Table 8: Co-operative societies - Programmes and performance, 1971-2000

	Low-cost			Low-Medium			Medium-cost			High-cost		
	Planned	Built	% of	Planned	Built	% of	Planned	Built	% of	Planned	Built	% of
	Target			Target			Target			Target		
1971-1975	-	3585*	-	na	-	-	n.a	-	-	na	-	-
1976-1980	12,000*	4120*	34.3	na	-	-	na	-	-	na	-	-
1981-1985	25,200*	4570*	18.1	na	-	-	na	-	-	na	-	-
1986-1990	3,700	1,187	32.1	na	-	-	6,300	5,687	90.3	2,500	609	-
1991-1995	1,300	2,886	222.0	na	-	-	10,100	7,172	71.0	1,200	1247	103.9
1996-2000	3,000	-	-	3,000	-	-	8,000	-	-	1,000	-	-

Sources: Malaysia Plans (various years)

Notes: * Figures for all types of houses. There were no figures for different types of houses for co-operatives in the Fourth Malaysia Plan or earlier plans.

na Not applicable.

private sector achievement of 141.1 per cent of target. In the earlier years, the completion rates were even lower.

Although the co-operatives do build low-cost housing, their role in this type of housing is very modest. In the Fifth Malaysia Plan, when data was available for the first time, they built 1,187 low-cost units or 16.9 per cent out of a total of 7,483 units built by them. In the Sixth Malaysia Plan, they achieved 20.3 per cent out of 11,305 units. The rest of the houses built by co-operatives were medium and high-cost types.

Low medium-cost houses

By the early 1990s, it had become increasingly apparent to industry players that the price ceiling of RM25,000 for low-cost houses was artificial. In the secondary housing market, it was difficult to find housing being sold at RM25,000 or below. Indeed since the early 1990s it has been very difficult to find houses selling for less than RM50,000 each in the urban areas. In major urban areas such as the Klang Valley, metropolitan George Town and Johor Bahru, the cheapest houses in the secondary property market were selling for RM80,000 and above.

In the Seventh Malaysia Plan, the federal government introduced for the first time low medium-cost houses, defined as houses selling for between RM26,000 and RM60,000 each. These are expected to cater to those whose monthly incomes range from RM751 to RM1,500. The government planners were of course not the first to introduce the concept of low medium-cost houses. The Penang Island Municipal Council, with the concurrence and assistance of the state government was already implementing the concept of low medium-cost houses as early as 1994 when it allowed private housing developers to build such houses instead of low-cost ones. However, this policy was only applicable in the northeast district of Penang Island. The maximum selling price of such houses was and is still fixed at not more than RM50,000 each and the sale of these houses has to be to the list of applicants who are registered with the state housing department, similar to the method of selling low-cost houses. In fact, it is understood that those who were allocated the low medium-cost houses were those who had applied for low-cost units. The first low medium-cost housing project in Penang, comprising 640 units, was sold out within one month of launch. Nearby apartments of slightly bigger sizes were each selling at RM90,000 and above.

Convinced that the low medium-cost houses would be attractive both to developers and buyers, the Seventh Malaysia Plan target is rather ambitious. It estimates that 350,000 of these houses will be built by the year 2000, out of the total 800,000 units planned. This is about 43.5 per cent of all houses to be built.

Out of the 350,000 units, 110,000 units are to be built by the public sector with the government commercial agencies, such as the state economic development corporations, allocated 16,000 units. Land schemes by regional development authorities are to build 1,000 units and another 93,000 units are to be built by various government departments to be used as government quarters. The private sector is supposed to contribute 240,000 units of the low medium-cost houses. The bulk of 237,000 units is to be built by the private housing developers while 3,000 units are to be built by co-operatives (Table 9).

Medium and high-cost houses

The overriding concern for adequate low-cost housing often obscures the fact that important issues have to be resolved in the delivery of medium and high-cost houses. Any inefficiency in the delivery of these houses adversely affects those who are not eligible for low-cost houses. Equally important, since the delivery of a substantial number of low-cost houses is a function of the delivery of medium and high-cost housing, inefficiency in this area will also affect low-cost housing.

Table 9: Low medium-cost houses - Programmes, 1996-2000

	No	%
Public Sector	110,000	
Commercial agencies	16,000	4.5
Land Schemes	1,000	0.3
Institutional Quarters	93,000	26.6
Private Sector	240,000	
Private Developers	237,000	67.7
Co-operative societies	3,000	0.9
Total	350,000	100.0

Source: Seventh Malaysia Plan, 1996-2000, p 574

The distinction between medium and high-cost houses from low-cost ones was only introduced in the Fourth Malaysia Plan. The distinction of high-cost from medium-cost houses was introduced in 1986 in the Fifth Malaysia Plan, when the government proposed that 180,200 medium-cost units and 26,300 high-cost units would be built (Table 10). Although no definitions of medium-cost and high-cost houses were made in the plan, it is possible to deduce from other government publications that medium-cost houses were those selling at between RM25,001 and RM100,000 each and high-cost houses were those selling at above RM100,000.

The definitions of medium and high-cost houses have now been made very clear. In the Seventh Malaysia Plan, medium-cost houses are defined as those selling from RM60,001 to RM100,000 each since the low medium-cost ones are those selling between RM26,000 and RM60,000. However, it should be noted that the National Housing Department of the Ministry of Housing and Local Government has a slightly different definition for medium-cost houses which it has defined as those selling between RM50,001 and RM100,000. It is imperative that all government departments synchronise their definitions. Otherwise they can confuse the public.

Role of the public sector

In Malaysia, the public sector also produces medium-cost and high-cost houses although its role is relatively minor compared with that of the

**Table 10: Medium-cost and high-cost houses -
Programmes and performance, 1981-96**

Malaysia Plan	Medium-cost houses			High-cost houses		
	Planned	Built	% Target	Planned	Built	% Target
1981-1985*	313,030	155,790	49.8	-	-	-
1986-1990	180,200	116,752	64.8	26,300	19,750	75.1
1991-1995	200,500	282,436	140.9	28,700	103,638	361.1
1996-2000	130,000	-	-	85,000	-	-

Sources: Malaysia plans (various years)

Note: * Figures in this column show the total of both medium-cost and high-cost houses.

private sector. Within the public sector, the main housing producers are the government commercial agencies which build houses for sale and government departments which build quarters for their own employees. In the Seventh Malaysia Plan, 9,700 units of the medium and high-cost houses proposed are earmarked as quarters for government employees. Some government departments may choose to build their own houses using the help of the Public Works Department, but most will likely collaborate with private developers on a turnkey basis to build the houses required.

Within the public sector, the government commercial agencies, such as the state economic development corporations and the Urban Development Authority, are the main producers of medium and high-cost houses. In the Seventh Malaysia Plan, they are targeted to build 15,000 units. This does not seem to be an impossible target, although their performance during the Sixth Malaysia Plan was below expectation (Table 11) and they only built 23,511 instead of their allocated target of 32,000. However, it should be remembered that the present target is for houses selling for RM60,001 and above, and should thus be less difficult compared to having to build houses selling from RM25,001 and still be economically viable.

Although profits are important to government commercial agencies when they build and sell houses, they are more sensitive to government policies compared to the private developers. In their design and sale of medium and high-cost houses, they are not market leaders in terms of prices and the selection process for their buyers

Table 11: Public sector medium and high-cost housing - Programmes and performance 1981-2000

Plan period	Government commercial agencies			Land schemes			Government quarters		
	Proposed	Built	% Built	Proposed	Built	% Built	Proposed	Built	% Built
1981-1985*	53,000	70,160	132.3	-	-	-	-	-	-
1986-1990	5,500	17,163	312.1	0	229	~	22,600	5402	23.9
1991-1995	32,200	23,511	73.0	0	558	~	15,000	13,976	93.2
1996-2000	15,000	-	-	300	-	-	9,700	-	-

Sources: Malaysia Plans (various years)

Note: * In the Third Malaysia Plan (1981-1985) there were no separate figures for houses built by government agencies and other houses for government quarters.

is not based on a first-come-first-served basis. In most cases, their Bumiputera quota is normally higher than that of the private sector. Some even have a rule that only those who do not already possess properties can purchase their houses.

Role of private developers

The single biggest category of producers of medium and high-cost houses is the private developers. In the current Seventh Malaysia Plan, they are expected to build 181,000 units or 84.2 per cent of the total number of such houses – which should not be an impossible task. In the Sixth Malaysia Plan, they built 339,610 units, way beyond their allocated target of 170,700 units.

However, this does not mean that private developers will build the number of houses needed or targeted. The Sixth Malaysia Plan period saw Malaysia enjoying an annual growth rate of more than eight per cent. Should there be a slowdown in the economy, with a drop in demand for houses, the performance of private developers is likely to be adversely affected. This was clear in the Fourth and Fifth Malaysia Plan periods. In the Fifth Malaysia Plan, the private developers built 107,442 units of medium and high-cost houses or 63.4 per cent of their target. In the Fourth Malaysia Plan, they built 85,630 units or only 33.0 per cent of their expected number (Table 12).

Table 12: Private sector medium and high-cost houses-Programmes and performance

Malaysia Plan	Medium-cost house			High-cost house		
	Proposed	Completed	%	Proposed	Completed	%
1981-1985*	259,470	85,630	33.0	-	-	-
1986-1990	146,000	89,741	61.5	23,600	17,701	75.0
1991-1995	145,800	240,069	164.7	24,900	99,541	399.8
1996-2000	339,000	-	-	79,000	-	-

Source: Malaysia Plans (various years)

Note: * There were no separate figures for medium and high-cost houses in the Fourth Malaysia Plan (1981-85). The figures here are for both categories of houses and do not include houses built by individuals and groups. In the subsequent Malaysia Plans, houses built by individuals and groups are included under private developers.

It may be useful to note that in the mid 1980s, Malaysia experienced an economic recession registering negative growth in the gross domestic product. Faced with substantial financial losses, many developers abandoned their housing projects. By 1990, there were 277 abandoned housing schemes, comprising about 63,560 units, almost all of which were accounted by private developers. It was also estimated that about 80 per cent of the abandoned projects were for medium-cost and high-cost houses.

The abandoned projects were not only losses to the developers but also to the country as a whole because materials and labour that had been invested in these projects were wasted while housing shortages were still being felt. The estimated value of the abandoned projects was RM3,630 million. Of more significance is the fact that some 36,550 buyers had made partial payments for houses in the abandoned projects. In most cases, they were not able to recover their payments because most developers had misused their funds and there was little left in their accounts.

The buoyant property market in the last decade or so has attracted many big companies, including public-listed ones, to venture into the housing industry. Many developers and their consultants have produced comfortable houses in interesting and pleasant surroundings. Many have added facilities that are not required by regulations to enhance the attractiveness of their projects. This rush to attract buyers with new

facilities, which may sometimes be expensive to maintain, may result in the building of houses which are beyond the affordability of most Malaysians.

An equally worrisome trend which is emerging is that most developers are investing in the housing sector without a comprehensive knowledge of the market and the industry. Many are attracted to the housing industry because they see others making relatively large profits. There is no up-to-date data on the housing needs and affordability, housing starts and the number of unoccupied housing units to guide potential developers. It is possible that the industry may already be building too many medium and high-cost houses. The recent Bank Negara Malaysia directive to financial institutions to limit loans to the property sector to 20 per cent of their total loans indicates that the government may have some worries that if the present pace of property development continues, the country may face a property glut.

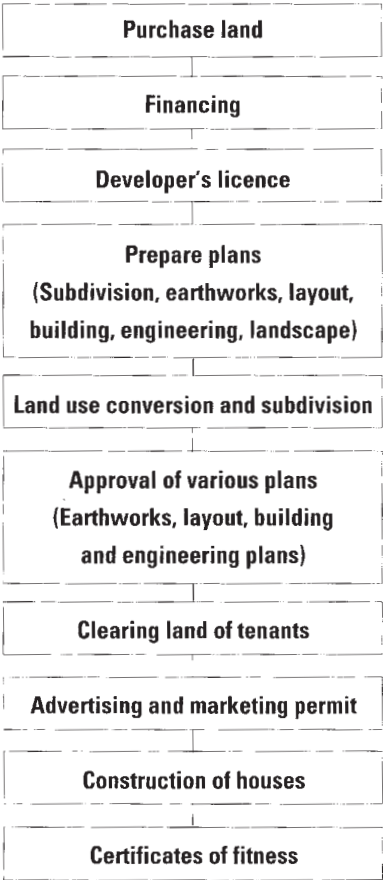
Players and processes

The role of the government in the housing delivery system is not limited to housing development. The government plays an important role in influencing the production and sale of houses of every developer. Furthermore, the housing delivery system also involves a multitude of players besides the government and housing developers. Developers have to go through nine to 11 major processes to build and sell houses in Malaysia. These include obtaining land, getting a developer's licence, arranging for finance, preparing the various plans, applying for land use conversion and land subdivision, obtaining approvals for the various plans from government departments, obtaining advertisement permit, marketing the houses, clearing the land of tenants and squatters, constructing the houses and obtaining certificates of fitness for occupation (Chart 1).

In most cases, the processes are not only interrelated but are also sequential. Any disruption in one process has adverse implications in subsequent ones and ultimately causes delay in the completion of the houses and adds costs. In some cases, such disruptions can cause the projects to be abandoned. However it should be stressed that, though cumbersome, the various processes to build and sell houses are not difficult. Nevertheless, the existing delivery system requires decision-making and performance from many quarters, all of which have different roles, objectives and idiosyncrasies.

Apart from the developers, other players in the delivery system are the government servants and politicians; professional consultants such as the architects, surveyors, engineers, lawyers and planners; bankers; builders; ground tenants and squatters; and house buyers. Chart 2 provides a

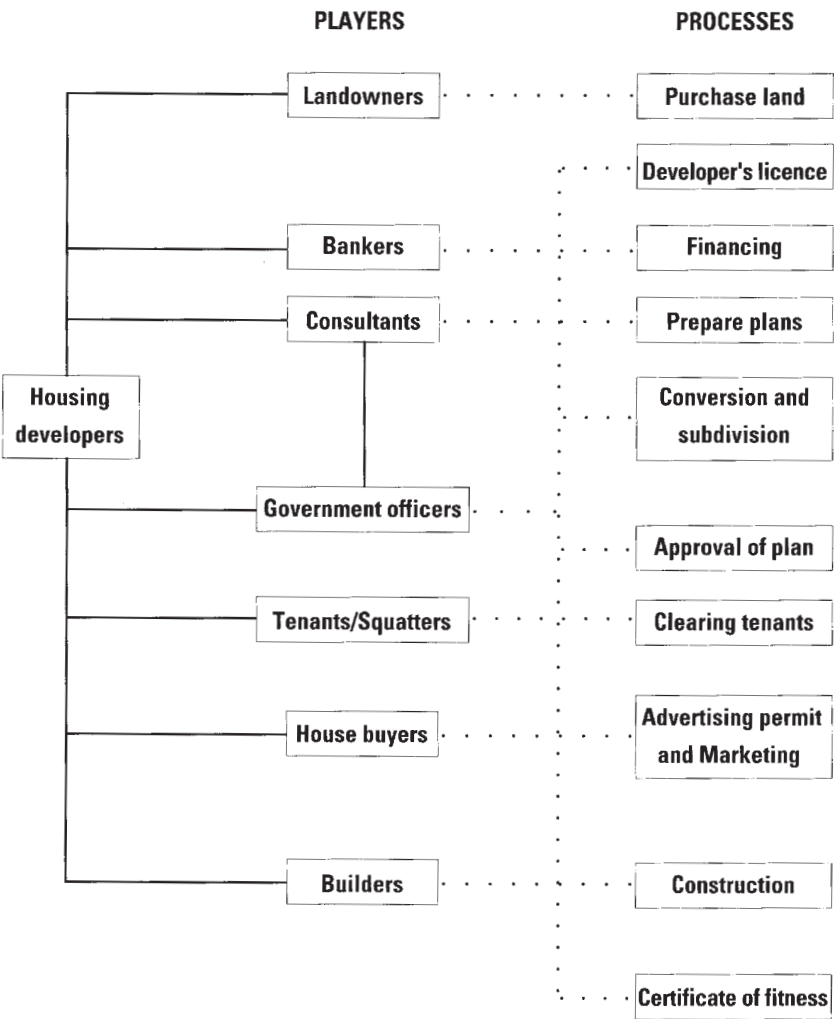
Chart 1: Major processes in the production and sale of houses in Malaysia



schematic picture of the relationships among the major players and their respective roles in the various processes. Although housing developers are the principal players involved in all processes, they have to interact with the others to ensure that the delivery system functions smoothly. For instance, they have to engage architects and engineers to prepare building and engineering plans because not only they do not have the technical expertise but also because the law requires that these professional consultants be engaged to prepare and submit plans to various government departments.

In the general category of ‘government servants’, there are actually a variety of personalities playing different roles. They include officers

Chart 2: Players and processes in housing delivery system



—— Relationship between players

. . . . Important roles

in the Public Works Department, Drainage and Irrigation Department, Department of Environment, Land Office, Fire Services Department and local councils. In fact, within the local council, there are officers in the Health Department, Town Planning Department, Building Department, Engineering Department, Gardens and Landscape Department and Licensing Department. Although these officers may have expertise in their respective field of studies, such as engineering and architecture, they may not possess insight into and understanding of the unique features of the housing industry, particularly the interdependence of the various processes in building and selling houses.

Also involved are the politicians who are members of committees that approve applications submitted by developers. These include the state executive councillors and local councillors. State executive councillors are appointed to the approving committees by virtue of their election as state assemblymen or appointment as executive councillors. The local councillors are appointed largely as a result of their positions in the political parties in control in the state governments. In some states, state assemblymen are also appointed as local councillors. The approval committees are thus made up of a mixture of personalities with different ideals, wants and needs who would have to consider the requirements of their respective political parties in their decision-making. It is fair to point out that being elected or appointed to these councils does not necessary mean that they have the capabilities to make good decisions on issues related to housing, planning and the development of the built environment.

For the housing delivery system to function, everyone involved in the industry needs to play his role efficiently and effectively with a common purpose and an established set of rules and regulations. In its simplest form, this calls for a dynamic and ethical private sector with the public sector employees, including the politicians, playing both regulatory and facilitating roles. If the private developers and their consultants are not ethical, dynamic and innovative or if the government employees only concentrate on their regulatory role, then the delivery system becomes very inefficient. Unfortunately, the existing conditions tend to promote unethical developers and consultants, and over-vigilant and demanding regulators. The key word to be stressed is 'promote' as there are still developers and professional consultants who are ethical and government employees who are relatively helpful and understanding. However, conditions can be much improved.

A case in point is the need to regulate the housing industry so that the built environment is liveable, healthy and sustainable and

commensurate with the economic status of the country. At present this is largely done by requiring those who want to undertake land development to obtain a series of approvals such as for earthworks, planning layout, building design, road and drainage networks and even landscaping.

In theory, getting the plans approved looks simple enough, especially since only qualified professionals can prepare most of them. However, in reality each plan has to be processed by a series of government departments before actual building activities can take place.

Despite repeated assurances by government leaders to minimise delays, the time taken to process the plans and to give approvals is still very long. To many developers and their consultants, a government department processing a plan is not one obstacle, but rather a series of obstacles because the department is manned by office boys, clerks, technicians, technical assistants, professional officers and department directors. It only takes one person in this chain of command to slacken or be incompetent or refuse to carry out his duties for whatever reason for the whole project to be adversely affected. Since successful housing development is a fine juxtaposition of many processes, a delay in one process not only causes delay and adds cost but may even lead to the demise of the project. Experienced housing developers have been lamenting about the frightful '72 steps' in the process of getting various approvals from government departments and agencies.

To further complicate matters, government agencies sometimes impose conditions which are questionable, at least in the eyes of the developers, such as requiring a developer of a small project to spend a large sum of money to upgrade a bridge which not only serves his scheme but many others as well. This is but only one example of an excessive condition demanded by a department. Many developers can relate more such stories.

In most instances, the developers do appeal against what they consider to be excessive and unjustified demands. Irrespective of the result of the appeals, there is already delay in the project. In housing development, time is of the essence and a delay in only one stage in the development process can cause a ripple effect and eventually cause serious problems to the scheme as a whole.

For instance, planning permission is valid only for one year and has to be renewed if there is no commencement of work on the site within the valid period. But work on site cannot begin until the building and other plans are approved. The developer thus has to apply for extension of the validity of the planning permission while the building plan is being prepared by the consultants and processed by the government

departments. If there is a delay in approving the building plan, the planning permission has to be renewed again and again.

If new conditions are imposed on the planning permission while it is being renewed, such as the provision of 30 per cent low-cost housing, the building plans which are in the midst of being processed have to be suitably changed to comply with the new requirement. In such a case, the developer would invariably appeal against the imposition of new conditions. Even if the appeal is granted, time is lost. But if the appeal is rejected, a longer time is needed to redraw the plans. The 'saga' of layout and building plans is only an example of what can cause delays in the delivery of houses or add costs. The whole process of land development is filled with many little 'sagas' and each is capable of causing long delays.

During times of property boom and with good profits, it is possible to smooth over the hitches and snags. But when prices of properties become very competitive and profits in housing projects are only marginal, the little hitches and snags ultimately lead to abandonment of the schemes as happened in the mid-1980s.

The issue here is not the elimination of development control procedures. It should be noted that not all developers are scrupulous and not all consultants play their roles faithfully. Past records have given enough reasons for the government to institute vigorous checks and control measures. Unfortunately developers and consultants who are aboveboard are also subjected to the same procedures. The challenge then is to institute procedures which provide for development control but eliminate avenues for inaction and foul play by those making decisions.

There are also regulations that have little to do with the production of houses, but rather the protection of the interests of house buyers largely because developers are allowed to sell houses long before they are built. Thus under the Housing Developers (Control and Licensing) Regulations, several important activities of the developers are now regulated. These include sale of houses, the time limit for delivery of houses, the schedule of progressive payments and the use of payments collected from the buyers.

Issues and challenges

Incentives instead of coercion

There is no doubt that the existing delivery system is not conducive to the production of houses catering to the poorer sections of Malaysian society. This

is especially so in the production of low-cost houses which have a selling price ceiling of not more than RM25,000 each while the cost of production ranges from RM22,000 to RM32,000. The public sector producers which should not be too concerned about the economics of building houses have failed to perform their role. There should be a comprehensive and thorough study into this matter so that corrective steps can be taken.

Instead, the federal planners merely shifted the bulk of the task of producing low-cost houses to the private housing developers. Whatever obstacles and problems inherent in the production of low-cost houses under existing conditions are transferred to them. While it is true that the private developers have some advantages over the government agencies in implementing certain projects, this may not be the case in housing development where there are so many rules and regulations. Equally important, it should be noted that the main, if not the only, reason for private developers to venture into building houses is profits. With price control imposed over low-cost houses, the single most important element for the developers and their consultants to work very hard is eliminated.

The challenge facing the government is very clear, that is, to enable and facilitate the private sector to build more low medium-cost and low-cost houses. The more effective strategy is through rewards rather than coercion. In other words, the government should facilitate the private developers to make a reasonable amount of profits out of building low medium-cost and low-cost houses. Those involved in building houses are not 'born developers' in the sense that they cannot go into other business ventures or take their skills and capital to another country.

The need for a review of the RM25,000 ceiling has been discussed in other chapters in this book and need not be repeated here. However, it should be recalled that Prime Minister Dato' Seri Dr Mahathir Mohamad has acknowledged that it is no longer feasible to build low-cost houses and sell them at RM25,000 each, especially in large urban areas like the capital city of Kuala Lumpur, George Town and Johor. The situation is summed up in a news commentary:¹⁰

The price, RM25,000 is actually an anachronism. It was fixed more than 25 years ago when the Second Malaysia Plan was worked out to provide a roof over the heads of the homeless among the lower income earners. The price of land was then relatively cheap, even in Kuala Lumpur. So was the cost of building materials.

10. *New Strait Times*, October 22, 1996, p12.

Dr Mahathir did not indicate how much higher the base selling price of RM25,000 would be raised. He only said that the government will determine the new figure.

But we believe the price would be just below that of the low medium-cost houses, anywhere around RM35,000. This selling price should nudge more builders to plan low-cost housing even in the peripheral location of urban areas

The unsustainability of building and selling low-cost houses at RM25,000 each was very clear as long ago as the late 1980s. While the government commercial agencies were having shortfalls in achieving the targets of the low-cost housing, they were building more than their targets of medium and high-cost houses. If public agencies cannot build the number of low-cost houses proposed by the government and yet at the same time have the capability to build more medium and high-cost houses than they were supposed to, then it is not fair for government leaders to be critical of private housing developers for failing to build low-cost houses.

The introduction of the low medium-cost houses to be sold at between RM25,001 and RM50,000 is a step in the right direction. However, this is just the first step and more concrete guidelines and procedures must be instituted to facilitate the production of such houses.

Honour system

There are many aspects of the housing industry where costs can be lowered. These include provisions of cheap loans, cheap land and cheaper labour. Although the government can, and has taken, certain steps to influence the costs in these areas, the room for manoeuvre is limited and the implications for other sectors of the economy make such intervention unsustainable. However, there is one area where much can be done without adversely affecting other sectors of the economy. This is the reduction of delays in the implementation of housing projects. One specific area where the government has substantial leverage is the processing of applications submitted by the developers and their consultants.

The challenge here is to ensure that the time taken to process the plans is cut substantially, making the viability of housing projects more predictable. There is nothing new in this call. For instance, former Deputy Prime Minister Datuk Musa Hitam had instructed that applications for land conversion and subdivision be processed within three months. Even Dato' Seri Dr Mahathir and the Minister of Housing

and Local Government, Datuk Dr Ting Chew Peh, have urged that the issuance of certificates of fitness for occupation not be delayed, and should ideally be made within two weeks from the day of application.

However, such calls for faster processing of plans are generally not effective. Even if they are, they cannot be sustained. The only effective method is to amend the development control system so that the stages and the number of people involved is minimised. If the number of people cannot be reduced drastically, the system should be made such that decision-making becomes routine in nature with the bulk of the work done by the professional consultants.

It is noteworthy to illustrate an example here. On Penang Island, until 1994, the processing of building plans submitted by the architects to the municipal council would not begin until the necessary plan fees were paid. The snag was that only one clerk was assigned to calculate the amount of plan fees. Inevitably this resulted in a long queue waiting for the fees to be calculated.

Since it is important that the council collect the fees before the plans are processed, the present practice is to allow the architects themselves to calculate the amount of fees and pay the council accordingly. The plans can then be circulated to the various departments immediately while the council takes time to check the calculations of the architects. For any calculation made by the architect which is within five per cent off the mark, the architect has to pay the difference. If the difference is more than five per cent, a penalty in the form of interest and the difference has to be paid. It is also made known to the architects that those who persistently make serious errors in their calculations may be subjected to thorough checks before their plans are released for processing by the various departments. Ultimately, it is hoped that there will be no need for a 100 per cent check on every calculation and only random plans are picked so as to encourage an honour system to emerge.

The calculation of plan fees is only one of the numerous stages of plan processing which can be made easier or be left to the professional consultants. There is a need for the government to analyse in detail every process and make the necessary changes. This is certainly not easy as it needs strong commitment to change a system which has been in practice for years .

For the honour system to work, the professionals must accept and be given the opportunity to take up the challenge of playing a more 'professional role'. Since it is assumed that the main interest of the developers is to maximise profits and to do everything to achieve their objective, the onus of ensuring that the housing projects comply with all the laws, by-laws and standards, including the unwritten ethical standards, rests squarely on the professional consultants.

This is not too much to expect from the professionals because of their educational backgrounds and their membership in professional institutes. Furthermore, most professionals involved in the housing industry are accorded legislated titles and there are laws which demand that only they can submit plans to the government. It is therefore incumbent upon them to ensure that housing projects under their charge are fully aboveboard. This is a challenge the professionals must accept for the various checks instituted by the government to be slowly and systematically dismantled.

Sensitising decision-makers

Another major challenge is to ensure that all those who are involved in the processing and approval of plans are familiar with and sensitive to the characteristics of the housing industry and the government policies. These include politicians who sit on committees approving plans and officers in technical departments. Individually, most of these people are no doubt well qualified in their own fields. However, without being sensitive to the workings of the housing industry and government priorities, they may unwittingly obstruct the development process, without realising it.

The government has also to take up the challenge of minimising, if not altogether eliminating, uncertainties in the whole process of land development. The enactment of the Uniform Building By-Laws has to a certain extent eliminated uncertainties in the specifications of residential buildings. Much more can be done.

An area that needs to be upgraded is planning permission. The private developers must have more certainty about the approvals of their applications. One strategy is to have more local plans so that anyone interested to undertake land development knows what to do on a particular piece of land. Local plans, which are prepared by the local authorities, must be gazetted to make them binding on all government departments. For instance, if a local plan shows that a piece of land is designated for housing, it becomes incumbent on the land office and ultimately the state executive council to approve the application for conversion of land use. There should not be unnecessary delays in waiting for the executive council to deliberate on whether to approve or otherwise. If the government does not want the land to be converted, than it should have objected to the land being 'zoned' for housing in the local plan in the first place.

Build-then-sell system

Since many regulations and procedures are instituted to facilitate and control the selling of houses long before they are built, and there have been calls for deregulation of the housing industry, it has been suggested Malaysia should adopt the 'build-then-sell' system. This means that houses are only placed on the market after they are built. This will also eliminate problems resulting from abandoned housing projects, complaints of shoddy workmanship and non-compliance with advertising claims.

Most developers, professional consultants and builders are against this proposal, claiming that it would increase costs to the buyers. A build-then-sell delivery system means that the developers would have to have adequate finance to cover the projects until they are completed. The present system requires that the developers have enough finance to cover the expenses of getting the plans prepared and approved by the government agencies, and the cost of the land. As soon as advertising permits are obtained from the Ministry of Housing and Local Government, the developers can sell houses and collect payments. The introduction of the Housing Developers (Housing Development Account) Regulations in 1991 only ensures that payments collected can be spent on specific projects and not for other business ventures. Developers are still required to use the buyer's payments to finance their projects.

The developers claim that in build-then-sell projects, the cost of bridging finance will be passed on to the purchasers, thus resulting in increased cost. This is actually a moot point because, under the present system, the buyers are already shouldering the cost of bridging finance as they make progressive payments for their houses. However, a build-then-sell system does have serious implications. What is likely to happen is that smaller developers will not survive or there will be fewer new small developers coming into the property sector. This may result in fewer number of houses being built and thus creating a 'shortage'.

Furthermore, under the proposed system, house buyers will have to pay the market price prevailing at the time the houses are completed. In times of rapid property price increase, there is a marked difference in the price of houses for buyers between the time when the plans are approved and the completion of houses. In other words, under the existing system, buyers who book their houses when the houses are advertised benefit from the rise in property prices. They are insulated from general inflation or increases in price of materials and labour. During periods of rapid increases in property price, those who book early and resell after the houses are completed sometimes make more money per house than the developers.

The consumers associations would of course favour the build-then-sell system. The advantages to the buyers are obvious, including the fact that they can see, touch and feel the buildings and the general environment before paying for the houses. Defects in workmanship or non-compliance in the provision of facilities will not be their problem. They do not have to worry about abandoned projects nor about delays in obtaining the certificate of fitness.

At present, because of a flaw in the standard Sale and Purchase Agreement, the developers can hand over 'completed' houses to the buyers even though the buildings in question have not been certified fit for occupation by the local authority. This is to save themselves from paying liquidated damages. Without certificates of fitness, the buyers cannot make use of their houses. Meanwhile, they have to service their housing loans. To add to their financial woes, some developers have even begun to charge 'maintenance fees' since the buyers have been handed vacant possession of their units. It should be stressed that not many reputable developers would like to face such a situation with irate house buyers complaining about the inability to move into their new house. However, except for some tarnishing of their reputations, the developers do not suffer great financial loss in cases of delays in getting certificate of fitness for occupation because by then they have already collected 95 per cent of the sale price.

The build-then-sell system has another advantage. It reduces the workload of the Ministry of Housing and Local Government. There is no need to implement and enforce many regulations created under the present system to safeguard house buyers who essentially make payments to the developers on the strength of promises printed in beautiful advertisements. From the numerous reports of complaints against housing developers, it is quite evident that the Ministry of Housing and Local Government has neither the capabilities to enforce all the regulations firmly nor the inclination to do so considering the small number of developers taken to court and punished for infringing existing rules and regulations. Without being so burdened with enforcing rules and regulations, the National Housing Department and the Ministry of Housing and Local Government can then concentrate more on their role as facilitators of housing rather than regulators.

National housing authority

Calls have been made to establish a national housing authority or a supra-housing authority to solve the myriad problems related to the

housing industry.¹¹ This seems to suggest there is a need to enhance the resources currently available in the Ministry of Housing and Local Government for it to be effective in ensuring a robust housing industry in Malaysia.

The pros and cons of, and the necessary conditions for, an effective national housing body have been discussed elsewhere¹² and need not be repeated here. Suffice to mention here that although such a housing body may have some positive impact in the delivery of low-cost houses, especially by the public sector, its effectiveness cannot be extensive. This is because of the separation of powers between the federal and the state governments as enshrined in the Federal Constitution where land matters and local authority matters come under the jurisdiction of the state governments. Furthermore, the roles and responsibilities of the local authorities, especially those related to regulating planning and building activities, will have to be reviewed and drastically reduced if the proposed national housing authority is to be effective. Even if these changes can be made, which is extremely doubtful, they may be at the expense of effective urban management and therefore lead to the further deterioration of the urban environment.

Without the powers to cut across bureaucratic red-tape, especially at the state government and local authority level, a national housing authority trying to justify its existence is likely to set up new rules and regulations which will place more obstacles in the delivery system. It only takes a few errant housing developers to cheat their clients or to destroy the environment to provide justifications for new rules.

There is no strong need to establish any national housing authority in order to upgrade the housing delivery system as the problems of the housing industry are mostly located at the state and local authority levels or in the running of the implementing agencies. What is seriously needed is a facilitator at each level of government. The crucial role of facilitators is already well recognised by the government planners and this is reflected in the statements in the various Malaysia Plans. The calls for a supra-housing authority can be seen as a desperate appeal to appoint someone of authority to whom developers can turn to for help and assistance when they are lost or caught in the myriad rules, regulations, standards and 'administrative policies'.

11. Teo Chiang Kok, 1991; Kington Loo, 1991.

12. Goh Ban Lee, 1991d.

'Administrative policies' actually comprise decisions made by government officers or committees to implement established socio-economic policy and are usually *ultra vires* but are nevertheless implemented with vigour. An example is the recent request by some states to private developers to pay a government agency a sum equivalent to five per cent of the value of unsold units reserved for Bumiputeras before such houses can be allowed to be sold in the open market.

There is actually no need to create a new post of a housing facilitator or a new government department. The Director-General of the National Housing Department and the Minister of Housing and Local Government are already in charge of housing. Each state also has a director of the housing department and an executive councillor in charge of housing. They should become housing facilitators. What is needed is commitment to their role, knowledge of the housing industry and the housing delivery system, and a sense of common purpose to ensure adequate housing for the people.

Apart from being available for housing developers, both from the public and private sectors, to approach and seek help and find solutions to problems, another specific role for the housing facilitators is to keep track of national housing targets and other plans of the states and local authorities. They should also monitor the progress of the projects so that the targets are met on schedule.

Conclusion

There is a functioning housing delivery system in Malaysia and this is evident by the production of about 140,000 units of houses annually in recent years. Many Malaysians are also adequately housed. Indeed, some are living in very comfortable houses in pleasant environments.

However, the system does not seem to function efficiently and effectively as can be seen in the big difference between programmes and performances of the various categories of housing developers. This is especially so in the delivery of houses which are within the means of poorer Malaysians. An effective and robust housing delivery system must match performance with programmes that must reflect the needs of the society. Therefore steps must be taken to facilitate those involved in the housing industry to perform their roles properly. The implementation of the suggestions in this chapter will go a long way in fostering a more robust housing delivery system in Malaysia.

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Housing and the Environment: A Planner's Perspective

Jimmy C S Lim

Impact of housing on the environment

Housing was, and still is, a major issue that has preoccupied democratic nations since the Second World War. It has become symbolised with democracy and freedom, and is used as a measure to assess the level of a country's development. Popularly-elected governments have invariably made housing for the people a priority issue. Although many governments have ventured to provide housing as part of their election promises, there were many instances when they could not fulfil their pledges and were accordingly voted out of office. Logically, one would have assumed that it would have been easy to carry out housing, since it is an universally sought-after commodity and a basic item. However, housing is also big business. Massive housing projects are fraught with problems which demand a strong will and persistence to overcome in order to survive and succeed. A strong political will and determination, backed by an abundance of financial resources, can sometimes make a success of housing provided the economy of the country is strong, sustainable and buoyant.

Malaysia has been successful in providing housing for the people. The level of home ownership among Malaysians is relatively high by world standards. The principal players in the housing industry have been the

private developers. In other countries, the public sector has been responsible for the task of housing development.

Prior to Independence in 1957, most Malaysian towns and centres of population were relatively small. The major towns were the trading ports of Penang, Port Swettenham and Melaka; with Penang and Melaka both part of the British Straits Settlements. Housing was not a priority then. Major housing growth occurred after Independence. With development, many of the rural areas were transformed and numerous former rubber estates were fragmented.

Role of the environment

When the need to build more houses increased, forests and other former green lung areas were opened up. In the process many of the natural habitats for the flora and fauna have been lost. Seeking and striking a balance between these two priorities has been a constant battle. The need to ensure that basic needs – safe and sufficient water supplies, sanitation, drainage and garbage collection, secure and safe housing, and health care – are met is an important one. Equally important is the need to ensure a sustainable level of use of resources. What is the correct and proper equation in the complex question of equitability between what man's physical needs are and what is required to be retained of the natural environment in order to sustain future humanity? Whether humanity is able to establish and maintain the balance between man's needs and preservation of nature before a breach in the fragile threshold of permissible development occurs, only time will tell. The breach may not happen if more developments are planned sensitively with a view towards preserving the environment.

The quest for development is full of challenges. One challenge that needs to be addressed is the issue of profiteering and profit-making. Profit-making in any business is acceptable but profiteering should not be condoned. It is important that values of social awareness and responsibility be inculcated. Whatever is taken from the environment must be replaced to enable nature to regenerate itself. Quoting from *Berita Arkitek*, the Malaysian Architects Association (PAM) newsletter:¹

As Malaysians, we have taken our environment for granted. We are very lucky both environmentally and economically. Traditionally, our wealth had come from sources which, when related, almost has a 'fairy tale' ring to it. We dig our ground to get wealth, in the form of tin; not only that but our money also 'grows on trees', rubber and oil palm; and for food we only have

1. *Berita Arkitek*, March 1991, 'Architect's Responsibility in P&D'.

to drop a seed and germination takes place supplying us with an abundant amount of fruits and nuts. Just as we thought that prices of tin and rubber were dropping and the economy threatened, we discovered high-priced prime quality petroleum. He who is above has smiled on Malaysians.

In the overall housing developing equation, the environment is the constant factor, without which the formula for development cannot be completed. The formula consists of the following elements:

Quality of inhabitability of development	= QD
Impact of engineering variables	= IEV
Impact of architectural variables	= IAV
Environment	= K (constant value of 10)

A simplified equation to ascertain quality would be something like this:

$$QD = K - (IEV + IAV)$$

QD must be maintained as close to 10 as possible.

The environment is a 'constant'. Whatever man builds, develops or adds to the environment being different is always a 'variable'. Conversely, it is true that as long as the delicate equilibrium is maintained there is hope for nature and, therefore, mankind. The continuing disregard for the environment by profit-driven and irresponsible developers and uncaring professionals will ultimately cause much devastation to the already distressed landscape. The distressed environment has manifested itself in more ways than one such as: the collapse of the Highland Towers, a high-rise apartment block, almost 20 years after its completion; the regular flooding of housing development Taman Sri Muda whenever it rains upriver; and the 25-year cyclical flash floods of Kuala Lumpur like the ones which occurred in March 1997 and previously in 1971. These disasters cannot be written off as 'natural occurrences' or even as 'acts of God'. Man must take stock of the situation and understand that the continuing assault on the environment will result in consequential problems.

Since the environment is considered a constant factor, it is 'not negotiable' under any circumstances for man to continue to disregard the signs and warnings, and to court catastrophe. In the development of housing, the environment must be respected and not be permitted to be destroyed. Those responsible must be brought to book irrespective of who they are. To date, the government's and the caring society's call to protect the environment seems to have brought about mixed reactions and at times even fallen on deaf ears. A perusal of news reports as listed in the appendix clearly highlights the situation.

Curbing destruction of the environment

The forest took thousands of years to form. Once harvested it will require almost a hundred years for the secondary forest to regenerate. Although the government has passed stringent laws and enacted harsher penalties to curb the unlawful felling of forests and prevent the destruction of the environment, this has not deterred or curbed the unlawful activities. The process of environmental destruction has been facilitated with the use of heavy earth-moving equipment which are able to cut roads through virgin forest easily, in the process removing trees effortlessly. Electric and motorised cutters and chain-saws have also eased logging operations. Motorised saws can cut down a tree in a matter of minutes and bulldozers can pull it away to the nearest means of transport in virtually no time.

It is in this context that it is considered timely for these great inventions to be reclassified and treated as controlled items. Applications for such items should be subjected to a rigorous investigation, background check, character reference and purpose in the interests of the public, and the built and the natural environment.

These heavy earth-moving equipment can be considered 'weapons' which can destroy nature if left in the hands of an untrained person or one who is only interested in quick gains. Therefore there should be appropriate and proper control to determine who should be permitted to own and to operate the equipment, what training should be provided to the operator, what the equipment will be used for and under what circumstances, and whether the operator is knowledgeable about the management of forests and eco systems. This will ensure that the forests and land opened up for development are destroyed by the uncontrolled use of such equipment.

Role of the housing industry

Are the industry players environmentally-conscious or have they just carelessly pursued profits?

In a recent case, a developer who launched a prestigious upmarket housing scheme on the outskirts of Kuala Lumpur produced a brochure extolling the impressive development guidelines followed. The development was described as an 'environmentally friendly' and 'ecologically... sustainable community' with 'no disturbances to the natural topography and vegetation'. However, upon visiting the site, it was found that none of the 'guidelines' were true. The site was hot, not conducive for salubrious living, and was environmentally unfriendly with hardly any view. Site topography had been cut and platformed, the topsoil was either removed or

washed away, and all existing trees were gone leaving only some mismatched trees along the roadside.

Advertisements carrying blatant misinformation should not be allowed. There should be a clause in one of the legal frameworks to protect the interest of the consumers. On the other hand, developers and professionals who implement environmentally friendly development should be given recognition and incentives.

Approaches to housing

There is not a single project in the Malaysian housing project development which does not employ the 'cut and fill' technique when preparing the land. The 'cut and fill' technique is fine as long as it is wisely implemented and the environment is not damaged or threatened. In many cases, what results is massive clearing giving rise to scarred hills, soil erosion and flooding. Until the introduction of the Town Planners' Act restricting submission of layout plans to only qualified planners, anyone could submit such plans. Many housing schemes were laid out by surveyors whose primary role was to optimise the number of housing lots.

With planners now doing the layout the situation has improved. However, the three-dimensional appreciation and understanding of the terrain still leaves a lot to be desired. The quality of the environment created is still not inspiring, brilliant or befitting Malaysia's aspiration to achieve an industrialised nation status by the year 2020.

Current practices

The common Malaysian housing practice is to cut down all the vegetation, remove all topsoil, cut the hills and fill in the valleys, divert all streams and rivers or better still convert them to drains, platform the land, create retaining walls and cascading drains, fragment the lots into small plots, grid-lock the whole landscape, set aside little green reserves as playgrounds, and as a gesture of complying with the local authority's requirement on landscaping, plant a few mismatched trees of incompatible habitat.

This practice, which prevails today, is a popular development approach for housing. It is purported to be the easiest to implement and the most profitable. This is also familiar to most developers and needs little thinking on the part of the consultants. Most civil engineers prefer to work on a levelled site and are quick to ascertain platforms, cuts and fills on an undulating site. However, getting them to design and analyse three-dimensional terrain without having to cut and fill is almost asking for the impossible. Local developers and their consultants have all developed a

taste for the simplistic. Despite repeated warnings by the government, destruction of the environment goes unheeded.

As pointed out many times before, 'if God had wanted man to live on only flat land, He would not have created an earth which is spherical, with undulating surfaces, valleys, deep oceans and seas filled with fishes, mountains, trees and forests full of other exotic creatures, rivers, etc.' He would have created an earth which has flat surfaces on all sides, not unlike a cube, revolving on its diagonal axis. Man would live on the six perfectly flat surfaces and upon reaching the edge, do a right-angle turn to reach the other surface, which is again flat. This indeed would have been most developers' dream. Regrettably this is not the case. Our tropical rainforests are densely covered with trees and other bio-diversified vegetation, and the topography in some areas is just not suitable for conventional housing.

Housing trends and practices

Post-Independence period (1950s to 1963): Kenny Hills development

A section of the north-western corner of Kuala Lumpur was developed by the Anglo-Thai Co-operation during the early post-Independence period. The site was approximately 100 acres of hilly terrain with hardly any flat land. Any flat land within the vicinity of the hills was located at the foothills and belonged to Harrisons and Crosfield Estates and other landowners. The proposed development was on the upper hilly terrain and it subdivided the whole site into large plots averaging between 40,000-60,000 sq ft per housing lot. According to a resident², the price of the land then (early 1950s) was 7½ sen per sq ft. By 1956 it had risen to 35 sen per sq ft, with a stated condition that a house with a value of not less than \$30,000 had to be built within six months of purchase.

This development is Kenny Hills (now renamed Bukit Tunku), a residential area located very close to Kuala Lumpur's city centre with land prices of between RM60-RM80 per sq ft. Many of the properties here are sought after for the quality of its environment and its closeness to nature. The fact that natural features of the terrain and vegetation were not disturbed or destroyed during its development makes this suburb most salubrious and environmentally friendly. The timelessness of its natural beauty with man living in harmony with nature is exemplary for other development projects in Malaysia. Regrettably, this example has not been

2. Dr C C Too was one of the earliest residents who brought a property at Kenny Hills. Both he and his wife Lum Swee Lan had at that time only recently returned from their studies in Hong Kong. They are both still living in Kenny Hills.

repeated or followed in later developments.

The fact that Kenny Hills was able to preserve much of its pristine forests, natural reserve and natural features probably resulted more by chance and through force of circumstances than through intent or pre-planning. In a young nation which had recently obtained self-rule, the economy and technology available then could not sustain the use of expensive and heavy earth-moving equipment. This would have been one of the probable reasons and constraints which determined the manner in which roads were designed – hugging the contours and building plots laid out to take advantage of the natural surface run-offs. Existing ravines and water courses were not altered. Minimal clearing of the natural flora was carried out. Plots were sold with existing natural elements intact. It was only when the house owners commenced building that reshaping and removal of trees occurred to facilitate construction. The bulk of work during infrastructure construction was carried out by manual labour with support from light earth-moving equipment.

Transitional period (1960s to 1973): Damansara Heights development

Following the success of the Bukit Tunku development, a large tract of agriculture land further west was earmarked for housing development. The Socfin estate, predominantly rubber and palm oil, was fragmented and carved up for housing development. In comparison to Bukit Tunku, Damansara Heights had more relatively flat land.

By the early 1960s development and economic growth were gaining impetus in Malaysia. Unlike the Bukit Tunku development of the early 1950s, the Damansara Heights development saw the use of some early models of heavy earth-moving equipment during construction. The consequential result was that more of the natural features were removed and destroyed.

The hills were cut and valleys filled in, slopes stepped and platformed to receive the buildings. Trees, shrubs and topsoil were removed or mixed in with the earth for back fillings. Pockets of natural terrain, which were difficult to access, were maintained and preserved because the available equipment were inappropriate for the tasks at hand. Since these earth moving equipment were fairly basic, although the hills were terraced and platformed, they still had some resemblance to their original silhouette. However, all the trees were removed from the housing plots. The plots were smaller at 7,000-15,000 sq ft compared to those of Bukit Tunku. The density was higher. More roads were built and retaining walls became an element in the suburban streetscape. The lack of trees and natural flora is the predominant and conspicuous feature of Damansara Heights. The use

of the heavy machinery on the natural environment has led to the elimination of natural flora and fauna. Unlike Bukit Tunku, this development was to become the model for other housing schemes in Malaysia.

In this development, not only was the estate subdivided into plots, individual bungalows based on standard designs were also built for sale. The Xanadu model in 1970, with a land area of approximately 7,000-8,000 sq ft was sold for approximately RM47,000 each. Properties in this residential suburb are currently offered in the market at between RM1.3 million to RM1.8 million each. Damansara Heights has matured and some of its former greenery has been restored. With time we can look to the replanting and re-growth of more lush tropical landscaping.

Boom period (1976-84): Bangsar hills neighbourhood

As the development of Damansara Heights was reaching its final stages, a major development adjacent to it was being planned. This is the Bangsar estate with a total development of 150 acres, located about three km to the south-west of Kuala Lumpur city and separated from Damansara Heights to its north by a rocky ridge.

By this time, most of the housing schemes contributing towards the growth of modern Kuala Lumpur were carried out by private developers who formerly owned large rubber holdings. Many large tracts of land near the town area were owned by Chinese traders who had acquired their properties during the colonial days.

The developer of the Bangsar hills, Ng Eng Lian, was one of them. Before embarking on this scheme he had earlier tried a modest-sized development on a hillside suburb called Taman Seputeh. This development consisting mainly of linked double-storey terrace-houses proved to be successful and popular with the younger professionals group during the 1970s. The initial selling price in 1971 for each of the double-storey houses with a land area of 22 ft by 80 ft was RM28,000. By 1973 the price had risen to RM32,000 and its current market price is above RM250,000.

The Bangsar development, on the other hand, was much larger in scale with housing as well as other types of development proposed. The intention was to create a township to serve the needs of the surrounding suburbs such as Pantai Hills, Damansara, Brickfields and parts of Petaling Jaya.

The development of Bangsar was carried out during the 1970s and 1980s with the application of sophisticated earth-moving equipment. The extensive earthwork was carried out in a short time. During its construction and after the initial phases were completed, the major link roads between Bangsar and Kuala Lumpur were usually flooded after torrential rain – which would bring the peak hour traffic out of Kuala Lumpur to a standstill. This problem was solved only

recently with the implementation of the overall improvement scheme to the waterways around Kuala Lumpur.

All the natural features of the site were removed. All vegetation, outcrops and natural water run-offs were levelled. Bangsar today bears testimony to man's ingenuity and success in taming nature. This is the success story which is to be retold many times over in the history of the development and growth of Kuala Lumpur. Developers now approach every site as a challenge. All that nature has provided must be removed; all natural features eliminated; and valleys filled in and hills levelled. On the bare red earth devoid of any topsoil cover, roads, drains, houses, playgrounds, etc, are to be built. Before the house buyers take possession of their keys, some token landscaping would be provided as a mandatory requirement to be fulfilled in applying for certificates of fitness for occupation. It is to the local government's credit that such a statute requirement was introduced to instil in the developers a sense of responsibility towards creating an environment which is friendly and conducive for pleasant living.

Condominium period (1989-92)

Following the boom of the late 1970s until the mid-1980s the Malaysian economy went into recession. Many housing projects were left uncompleted or abandoned by the developers, many of whom had absconded with the purchasers' payments. The surrounding landscape was tainted with the shattered dreams of house owners who lost their savings. The government had to intervene, together with financial institutions, to salvage and resuscitate some of these projects to help the house buyers to recover some of their deposits.

It was with this in mind that most Malaysian developers swung into the next phase of development in Kuala Lumpur. Having barely survived the recession, many developers were glad to be given another opportunity. There were many new players, often with foreign funding from Hong Kong, Taiwan, or even Singapore, to help fuel the next upturn in the building industry. These developers concentrated on the building of high-rise or upmarket condominiums – this being an area of development with which they were familiar in their home countries. The sudden take-off of condominium developments took everyone by surprise. Few people thought it possible considering that memories of the recent debacle of the building industry were still fresh.

Selected locations in prime residential suburbs of Kuala Lumpur were targeted for the development of these condominiums. The most popular were the Bangsar hills, Damansara Heights, Sri Hartamas, Taman Desa, Kampong Kerinchi, Jalan Ampang Hilir/Jalan Ritchie and Jalan U-Thant enclaves. Even the foothills of the lush Bukit Tunku were not spared.

They say that mushrooms grow very fast, but in the tropics, especially in Malaysia, 'condominiums' grow even faster. Now 'condo-developments' no longer belong exclusively within the grasp and dominance of some developers. It is common property. The purist concept of what condominium developments should consist of has been 'watered' down to a level that is sometimes nothing more than a glorified larger-scaled low-cost-type apartments with 'frills and thrills'. This cycle has brought with it developments of all shapes and sizes. All under the name of 'condominium'.

Kuala Lumpur has probably the most number of high-rise condominium developments in Malaysia... We are told that 'densities' have gone through the roof and that the old mandatory '60 persons maximum per acre for a minimum of 2 acres development for condominium' is now an 'appendix' to the New Testament, and is no longer applicable. Currently '200 units/acre' is closer to the norm. And why not if the city can sustain and support such densities?; if quality of life of residents and users of the city can be maintained?

Ultimately the test is whether the smooth functioning and activities of the city can be maintained.³

Many of the ills associated with condominium living were not understood by local developers or the city planners and approving authorities. There was no effort made to monitor, study, evaluate or formulate new guidelines, or to determine what the resultant impact of high density, high-cost and high-rise development will be on the environment and the quality of life. Studies ought to have been made to ascertain the best possible answer to new problems created by these mega developments.

There was little or no consideration of whether existing services and facilities in the location were adequate to handle the extra loading and imposition. Neither was there any attention paid to other questions which surfaced in Kuala Lumpur such as: Are the drains adequately sized to take the additional overflows and discharges? Is there sufficient water and is the water pressure adequate to service these elevated sites? Are the road networks adequate to handle the increased volume of traffic generated? Such factors were not carefully scrutinised at the approval of planning stage for these condominium projects. Planning guidelines under the local authorities were inadequately implemented. Besides, local plans even if they existed were outdated. Road hierarchy, for example, was not adhered to. The cumulative effect of these developments is now taking its toll on surrounding residential neighbourhoods. The Jalan Ampang arterial road, the Federal Highway, the Sungai Besi feeder road, the Inner and Outer Ring roads have become the bane

3. *Berita Arkitek*, January 1991, 'Of condominiums and mushrooms'.

of commuters working in Kuala Lumpur. Traffic is bumper to bumper at most times, with massive back-ups a common daily occurrence. Traffic jams have become an icon of Kuala Lumpur.

As the leading metropolis of Malaysia, Kuala Lumpur ought to have set an example by planning and encouraging the development of concentrated enclaves of high-density residential dwellings or condominiums within one suburb; with a concentrated commercial development nearby as a complementary unit. This would present Malaysian planners, architects, researchers, and those associated with the design and planning of the environment, an opportunity to study and monitor its impact. With the scattered, sporadic, haphazard and unco-ordinated development which is the current norm, a 'laboratory-like' experimentation opportunity is missed.

Development of land for housing

Regulatory enforcement, effectiveness and procedure

There appears to be adequate regulatory procedures and guidelines in ensuring proper practices during land clearing for housing construction. However, its effectiveness is only as good as what the approving person is prepared to uphold on behalf of the law. At the ground level the site control lies concurrently with the consultants and the owners' representatives in ensuring sensitive implementation without any wanton or unnecessary destruction of the environment. The Environmental Quality Act, the Environmental Impact Assessment (EIA) guidelines and other environmental related acts as well as the jurisdictional responsibilities and implementation are not very well understood. A survey by the Ministry of Science, Technology and the Environment in 1996 clearly indicated the public's lack of understanding of the responsibilities of the various agencies. In turn, the various agencies also need to understand the line of responsibilities and enhance the effectiveness of the administrative and legal mechanisms.

The laws must be strengthened, where possible, and their specific intent spelt out. There must be no room for misinterpretation or non-compliance. The setting up of a separate entity to supervise the implementation of procedures and guidelines may ensure their effectiveness.

Planning procedure in approval of housing

The primary problem in planning procedure is that most local authorities do not have proper structure or local plans. Any existing plans would be outdated. Despite constant reminders by the Minister for Housing and Local Government, nothing is forthcoming. State officers are not answer-

able to the minister on planning and land matters. The current sources of funds for most states are their forest and land, and federal allocation. Unless the federal and the state governments settle the issue of land and revenue-sharing, it will be difficult to achieve effective planning and protection of our environment.

Environmental awareness

The level of public awareness about the quality of the environment is high. The number of residents associations formed recently may be evidence of the backlash towards the local authorities' lack of attentiveness towards the basic needs of ordinary citizens.

Too many local authorities have simply brushed aside the views and grouses of rate-payers about the environment. Problems faced are numerous – traffic congestion, poorly maintained roads, misuse of roads by overloaded lorries, clogged drains, poorly designed drainage systems which flood whenever it rains, poor garbage disposal, wrong land-use according to outdated structure plans, increase in population density without considering the appropriateness of the development, destruction of green reserves, poor maintenance of street lights, belated repair of water-mains resulting in the wastage of water, and repair works being carried out without prior warning.

Officers from local authorities generally do not have the capacity to deal effectively with problems raised by representatives from local residents associations. These groups' concerns for the living environment, nature, old buildings, air quality or natural assets are often not appreciated. Respect for the environment must be further inculcated so that those whose work affects the environment directly or indirectly can have a positive influence.

Land development and environmental problems

Although the Ministry of Science, Technology and the Environment has already drawn up guidelines for the protection of the environment in all aspects of land development, the system can be further streamlined and any existing loopholes tightened. Despite the requirement for EIA reports to be submitted before approval can be obtained, projects have been known to be implemented prior to approval (as shown in 1993 Department of Environment records) and a number did not comply with the said conditions. Massive clearing has sometimes resulted, giving rise to erosion, siltation and flooding.

Comments and concerns have been expressed at the various dialogues organised by the Ministry of Housing and Local Government for representatives of local authorities and non-governmental organisations (NGOs). The inadequacies in the EIA guidelines, and their evaluation and monitoring will hopefully be incorporated and addressed accordingly. Many of the minimum project sizes listed in the classified activities subject to EIA are far too large – for example, ‘conversion of hill forest land to other use’ is 50 hectares; ‘hill station resort or hotel development’ is 50 hectares.

The EIA procedures and requirements emphasise waste control, industry, chemical treatment etc. However, the full impact and importance of the environment for maintaining a reasonable level of quality of life appears not to be fully understood. Having started on something useful, the government should now expand the section on land development for construction and tighten up on the minimum permissible sizes.

Current problems facing most developments are at the planning level and include:

- Insensitive layouts;
- Disregard for nature and the natural site topography;
- Uncontrolled land use zoning;
- Indiscriminate increase in population density;
- Lack of appreciation for the three-dimensional quality of the land;
- Disregard for the loading capacity of the existing infrastructure, traffic and utilities;
- Lack of appreciation and/or concern for the existing natural features and assets, such as streams, huge trees rock outcrops, large tracts of greenery;
- Abundance of bureaucratic requirements; and
- Indiscriminate alienation of land and clearing of forests.

Traffic implementation problems include:

- Inadequate traffic studies;
- Inadequate ‘on the ground’ knowledge of the development;
- Inattentiveness of design engineers and local authorities’ engineers to details; and
- Road proposals are not ‘real’ and practical.

Strategy for environmental protection and enforcement

To develop an effective management strategy for protecting the environment and its necessary enforcement, the following issues must be included at the planning stage:

- The constant destruction of green lungs in and around, or near to, urban areas and dormitory corridors without considering the well-being of its inhabitants must not be permitted.
- The further deterioration of the air quality due to the removal of too much greenery, thereby affecting the production of oxygen, must be prevented.
- To reduce the possibility of constant exposure to the serious effects of carbon-monoxide emission from vehicles, road and traffic network system designs need to be efficient to disperse traffic rapidly, thereby avoiding traffic snarls and congestion.
- A complete study and understanding of the climatology of the tropics is essential and necessary to implement systems to induce cooling through the help of the surrounding greenery and the tropical rainforests.
- There is a need to inculcate social awareness among the developers and professionals to encourage them to design wholesome and well-conceived environments for the enjoyment of the people leading towards a better quality of life. There is also a need for the approving authorities to be visionaries in approving well-conceived and innovative concepts. The current approach towards anything new is 'if it is anything unfamiliar, reject it!' and no one will venture into anything 'unless it has been done before'.
- Efforts should be made to disallow poor quality and ill-thought out housing scheme and house designs houses, which when constructed will cause hardships, heartaches, financial burdens due to time-wasting traffic jams resulting in unnecessary stress; regular flash floods; and a general deterioration of the quality of life of the inhabitants. Many house buyers are first-time homeowners. Many have worked hard and saved over long periods to purchase their dream homes. Their dreams should not be shattered the moment the first rainstorm starts.
- Planning guidelines on land use and density must be clear, predetermined and transparent. The present format is arbitrary, ad hoc, subjected to multiple 'reinterpretation' and abuse, resulting in housing schemes which devastate the environment.
- Housing development applications procedure must be simplified and streamlined. Although all applications must provide relevant analysis studies and evaluation reports on traffic, air quality and quality of the environment for living, design layouts which are pertinent for the tropics and all other standard statutory procedural matters could be held in abeyance for compliance once the project is under way. The current practice requires both developers and professionals to run the bureaucratic gauntlet in trying to comply with the standard statutory conditions of the Development Order. 'Sensitive' developers, under-

standing the inferred meaning of these requirements and wishing to expedite their approvals from the various departments, will ultimately resort to doing the proper thing to secure the means to the end. This may be the reason causing the collapse of proper enforcement of the protection of the environment.

- Forest reserves and former agricultural land should not be converted for development purpose without considering their long-term impacts.

Responsibilities of developers towards the environment

It is not difficult for developers to be responsible in creating healthy, environmentally friendly housing environments once the political will is set into motion. Developers are able to produce good work. The current approach to housing development and the delays encountered in land conversion, planning application, building plan approval and other conditional approvals from other government agencies can be reduced and the processes streamlined. Quality of development can improve if developers would employ competent and adequately remunerated consultants to provide proper advice on design and environmental matters instead of interfering or imposing their own views for maximising profits.

The unfortunate situation currently is that there is too much intervention by the developers' representatives and/or by project managers into architectural and engineering design matters. Good advice is often overruled with the simple excuse of budget constraint, a favourite catch phrase used to kill ideas. Few developers would overturn their representatives' or project managers' decisions since these people have been employed to look after the developers' interests.

Malaysia needs to review the whole situation and adopt a national decision to uplift the quality of our environment without causing future generations to pay a high price to correct the shambles created by the current society.

To illustrate the current situation, let us consider the following scenario.

A developer acquires a property with a view to developing it for housing. He employs an architect, requesting him to design a proposal and prepare the submission to the local council soonest possible. In the meantime, he negotiates a low fee with the architect. If the architect is in a hurry and is paid a low fee, what are the chances that he will produce a well thought-out scheme in view of the constraints?

Now one may say that there is a scale of fee for the professional architect to follow. Indeed there is. However, the sad truth is that there are government agencies which do not even follow the prescribed fee structure

set by the Board of Architects of Malaysia. Be that as it may how many architects are there who are prepared to abide by the scale? This problem of fees can be overcome if the Board of Architects of Malaysia were to introduce a fee-collection system for all registered architects, not unlike what is being done in Korea and Spain. In Malaysia, the Surveyors' Board also collect their members' fees. If this practice were instituted the problem of fee undercutting would not exist and all architects will be expected to provide full, quality and total service.

After the plans are submitted to the authorities the developer waits for the approval. Or he will very often send emissaries to enquire about the status of his application. Despite the intervention of these emissaries the application still takes a long time. Every day the application sits in the planning office bank interest is clocking up. The longer it stays in there, the more the developer has to incur. Of course, he could always pass this expense on to the buyers. However, he still has to think of his shareholders and his main objective of making and maintaining a respectable profit. It is necessary to simplify housing development application procedure so as not to burden the project with unnecessary additional cost.

In the next stage, ground work commences on site. Based on the engineering plans for earthworks, the workers start off by first cutting all the trees and clearing the site of any vegetation. They start shifting the earth, then they convert existing streams and rivers into huge water channels and drains with slope cutting supported by huge retaining walls. All these external works form a very large portion of the project cost.

The question to be raised here is why spend mega bucks on destroying the environment when the money could be saved for other purposes and at the same time minimise the impact on the environment? This irrational and contradictory action has always baffled this writer. The construction of engineering infrastructural work is economically unjustifiable when nature has already exemplified it.

In the last stage, the project is completed and the developer has to appoint a landscape architect to recreate the environment which he had only a few months ago destroyed. The recreation can never match the original work destroyed. New topsoil will have to be carted in, ground cover reintroduced, shrubs and trees replanted to create an artificial environment. Earth has to be shifted again to be reshaped, artificial waterfalls built and new rocks re-imported to create authenticity.

It is only when such issues are overcome by a political will to altruistically correct the ills in the building profession, the approving authorities and the built environment, that housing in Malaysia will cost less and the people will get a better quality end-product. The following can be considered some of the more visible actions to help improve the current situation.

Enforcement of gazetted scale of fees

The Board of Architects of Malaysia as well as other professional bodies should be directed to collect the scheduled fees on behalf of the professionals. There is no reason why this cannot be enforced. The Board has extensive powers to contribute towards correcting the social ills of fee-cutting and the taking of kickbacks to compensate for lost fees. For this additional service to the profession, the Board may, if it wishes, charge the professionals a token sum to cover the administration cost of having to employ public accounting firms to do the task. Prevalent fee cutting has resulted in substandard work by the professionals.

When the scale of fees and fee-collection is protected by the Board, the professional is more likely to be ethical and outspoken and focus on providing quality service. The prevailing attitude of having to accede to the client's demands and to be a friendly and obedient consultant is the norm since any professional who speaks out is liable to suffer late payments, have his claims rejected and not be commissioned for the next phase of the project. The Minister of Public Works should be prompted to set up an independent commission to study this proposal and to determine its merits and demerits, if any.

Submission of plans to local authorities

The existing legislation on the registration of architects is stringent. All graduate architects wishing to be registered must show adequate proof that he or she has undertaken a course from an approved and recognised school of architecture, attained the prescribed period of practical experience in Malaysia, sat and passed the Board's professional practice examination, and become a corporate member of the Malaysian Institute of Architects. Only then can he or she be legally entitled to be called an 'architect'. On reaching this stage, the architect is also entitled to submit plans to the authorities.

The authority empowered to check and approve these plans may not necessarily have equally qualified checkers. Very often, technicians who have risen from rank and file in the building department are required to carry out the almost impossible task and to do it well. Approvals given by the authority are not accountable nor can they be held responsible in the event of any mishap. The authority is absolved of any blame, wrong-doing and responsibility of any kind. The full blame rests with the submitting person, even though the plans are checked and approved by the authority. The checking procedure can take a long time depending on the work load of the building department, the complexity of the design submission, comments from other departments and various other factors.

This 'privilege' accorded to an architect to submit plans for checking and approval is unique. Other professionals are not required to do so. Take the structural engineer for example. Although he is responsible for the design structure, on which the whole stability and strength of the building depends, he is not encumbered by the requirement of having to submit his design for checking and approval by the authority's engineering department prior to construction.

The present bureaucratic procedure requiring architects to submit plans should be abolished. It will decrease delays and holding costs. It should be made mandatory to allow the architect to proceed automatically with construction if plans submitted are not commented on within two weeks of their submission. Architectural plans should be accepted on the same premise as those of engineers, that is, for record purposes only.

To control development and to ensure quality, the authorities should ensure that professionals such as planners, architects and engineers are in charge of the relevant design, planning and engineering departments – their role being that of a custodian of the policies set out by the authorities. If these policies are universally accepted and made known to all professional consultants, the implementation and the responsibility should rest with the professionals. The profession will thus become self-regulating.

Staffing local authorities with professionals

When qualified professionals are in charge of the relevant departments, policies governing proper development can be formulated and adopted. Without properly formulated guidelines or comprehensive planning policies, many development projects are carried out in a manner inconsistent with proper land-use and on an ad-hoc basis. This has been the current practice. With proper professional planning, developers and professionals involved will be able to spend time on quality designs without the burden of having to reinterpret the ad hoc requirements set out by the authorities and fear having to face long delays for plans to be approved. The streamlining of this aspect of the local authority's tasks will contribute towards better quality and lower-cost housing.

Encouraging creativity and innovation

Putting qualified professionals in charge of the various departments in the relevant authorities will enable them to evaluate, assess and recommend developments which are innovative and which provide quality environment and lifestyle. Accordingly as encouragement to these developers to continue to provide quality products, recognition or incentives should be

awarded by the authorities. This is not a new idea. It has been applied in many of the great cities around the world.

Role of the government

Fostering quality housing and environment

The situation in Malaysia needs to be addressed. Concerted effort is required to ensure quality living and quality housing. Despite regulatory guidelines set by the authorities and admonitions by the government, many developers appear to have the perception that they are above the law or that the law is not applicable to them.

For Malaysia to achieve industrialised nation status by the year 2020, it is imperative for development planners to realise that environments which are not well planned or designed will ultimately not contribute towards quality living. Poor or inferior quality housing will only contribute towards the detriment of the Malaysian housing industry and the quality of the future Malaysian lifestyle.

The number of civil engineering failures are too many. Road cave-ins, landslides, structural failure of retaining walls, and bridges collapsing are now common. The lack of reaction by the victims, the aggrieved and the general public is rather puzzling. Have Malaysians become too complacent or are we simply too intimidated into believing that there is no redress when dealing with the authority, the courts and the system to react? It has been noted that relevant authorities are also sometimes slow to react or have the relevant power to act.

Other structural failures and accidents are all too numerous – whether due to human errors, poor judgement or a lack of responsibility on the part of those who are supposedly in charge. This lack of concern for the environment cannot be allowed to continue. Society on the whole needs to be re-educated. Young professionals joining the industry need to be versed on their social responsibility of creating quality environment and housing for the people. Despite the principle objective of all developers to derive profits, this can be satisfactorily balanced against the wanton destruction of the natural environment.

Ensuring sufficiency of supply

Consultants who are adequately remunerated for their full professional services will be compelled to provide the level of service commensurate with their fees. The current practice among developers, as well as some government agencies, is to seek to reduce consultants' even though minimum scales of fees have been proposed. This does not augur well for the industry and nation. It

is ironical and a mockery for the law to be flouted this way. The adage that when 'you pay peanuts you get monkeys' applies. This is probably a fundamental reason why the quality of services in the country is less than desired. Corrective actions and leadership by example must be initiated by the government and those responsible. One way of ensuring that there will be no undercutting of fees is for the various professional boards to undertake the task of collecting fees on behalf of their members as suggested earlier.

New approaches to housing implementation

As Malaysia forges towards Vision 2020 and the approaching millennium, it is essential that the present attitude towards housing development and the environment must change. A new approach must be introduced.

The prevailing habit of going for quantity instead of quality of housing does not raise the standard of living of the people nor the quality of the houses built. Housing projects approved are often conditional upon a certain percentage of the project comprising low-cost housing to be sold at not more than RM25,000 each. With prices of other goods such as motor vehicles rising annually and priced considerably higher than RM25,000 each, the call to provide cheap subsidised low-cost housing at this level seems unjustifiable. Are there people who still cannot afford a reasonably priced basic housing unit without frills? Or are we to also believe that Malaysia's economic miracle has not benefited every one?

Before a new approach to housing can take off there has to be a re-evaluation of the economic scenario in Malaysia and a forecast of what the social order will be in the year 2020. To project a picture of what the economic, social and natural environment will be like, national policies and objectives have to be outlined and pre-determined, failing which the future may lack order, decision and direction. To support it there will be a need to strengthen and instil an attitude of selflessness and altruism for the well-being of the nation, among all sectors of the population and collectively as a nation.

There is an ongoing development project which displays a paradigm shift from the norm. It is preserving, enhancing and promoting the environment as the principle feature of its development. With encouragement others may follow and adopt this methodology to development.

For a new approach to take effect the following must be observed.

- There must be a firm and decisive will to provide quality housing set in natural environments.
- All leaders must call for affordable and quality housing.
- There should be no destruction of the natural environment. All developments must harmonise with and fit into the natural environment.
- Efforts must be made to ensure that all parties involved in the construc-

tion industry respect and do their utmost to preserve the environment for future generations.

- All consultants must be professional in their approach to the tasks entrusted to them to ensure quality living and to address the needs of the environment. For this they must be adequately remunerated.

Conclusion

Alternative for the future: The 'kampongminium' concept

'Kampongminium' is coined by combining the words 'kampong' (village) and 'condominium'. The kampong identity associated with Malaysia is readily understood by people within and outside the region. The kampong with its cultural values and social practices remain an inviting way of living for many Malaysians. Modernity and technology have not undermined the essence of kampong living. The values and traditional ways of life in a natural environment are just as valid today although many modernist proponents in Malaysia have ignored or forgotten the potential of the kampong in their development of a cultural identity of Malaysia. The kampong represents Malaysian culture and traditions at their best, besides reflecting the richness of regional arts, craft and architecture.

On the other hand, the condominium lifestyle has captured the imagination of the people. Condominium living embodies all that is modern, including amenities not found in the normal home such as security system, modern kitchens, brightly-tiled bathrooms and carpeted bedrooms.

Therefore the combination of the two was dialectic and unavoidable in the context of the future of the housing industry in the Malaysian environment. Teaming the two together conjures visions of a manifestation of new environments and spaces not seen anywhere else before. It is homespun. It is a new concept for tropical living. The environment is protected and nature is respected. Before the adoption and implementation of such a concept, it is foreseen that some existing by-laws may need to be modified and attitudes changed.

The concept

As a celebration of the approaching millennium, the 'kampongminium concept' will set a precedent for future developments in its appreciation for the natural environment and its adaptation of traditional cultural values into a modern context, promoting a greatly enriched lifestyle. This concept does not subscribe to environmental degradation which has occurred throughout Malaysian development history. In this sort of development, buildings to are elevated from the

ground, enabling vegetation to permeate the structures and the buildings adhere to the path of the contours as an extension of the landscape.

Housing enclave

A kampongminium enables residents to benefit from communal facilities and yet have all their modern requirements within walking distance. The various housing types reinforce the kampongminium philosophy in terms of their formal composition and in how they address the landscape. Each type follows the geography, stepping up and staggered across and down the slopes capitalising on every possible view of the green environment. It will be a sensitive blending of residential, commercial and other facilities into the green area.

Advantages of kampongminium concept

Among the advantages to be derived from the implementation of this concept are:

- Minimal hill cutting and no major excavation;
- Minimum tree cutting and removal of vegetation and topsoil;
- No necessity to build drains;
- No major road network;
- No extensive electrical/water mains and distribution;
- Minimal earth cutting and filling;
- Saving on piling cost at filled valleys;
- No fencing cost;
- Minimal street lighting;
- Minimal re-landscaping;
- Minimum retaining walls;
- No danger of landslide
- No gutters and down pipes, thus resulting in minimal maintenance cost.

Further possibilities and advantages of the kampongminium concept are highlighted.

Inter-dependency. The residents of a kampong do not live separate, independent lives but promote groups or extended families. People can rely on one another, if desired, and assist friends and neighbours both physically and spiritually.

Appropriate minimalist architecture. Architecture should be of a form suited to the climate – physically, socially and culturally. There is little need for vegetation removal, hill cutting and filling, landscaping and fencing. This reduces costs and suits the kampong lifestyle, retaining a natural, climate-modified environment.

Expression of cultural identity. The kampongminium, unlike many current developments, will reflect the Malaysian way of life and its cultures and traditions. It does not create a 'soul-less' environment, lacking identity and respect for the people.

Community closeness. Personal privacy does not play a major role in the kampong way of life but community closeness does. The interdependent lifestyle of the kampong, together with shared communal facilities, green gathering areas and a pooling of resources, reinforces the feeling of community closeness.

A sustainable tropical solution

It is only appropriate that Malaysian architects and other professionals involved in the construction of housing should make it a point to find solutions to design buildings and structures which are appropriate for and reflective of the tropical regional climate and our cultural context – which is the hot, humid lowland tropics of Southeast Asia – and not simplistically regurgitate images or solutions out of glossy foreign architectural magazines.

Many of these pretty images may not be suitable for the tropical context. The number of buildings being constructed without any windows and totally dependent on air-conditioning is on the increase. Electricity consumption has risen. Housing architecture in our context begs for a local solution dependable on nature for self-sustainability.

Malaysia should meet the millennium with a revolutionary way of development. One proposal is to provide a quality lifestyle and salubrious environment for living through the kampongminium concept. This will consist of residential, commercial and other facilities set in a cool, green and inviting environment – in a context in which hopes and aspirations of a traditional way of life complement modernity and progress, complete with ingredients which will provide many future Malaysians with a fulfilling lifestyle.

Developing self-dependency and a sustainable housing solution

In the global context, is Malaysian tropical architecture an item of passing curiosity, exotic history or merely an architectural oddity of no consequence? Until Malaysian architects, artists and designers begin to produce serious works of substance, of consequence and of importance, which are appreciated and valued by our society, there cannot be any meaningful 'revolution' or 'renaissance' in our culture.

This brings up the question of the Malaysian psyche. Is the Oriental mental make-up inferior to that of the Occidental? Why are so many Malaysian

architectural works copies of American and European models? Does this mean that there is no Malaysian art future? Therefore do we assume that architects from the hot, humid lowland tropics are incapable of designing good architecture for the future? If this were not so, then what is rationale for the continuous reproduction and perpetuation of recycled ideas of mediocrity? Have the traditions of the great cultures of Asia, from which we hailed, dipped so low that it is not possible for its descendants to re-surface in a 'renaissance' of their great heritage? Until then we have to put with the stigma attached to modern Malaysian society and the prevailing beliefs that 'mediocrity reigns', that 'what's best is west' and that what Malaysians perceive as 'luxurious and excellent' are in fact 'bad taste and mediocrity'.

Alternative sources of energy for housing consumption

The earth's reserve of fossil fuel, as a regular source of energy on a global scale, is fast running out. Despite the fact that the bulk of energy is being consumed by a small proportion of the world's population, mainly the western developed nations, with the rest of the world consuming a smaller percentage it is a global responsibility to conserve the last remaining reserves of fossil fuel.

Presumably alternative sources of energy are being developed by the western countries even now. When they have discovered an alternate form of energy it may lead to a renewed economic recolonisation by the west. Outdated equipment in buildings might have to be replaced to be compatible with the new type of energy. How else would you air-condition all the modern skyscrapers of Asia? What choices have you got but to replace all existing lifts with modern ones operable by alternative means of energy? It may not happen immediately, but it is an eventuality which has to be considered.

The world's reserve of fossil fuel is only good for another 40 years. If all buildings being built are dependable on electricity to drive their cooling systems, what will happen when the sources of this energy run out? To tackle this question, architects today have to start by designing buildings for tomorrow. Too many buildings being built today are modelled on old concepts and ideas developed for the temperate climate. Funds must be made available to carry out programmes to research into the uniqueness of the tropical region. Alternative sources of energy harnessing the power of the sun, the wind, rain and water should be considered to produce cheap and clean energy. Buildings could be designed to harness energy, or as energy production centres. High-rise buildings could also be converted into energy towers, generating energy not only to sustain themselves but also for its surroundings. In the tropics there is an abundance of sunlight, rain and wind. These are all potential energy sources for us to harness and to be self-sustainable. We have to seek a solution.

Appendix: List of selected news reports highlighting effects on the environment (in chronological order)

- 'Landslide caused collapse says council' (Highland Towers collapse), *New Straits Times*, December 29, 1993.
- 'Stop excising hill land for development' (Highland Towers collapse), *New Straits Times*, December 29, 1993.
- 'City Hall ordered to review Act's amendments', *New Straits Times*, July 4, 1994.
- 'Sponsor planting of trees for loved ones', *New Straits Times*, July 4, 1994.
- 'Be sensitive to nature, says Mahathir', *The Star*, August 12, 1994.
- 'Dr M: Stripping hills bare is not government's way', *The Star*, August 12, 1994.
- 'Study on development timely', *New Straits Times*, August 17, 1994.
- 'Project cause of hillslope collapse' (Kampong Petani landslide incident), *New Straits Times*, February 2, 1995.
- 'Warning of another avalanche', (Genting landslide tragedy), *New Straits Times*, July 3, 1995.
- 'Hills projects: Cabinet to discuss loopholes', *New Straits Times*, July 12, 1995.
- 'Watch on buildings laws to be reviewed in the wake of collapses, says PM', *The Star*, July 12, 1995.
- 'Daim: Stop projects that hurt environment', *New Straits Times*, August 10, 1995.
- 'Dr M: Maintain, improve green look for country', *Business Times*, August 10, 1995.
- 'Need to be open about hill projects', *New Straits Times*, August 10, 1995.
- 'Keep to land use plan, City Hall Urged', *New Straits Times*, September 13, 1995.
- 'PM: All must care for environment', *New Straits Times*, December 4, 1995.
- 'TEM: Condo collapse triggered by landslide', *New Straits Times*, December 13, 1995.
- 'A question of monitoring' (Tapah/Gopeng landslide), *Sunday Star*, January 7, 1996.
- '139 proposals on ways to protect nature: New approach change in planning growth', *The Star*, January 10, 1996.
- 'More than 20 Pahang highland projects frozen', *New Straits Times*, January 10, 1996.
- 'Selangor issues get-tough order on developers', *The Malay Mail*, February 29, 1996.
- 'Landslip in Taman Sri Watan: Builder takes prompt action', *The Malay Mail*, March 11, 1996.
- 'Give us a house back residents fear hillslope project', *The Malay Mail*, March 15, 1996.
- 'Expert to check Pantai Dalam slope', *New Straits Times*, March 22, 1996.
- 'Developers told not to cut down trees unnecessarily', *New Straits Times*, March 30, 1996.

- 'Buy a tree and green the nation', *The Malay Mail*, April 6, 1996.
- 'PM urges developers to restrict number of buildings', *New Straits Times*, April 6, 1996.
- 'PM: People should pay more to protect environs', *New Straits Times*, April 6, 1996.
- 'No project in Templer's Park, state told', *New Straits Times*, May 30, 1996.
- 'Be responsible, groups tell builders', *New Straits Times*, July 3, 1996.
- 'Stop work order on Mimaland resort lifted', *New Straits Times*, July 26, 1996.
- 'Mimaland yet to decide when to resume work', *New Straits Times*, July 27, 1996.
- 'Protest walk to save last of Cheras forest', *New Straits Times*, July 27, 1996.
- 'Protest walk to save green lung', *New Straits Times*, July 30, 1996.
- 'Stop work orders issued to four developers', *New Straits Times*, October 9, 1996.
- 'Remedial work order issued to developer', *New Straits Times*, October 15, 1996.
- 'Curbing hillslope projects on Tioman', *New Straits Times*, October 19, 1996.
- 'Nurturing nature in the rainforest', *New Straits Times*, October 19, 1996.
- 'Johor scraps building project to save playground', *New Straits Times*, March 10, 1997.
- 'Kept in the dark about condo project', *New Straits Times*, March 10, 1997.
- 'Designer homes get good response', *New Straits Times*, March 19, 1997.
- 'A warning sign from mother nature!' *The Malay Mail*, March 23, 1996.
- 'Earthworks on hillslope leave residents wondering: Taman Seputeh folk in the dark about project,' *The Malay Mail*, March 28, 1997.
- 'Greenery gone', *The Malay Mail*, March 28, 1997.
- 'MB: No indiscriminate opening of land in state', *New Straits Times*, March 28, 1997.
- 'Rainforest turns "desert" in Hulu Klang', *New Straits Times*, March 28, 1997.
- 'Project not carried out in proper phases', *New Straits Times*, March 29, 1997.
- 'Warnings ignored, Hulu Klang folk lament council's inaction', *The Malay Mail*, March 29, 1997.
- 'Consumed by fear of floods, landslips', *New Straits Times*, April 2, 1997.
- 'Preserve Penang Hill, say public', *The Star*, April 2, 1997.
- 'Cry against high-rise plan at playground', *New Straits Times*, April 3, 1997.
- 'Plant trees six months ahead, developers told', *The Star*, April 9, 1997.
- 'Spare the hills from development', *New Straits Times*, April 9, 1997.
- 'Protect environment from developers', *New Straits Times*, April 10, 1997.

Housing and the Environment: The Government Perspective

Lee Heng Keng

Introduction

The housing industry, which has achieved significant growth in the past few years, remains strong. During the Sixth Malaysia Plan period, 647,460 houses were built, of which a third were low-cost houses. The government is committed in providing affordable housing for its people, particularly the lower income group. Three special funds with a total allocation of RM 3.1 billion have been established to achieve this objective. These are the Housing Fund for Hard core Poor, Fund to Accelerate the Construction of Low-Cost Houses and Low-Cost Housing Revolving Development Fund (*Economic Report 1996/97*).

Housing development utilises natural resources and, if not planned with the environment in mind, would give rise to problems like flooding, degradation of river water and air quality. The environment, as defined in the Environmental Quality Act 1974, means 'the physical factors of the surroundings of human beings including land, water, atmosphere, climate, sound, odour, taste, the biological factors of animals and plants and the social factor of aesthetics.'

This chapter aims to highlight environmental issues arising from the housing industry and to discuss the various legislation under the Environmental Quality Act 1974 governing the industry. Measures to ensure minimal degradation to the environment during housing development are suggested.

Environmental objectives and policy statements

Recognising the linkages between the environment and development, the government had formalised environmental management objectives in the Third Malaysia Plan (1976-80) which were reinforced in the Fifth and Sixth Malaysia Plans. In the Seventh Malaysia Plan, the government once again declared its commitment to the principle of sustainable development: 'Malaysia will continue to take appropriate action to ensure that development is sustainable and balanced. Towards this end, environmental and conservation considerations will increasingly be integrated with development planning.'

The environmental policy objectives are intended to balance the goals for socio-economic development with the need to bring the benefits of development to a wide spectrum of the population. Further to this, the National Development Policy of the Second Outline Perspective Plan (OPP2) (1991-2000) states that 'adequate attention will be given to the protection of the environment...' In Malaysia's Vision 2020, it is stated that in the pursuit of economic development, Malaysia will also '...ensure that her invaluable natural resources are not wasted, the land remains productive and fertile, the atmosphere clear and clean, the water unpolluted, the forest resources capable of regeneration, able to yield the needs of the national development. The beauty of the land must not be desecrated for its own sake and for its economic advancement.'

After two decades of administering the Environmental Quality Act 1974, it is evident that strategies and programmes have evolved to take into account the changes in the country in terms of socio-economic and infrastructure development, science and technological advancement and the expectations of the people. The changes have also considered global and regional commitments and the need to comply with international laws while continuing with efforts to pursue national goals.

Environmental management strategy

The remedial approach, which constitutes enforcement of the Environmental Quality Act 1974 and its regulations is insufficient and inadequate to tackle emerging environmental problems due to the accelerated growth

in the industrial sector and infrastructure development in the 1980s. A preventive approach was therefore adopted to complement the remedial approach of the 1970s. The preventive approach emphasises land use planning, the integration of environmental factors in the implementation of development projects and the conduct of Environmental Impact Assessment (EIA). The EIA process will be further elaborated later.

The co-operation and support of all parties concerned, both private and public, are vital to ensure the effectiveness of the preventive approach. Key players include project proponents, project approving authorities at the local, state and federal levels, the professionals including architects, planners, engineers, ecologists, etc, contractors, project operators and consultants. Being preventive in nature, concerns should be addressed early within the project cycle.

Environmental impact of housing development

Environmental impact can occur at the various stages of housing development, from construction till when the houses are occupied if inadequate mitigation measures are taken. Therefore concern for the environment needs to be addressed throughout the project cycle – that is, right through planning, designing, construction and occupation. Environmental issues depend on the activities undertaken during the various stages of implementation and the sensitivity of the project site. Development on coastal areas would differ entirely from development on highlands, hill slopes or former mining land. However, in the housing industry the most damaging impact normally occurs during the construction stage. Significant environmental impacts during construction are:

- Erosion and siltation;
- Increased runoff and flooding;
- Destruction of habitat and degradation of biodiversity;
- Indiscriminate tree-cutting;
- Air quality;
- Noise;
- Sewage disposal; and
- Construction debris/solid waste disposal.

Earthworks

Earthworks create the highest impact on the environment if not carried out with proper control. There is a tendency for developers to clear large tracts of land to save costs and time without giving due consideration to the environmental impact. This would invariably result in massive soil loss and

increased surface runoff ultimately causing the receiving river to become heavily silted and cause flooding downstream. If the project is sited on hill slopes, landslides and mud slides could also be a problem. The usual excuse is that there is a need to reach the platform level before any control measures can be taken. Developers are not amiable to phased development where mitigation measures can be instituted as the project progresses.

Role of government in environmental control

Legal requirements

The Environmental Quality Act 1974 and Regulations also govern the activities undertaken during housing development. These include the Environmental Quality (Clean Air) Regulations 1978, the Environmental Quality (Sewage and Industrial Effluent) Regulations 1979 and the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 1987.

Environmental Quality (Clean Air) Regulations 1978

Regulation 11 prohibits open burning of construction debris and bio-mass cleared. Installation of fuel burning equipment such as gen-set and boilers require written permission of the Director-General of Environment. Siting and installation of concrete batching plant are also governed by this regulation.

Environmental Quality (Sewage and Industrial Effluent) Regulations 1979

In any housing or commercial development or both with more than 30 units, the design and discharge of sewage must comply with the requirements of this regulation.

Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 1987

The legal requirement for EIA came into effect on April 1, 1988. Under Section 34A of the Environmental Quality Act 1974 any person intending to carry out any of the activities which are prescribed is required to submit a report to the Director-General of Environmental Quality containing an assessment of the impact on the environment. The report shall be submitted for review prior to the granting of approval of the activity by the relevant authority. Housing developments covering an area of 50 hectares or more (Activity 7) and construction of new townships (Activity 9e) are prescribed activities under the Order. Penalties for contravention of Section 34A include fines of up to RM100,000 or imprisonment for a term not

exceeding five years or both, and a further fine of RM1,000 for every day that the offence is continued after a notice to comply with the Act has been served by the Director-General.

Environmental Impact Assessment

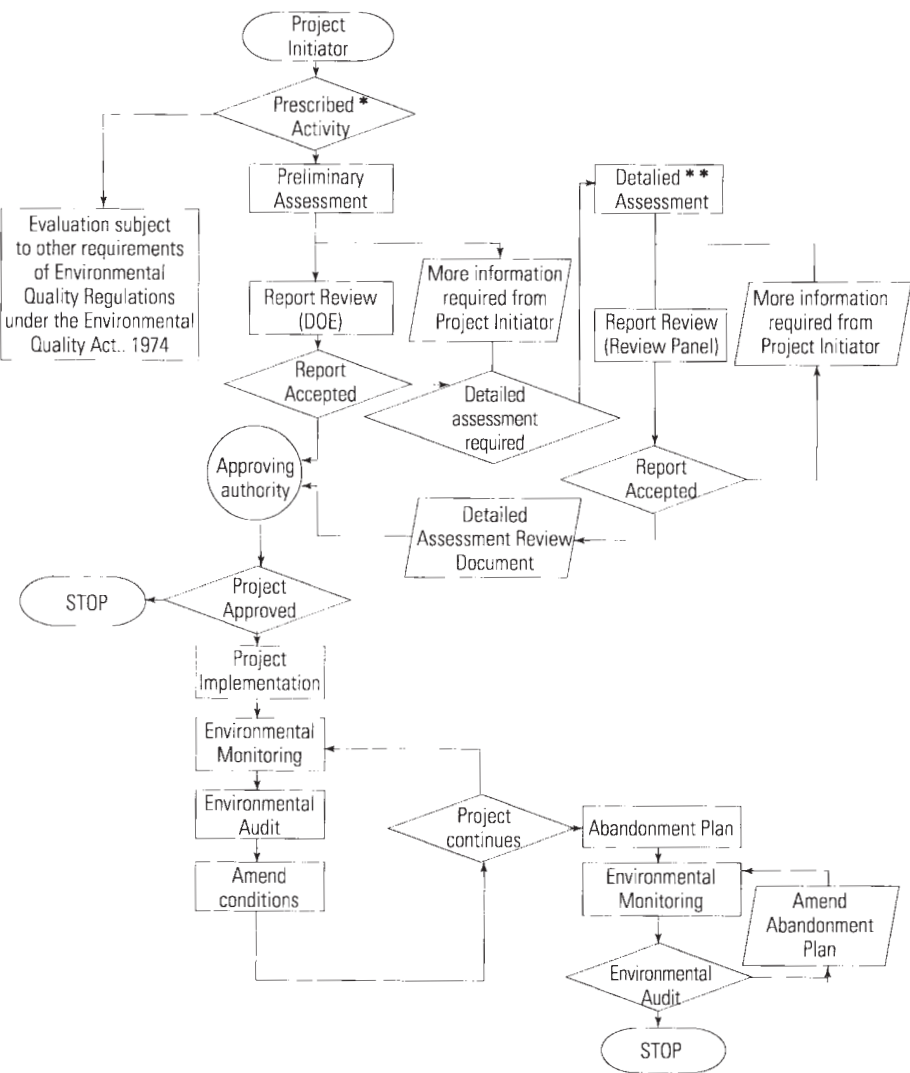
The Environmental Impact Assessment is a study to identify, predict, evaluate and communicate information about the impacts on the environment of a proposed project and to detail out the mitigating measures prior to project approval and implementation. It is essentially a planning tool to prevent environmental problems due to an action. It seeks to avoid costly mistakes in project implementation – costly either because of environmental damage that is likely to arise during project implementation or because of modifications that may be required subsequently to make the action environmentally acceptable. The EIA is not intended to disrupt nor to impede economic development but, on the contrary, it helps to enhance economic achievement in the context of sustainable development. For the EIA to be effective as a planning tool, it has to be conducted early in the project cycle, providing options in project siting and technology, adverse environmental impact identified and mitigating measures proposed. Properly executed, the findings of an EIA can enhance the project and ensure its viability, both economically and environmentally.

EIA procedure in Malaysia

The EIA procedure adopted in Malaysia consists of three major steps (Figure 1). The administrative procedure and administration of EIA are outlined in detail in the Handbook of EIA Guidelines. The major steps are:

- Preliminary assessment, which relates to the initial assessment of the impacts due to those activities that are prescribed, should be initiated at the pre-feasibility or feasibility study stage. Project options are identified and any significant residual environmental impacts are made known.
- Detailed assessment is undertaken for those projects for which significant residual environmental impacts have been predicted in the preliminary assessment. The assessment should ideally continue during project feasibility stage. Detailed assessment is carried out based on specific terms of reference issued by an ad hoc review panel appointed by the Director-General of Environment. Review of EIA reports is carried out internally by the Department of Environment for preliminary assessment while detailed assessment reports are reviewed by the ad hoc review panel.
- The EIA procedure also allows for public involvement. Public involvement is carried out through two different channels. Firstly, at the stage

Figure 1: Outline of Environmental Impact Assessment procedure in Malaysia



* Environmental Quality (Prescribed Activities)
Environmental Impact Assessment Order 1987

** Consultation with Department of Environment on Terms of Reference

during the conduct of an EIA study where the assessor is normally required to obtain public opinion on the project, through surveys, meeting or other means of communication. Secondly, at the review stage of detailed assessment reports where a member of the public is invited to sit on the review panel, while other members of the public are invited to submit written comments to the review panel after the EIA report is put on public display.

EIA and project planning cycle

The EIA procedure in Malaysia is designed to follow the integrated project planning concept. The preliminary assessment should coincide with the pre-feasibility study stage or the earliest stage of the project planning cycle. This is to ensure that options and alternatives are being considered and all environmental considerations incorporated into the planning process at this early stage. If detailed assessment is required, it should then be conducted in the feasibility stage for the same reasons. The timing of submission of the EIA report is vital so as not to disrupt the overall project planning cycle. Early submission enables recommendations on environmental changes or modifications to the project plan to be incorporated. Late submission of an EIA report will reduce the value of the assessment and possibly increase environmental costs or delay implementation of the project.

Post-EIA audit and monitoring

The need for environmental monitoring and audit is never over-emphasised. It is a useful tool in enhancing the effectiveness of the EIA system by reviewing how the predictions and the recommended mitigation measures actually work in reality, and what needs to be done to rectify the deficiencies. Monitoring involves measuring and recording the physical, biological, social and economic variables associated with the development such as air quality, water quality, noise, traffic flows, employment, etc. Post-development audit refers to a process of comparing the impacts predicted in an EIA with those which actually occur after implementation in order to assess whether the impact predicted performs satisfactorily.

From the records of the Department of Environment, since 1993 a total of 14 cases of violation of EIA requirements in construction and housing have been charged in court. Out of these, six cases were for implementing projects without EIA approvals. The remaining eight cases were for not complying with the conditions of approval. In most of these cases offences were for discharging suspended solids exceeding the legal limits, implying poor management of

earthworks. Indiscriminate land-clearing especially for development on hill slopes has also caused massive erosion and flooding downstream of the project site as seen in the Mimaland case in Selangor.

Role of developers in mitigating environmental impact

Project concept

In planning the project, the greatest care must be exercised to ensure the natural topography is maintained as far as possible. Development schedules must be clearly defined and timing of construction spread evenly and according to phases. Trees should be marked and not cut indiscriminately as required under the Town and Country Planning Act (Amendment) 1995. Sufficient buffers shall be provided between road reserves and the project area. Riparian reserve in accordance with Drainage and Irrigation Department Guidelines shall also be incorporated.

The innovative concept of design with nature will not only minimise the impact of the project on the environment, thus making it environmentally acceptable, but will also enhance the project visually. Some of the concepts being promoted are:

- Making use of natural topography where possible;
- Exploiting natural features as tourist attractions; and
- Balancing cut and fill.

In this regard, development on sloped or hill land should also abide by the guidelines drawn up by the Ministry of Housing and Local Government. Generally slopes of more than 25 degrees are considered high-risk areas and are prone to landslips. Any development in these areas must be subjected to stringent conditions including maintaining the original topography, minimal cutting and only confined to infrastructure development. Other aspects that need to be considered include: building according to the contours; maximum height of buildings not higher than five-storeys and medium-density development.

Planning

Proposed projects need to be consistent with existing development plans, master plans or land use plans to avoid incompatibility of land-use. Encroachment of industries into residential areas or vice versa without sufficient buffers are typical causes of complaints of nuisance such as air pollution, noise and odour. Half the battle would have been won with proper planning and appropriate siting.

Designing

Project design needs to incorporate the findings of the Environment Impact Assessment or any other studies conducted such as hydrological, geological or soil erosion risk areas. Mitigating measures proposed to minimise environmental impact need to be incorporated into the project design. Design of siltation ponds and retention ponds, for example, should be able to cope with the surface run-off during construction.

Of utmost importance for consideration during design and lay-out planning is the concept of buffer zone. Adequate buffer zones within the development, between commercial areas, industries and residential areas is critical so as to avoid nuisance such as noise, odour etc.

Construction and operation

During construction, the earthworks stage is the most critical and the problems of soil erosion need to be urgently addressed. Soil erosion creates a host of other associated problems including siltation, deterioration of water quality and flooding of areas downstream of project site.

Control of earthworks

Every housing site differs in topography, geology and soil types. The type of activity undertaken also varies. There is a need to plan the earthworks and implement control measures at the earliest stage to avoid siltation and pollution to the receiving waters. Appropriate sediment control measures must be incorporated as part of the development and developers, consultants and contractors must take these measures into account in the cost estimates and pricing. Sediment control measures must be in place before other earthworks commence. Earthworks shall be scheduled to avoid the rainy season and a detailed earthworks plan shall be prepared and endorsed by a professional engineer.

Control of erosion and siltation

Erosion is a natural process through which the earth is loosened and removed, usually by wind and rain. Natural erosion occurs slowly, but when man's activities alter the landscape, the erosion process can be greatly accelerated. Sedimentation is a process of deposition of any size of soil or earth materials on lands, in rivers or in the sea. It is essentially the settling down of the earth particles that have been transported by wind and water. The rate of deposition depends primarily on particle size and velocity of runoff. Heavier particles such as gravel and sand are deposited first and finer

particles such as clay remain in suspension. Clay particles can become electrostatically charged due to turbulence and can stay suspended in water for long periods, contributing significantly to water turbidity or discolouration. Control is based firstly on protection of soil surface from rain and runoff, and secondly on capturing eroded soil particles onsite. As the finer particles can be very difficult to capture once they have been mobilised, the best way to control the generation of sediment is to prevent erosion. The Department of Environment has published Guidelines for Prevention and Control of Soil Erosion and Siltation in Malaysia which provide a useful reference for housing developers and contractors. Techniques for the prevention and control of soil erosion are highlighted. Generally control measures fall into three categories:

- Drainage controls – to control the flow of water by spreading and ponding;
- Erosion control – to reduce the quantity of sediments generated; and
- Sediment control – to reduce the quantity of sediment leaving the construction site.

Some examples of drainage controls are catch drain and perimeter drain, diversion tunnel, rock lined channel, concrete lined channel, berm drain, cascading drain, check dam, gabion and temporary diversion dyke. Erosion measures that can be considered are mulching, revegetation, spot and close turfing, fibromatting and hydroseeding, terracing/benching, cover crops, interlocking concrete block, crib wall, plastic sheet, reinforced steel anchor wall, rubble wall, rip-rap, earth bund etc. As for sediment control measures, these include retention pond, sediment basin, filter dam, sump, and others.

The design of these control measures must ensure that the discharge standards for suspended solids stipulated can be met. In some cases silt traps are undersized resulting in sediments being carried over and polluting the receiving river or insufficient numbers provided. In other cases sediment traps/ponds are not maintained, causing build-up of silt which virtually renders them useless.

The guidelines also provide some indicative costing for erosion and sediment control as an indicator to assist developers.

Control of water quality

Other than sediment that can cause deterioration of water quality, the discharge of untreated sewage and sullage, especially from workers' quarters, can be another source of pollutants. Temporary sanitary facilities complying with the requirements of the Department of Sewerage Services should be provided in the workers' quarters.

Disposal of solid waste

Overburden or earth spoil shall be disposed of within the project area or in designated spoil tips. Open burning of waste construction materials such as formworks and bio-mass removed is strictly prohibited. These materials should be chipped and carted away or used as fuel.

Control of air pollution

Water spraying facilities shall be provided at construction sites and wheels of vehicles or machinery used for transportation of construction materials shall be cleaned before leaving the construction site so as not to litter the roads with mud and soil. Wash trough and water jets can be used. Access roads shall be paved before any construction starts or water trucks provided to wet roads especially during dry periods.

Control of noise

Noise is unwanted sound and has various effects on human beings ranging from annoyance and discomfort to hearing loss. Noise from construction sites is generated by different activities. Vibration from piling operations not only can cause annoyance but could also cause structural failure to nearby buildings. The main activities emitting noise during construction are piling operation, blasting, boring and drilling, rock crushing, power generators, compressor, pneumatic tools, earth moving vehicles and vehicle movements.

Noise control can be effected through either engineering means, separation of source and receptors or through limiting the hours of operation of the noise source. Engineering methods could include the installation of quiet machines, insulating the machines or providing screens and noise barriers. Generally noise at the boundary of the construction site shall be controlled so as not to exceed 55 dB(A) at night and 65 dB(A) during the day. However in noise sensitive areas such as hospital, schools, residential areas and places of worship, a lower noise level must be observed. In this instance, noise level at the receiving land use should not exceed 50 dB(A) during the day and 40 dB(A) at night.

Monitoring

Monitoring of river water quality for suspended solids, organic pollutants and E coli bacteria, both upstream and downstream, of the project site shall be carried out regularly during construction of the project. Total suspended solids, noise and vibration should also be monitored. Monitoring shall be done by a competent person and reports submitted to the Department of Environment on a regular basis.

Recommendations and proposals

Schedule of works

The present schedule of works and payment under the Housing Developers (Control and Licensing) Regulations 1989 do not mention specifically the control of site clearing and earthworks. It is proposed that a schedule of works be adopted to address the issue of soil erosion and landslides. Under this proposal the following measures are given due attention at the early stage:

- Identification and preservation of selected trees;
- Removal and gathering of vegetation and top soil;
- Putting in temporary drains;
- Construction and maintenance of storm water retention ponds and silt traps;
- Dust control;
- Slope stabilisation and turfing;
- Crusher-run road surfacing;
- Construction of drainage system including permanent silt traps;
- Road finishing; and
- Commissioning of sewage treatment systems.

For housing activity that is subjected to the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 1987, the Department of Environment has imposed the proposed schedule of works as one of the conditions of approval (Figure 2).

Environmental awareness and commitment

At the root of all the environmental issues and problems is the need to enhance awareness and commitment of all parties concerned, particularly project proponents and developers as well as decision makers. There is even a need now to educate financiers and bankers to only support projects that have conformed to environmental laws and regulations. Perhaps developers need to be convinced that it is cost effective to invest upfront at the planning and design stage to address environmental issues rather than spending more in mitigating and remedial measures to clean up the mess after disasters at the expense of lives and properties.

Conservation clause in contract documents

A conservation clause should be included in all contracts, subcontracts or agreements to ensure that contractors give due consideration to the preservation of the environment and incorporate mitigating measures in their planning, design and implementation of the project. In this respect developers should

declare the professionals who will be responsible to undertake the mitigation measures as stated in the EIA report. This is to provide the vital link between developers and the contractors and operators.

Towards this end, the professional bodies governing their conduct such as the Institution of Engineers, Institute of Architects, Institute of Planners and others should, through specific codes of practice on environmental protection, spell out the responsibility of their members, and promote the amendment of codes and regulations to impose upon their members the relevant duties and authority. This could then be used to oblige contractors and developers using their services to follow their directive for the further protection measures needed in a resource development project. Furthermore, it is suggested that a professional body of environmental auditors be constituted to provide the much needed service to the industries. Other than upgrading their skill and knowledge, the body could promote and govern accountability for the service rendered.

Conclusion

As environmental degradation undermines economic development and at times threatens human safety, health and well being, efforts to integrate environmental aspects into development planning is vital in view of Malaysia's drive towards a fully developed and industrialised nation. 'Design with nature' and 'environment-friendly processes' are some catch phrases that have been bandied around. Developers and contractors can make a difference by making these phrases a reality and not be accused of destroying the environment. It is a challenging task even after two decades of enforcing the Environmental Quality Act and its Regulations to make the business community understand that environmental management through proper planning and the EIA process can be cost effective in the long term. There is a need for all Malaysians to establish themselves as a society with high moral and ethical values as no amount of legal enforcement will be as effective as the inculcation of such values in overcoming the numerous environmental problems facing us.

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Housing and the Concerns of Consumers

Meenakshi Raman

Introduction

Housing and shelter are basic human needs, which are a part of our human rights. We require a roof over our heads (that does not leak), space for the family to live in, and reasonable security of tenure for land and house. Like other developing countries, Malaysia faces the problem of providing adequate and secure shelter for a large portion of its people, especially the poor. In spite of the hundreds of thousands of houses, flats and apartments having been built over the years throughout the country, many Malaysian consumers can only dream about owning their own homes. This is because not enough houses are being supplied at low enough prices to cater to all who want to have their own houses.

For the poor and the lower-middle income group, the greatest stumbling block to owning their own homes is the lack of affordable housing. However, those who are lucky enough to own one of these affordable houses often end up with homes that are not suitable for living. This may

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be due to a number of factors, such as, defective and poor-quality housing, poorly-designed units too small to accommodate large families, high-density living environments which are more like urban slums and concrete jungles – noisy and devoid of any green and open spaces. Thus, the process towards owning a home can be full of trials and tribulations for lower-income consumers.

Given the above situation, the objective of this chapter is to shed some light on the major concerns and problems of consumers in the country with regard to housing. The paper will also deal with the inadequacies that exist in the relevant laws affecting house buyers and, where possible, propose the necessary improvements to protect consumers.

Factors influencing choice of housing

Affordability

For the average consumer, the deciding factor influencing the choice of housing is the question of affordability. This is not to say that the locality, size and design of building are not important. It is commonly acknowledged that houses are cheaper if they are further away from the towns and cities and, for many, spending extra time and costs on commuting is the only way they can own their own homes. What a consumer is able to afford is of course related to his income and the availability and access to financial institutions to secure financing. Hence, a major factor to consider in relation to the choice of housing is income level.

Figures in the Seventh Malaysia Plan show that the average income of the bottom 40 per cent of households in the country was RM672 in 1995. For the same period, the percentage of households earning between RM1,000 and RM3,000 per month was 47 per cent, and this category comprised the middle-income group. This data provides some indication of the profile of consumers in the country. However, it must be noted that these income levels are for household incomes and do not reflect the income levels of individual consumers.

Hence, given the above scenario, it is apparent that the provision of cheap and affordable housing within the range of the low and middle-income group is imperative. In the housing industry, where medium and low-cost houses are concerned, developers find that the higher the density of the housing project, the more profitable it is. Looking at existing trends, the more affordable housing units tend to be smaller in size and are designed with the aim of generating maximum land use, not the comfort of the buyer. Only higher-income buyers can have the

luxury of choosing a house that is in the right location, spacious and comfortable to live in. At present, it is not only the poor and the lower-middle income consumers who find houses priced beyond their reach, middle-income consumers face a similar plight. They also face difficulties owning their own homes because prices have risen so much that even they find existing houses unaffordable.

The crux of the housing problem is that the country's building resources are not channelled towards meeting people's housing needs but towards the market which could afford to pay. The question builders ask is not how to fulfil the housing needs of the majority, but how to build the kind of units to attract those who have the money to pay the highest prices. Thus, people who already have comfortable houses can buy even more luxurious houses or second, third, fourth or fifth houses as 'investments'. Those who really need secure shelter still go in want. The priority of the housing industry at present is to service those who can afford expensive houses and not those who need shelter and houses.

The consumer who really needs shelter can only afford houses at the lower end of the market. In our categorisation, low-cost housing are those priced at RM25,000 or less per unit; low medium-cost at RM26,000 to RM60,000; medium-cost at RM60,000 to RM100,000; and high-cost above RM100,000.

The RM25,000 low-cost houses continue to be in great demand. However, these RM25,000 housing units often end up costing more than the official price because the developer, wishing to make extra profits, will insist that the buyer pay extra for so-called renovations. In future, low-cost houses may be officially priced higher than RM25,000. The trend in this direction is evident from recent statements of the government. In October 1996, Prime Minister Dato' Seri Dr Mahathir Mohamad said the price of low-cost houses in urban areas should be fixed according to their location as it was no longer possible to maintain the RM25,000 ceiling for each unit.

To make matters worse for the poor, complaints are common that the low-middle income consumers are buying low-cost units because they find other houses too expensive. This then deprives the really deserving consumers from owning these RM25,000 low-cost units.

Although greater profits per unit can be made from the construction of high-cost housing units, there is no doubt a good market for affordable housing. In 1996, houses below RM75,000 formed almost half of the total houses transacted in that year. Houses within the range of RM50,000 to RM75,000 were the most widely transacted in the whole country. This indicates that affordably-priced

houses continue to attract good demand in the country.¹ It is clear that what the consumer in this country primarily seeks is cheap and affordable housing.

The media has often reported cases of consumers who are desperate for low-cost houses being tricked by con-men who claim to be able to arrange for the provision of low-cost houses upon payment of a few thousand ringgit. These consumers become easy prey because these houses are the only ones priced within their means and there is a long waiting list for such houses. An example is the case of the 29 buyers who lodged police reports because they had been conned into paying deposits for non-existent low-cost flats. The victims had been cheated by two men who promised to help them acquire low-cost flats. The men collected a 10 per cent deposit of RM2,500, 'coffee money' of RM2,000 and an additional RM400 for maintenance fees.² We can understand how these buyers can be duped since, as was reported in Penang, 2,729 people had been on the state housing application list for low-cost housing for more than 10 years.³

Of course, the more expensive the housing units the more the profits the developer makes on the same piece of land. Developers would thus prefer to undertake the upmarket projects compared to the lower-end market. In September 1996, Deputy Prime Minister Dato' Seri Anwar Ibrahim asked developers not to shrug off their social responsibility in meeting the housing needs of the lower income group. He said he had repeatedly raised the issue of providing adequate housing for the low-income group as the commitment from the private sector was obviously lacking. He added that developers would not suffer losses by building low-cost houses. They might get lower profits but this can be compensated with gains from other projects.⁴ A few months later, while noting that housing developers have responded to his numerous appeals to build more low-cost houses, the Deputy Prime Minister admitted that only a small number of developers have adhered to the government's ruling of building at least 30 per cent low-cost houses.⁵ In fact he acknowledged that the huge number of applications for houses, especially low and medium-cost units, was the result of bad

1. *Property Market Report* 1996.

2. *The Sun*, July 18, 1996

3. *New Straits Times*, December 13, 1995

4. *New Straits Times*, September 18, 1996

5. *New Straits Times*, November 20, 1996

planning in the past. The mistake was the failure to build enough houses to meet the demand. Under the Seventh Malaysia Plan, he said, 800,000 housing units will be built with 70 per cent of them being low and medium-cost units.⁶

It is true that targets for low-cost units have never been met under the previous Malaysia plans. Targets for medium and high-cost units have sometimes been surpassed. Under the Sixth Malaysia Plan, a total of 261,386 units of low-cost houses or 76 per cent of the target was completed. Of this, the private sector built 214,889 units, fulfilling 99 per cent of its target (its best so far). The public sector on the other hand built 46,497 units or 36.7 per cent of its target. At the same time, the public sector managed to meet 79 per cent of its target for medium-cost houses and 110 per cent of its quota for high-cost houses. The private sector built more than it was required of its share of medium-cost houses (159 per cent) and high-cost houses (386 per cent).

As can be noted, the low-cost houses are the least popular with developers – whether they are from the public or private sectors. A smaller percentage seems to have been planned in the Seventh Malaysia Plan. The total number of housing units planned is 800,000 – of which 85,000 are high-cost units; 130,000 medium-cost units; 350,000 low medium-cost units; 200,000 low-cost units; and the remaining 35,000 units are housing for the poor. Under the Sixth Malaysia Plan, the targeted number of low-cost houses was 343,800 units.

Since the low-cost housing targets have never been fulfilled, and the target is lower, in the end only a small portion of the total housing needs of the poor will be met. This is made worse by the increasing population, which means that more people will be requiring housing year after year.

Access to financing

Apart from the issue of house prices, access to financing continues to be a stumbling block in the consumer's attempt to own his own home. To buy a house, the consumer usually has to rely on getting a loan from a financial institution or the Treasury, if he is a government servant. Buyers would also have to rely partly on their own savings. This could be money that has been diligently saved as well as savings in the Employees Provident Fund (EPF).

Where EPF is concerned, a member can withdraw savings from Account 2 to buy or build a house or shophouse and to reduce or settle the balance of the housing loan. Account 2 actually consists of 30 per cent of

6. *New Straits Times*, September 18, 1996

the member's total EPF savings. Members can either withdraw all their savings in their Account 2, or the difference between the house price and the housing loan plus 10 per cent to meet incidental expenses like lawyer's fees, whichever amount is lower. For joint buyers, EPF will process the first buyer's application and if the amount withdrawn is not enough to meet the total amount eligible to be withdrawn, then EPF will process the application from the second buyer.

However, EPF contributors are not allowed to withdraw from Account 2 if they are buying a piece of land, buying the house on a rent-first-buy-later basis, or are planning to renovate, repair or build extensions to their existing homes. Under Account 2 contributors can subsequently make withdrawals at five-year intervals to reduce or settle their housing loans until they reach 55 years of age, when they can close the account.

Being able to withdraw their EPF savings would help ease the contributors' financial problems to an extent although not much. As shown in EPF's 1992 Annual Report, 75 per cent of its contributors had savings of RM9,999 and below. The majority of EPF contributors can only withdraw RM3,000 or less. This group will have to rely on bank loans and this can be a problem for those in the lower-income group. Take for example the RM25,000 low-cost houses meant for those with monthly incomes ranging from RM500 to RM750. Even those in this income group will find it difficult to own such a house because of the monthly housing loan instalments.

The amount of interest a borrower is charged depends on the value of the house and whether it will be occupied by the owner. For houses priced at RM100,000 and below, financial institutions can only charge a maximum interest rate of 9 per cent per annum or 1.75 percentage points above the base lending rate. However, not every buyer of a house priced at RM100,000 gets this special interest rate on his loan. To be eligible, the borrower must fulfil the following conditions:

- The buyer must be purchasing or constructing his first house and the house has to be owner-occupied;
- A married couple is eligible for only one housing loan at the prescribed interest rate; and
- The borrower's monthly income (or combined income, if married) should not exceed RM2,800 for the purchase or construction of a house costing RM100,000 or less.

For houses costing RM100,000 and above, the borrower has to pay the going market rate. The interest rates of financial institutions can vary slightly. However, the banks and finance companies cannot charge an interest rate that is more than four per cent above the base lending rate.

If a buyer does not have any savings and is not an EPF contributor, then he has to borrow the full RM25,000 if he wishes to buy a low-cost house. Most financial institutions provide loans of up to 80 per cent of the value of the property. However, sometimes one can get a full loan for a low-cost house.

The present interest rate for a loan for houses below RM100,000 is nine per cent per annum for owner-occupied houses. If a buyer borrows RM25,000 for 15 years, the monthly repayment will be RM254 and if it is for 20 years then it will be RM225. The bank will usually require the borrower's salary to be at least three times that of the monthly repayment. To qualify for the full loan of RM25,000, the buyer would have to earn at least RM762 monthly for a 25-year term and RM663 for a 20-year loan.

Even though the monthly instalments are less than RM260, it is a lot considering that the borrower does not have much to start with. What more if one has a family and is already struggling to make ends meet. The family survives because they are probably squatters or living in shared accommodation and paying a rental that is a fraction of the monthly instalment for a housing loan.

Let us say the house buyer only needs to borrow RM20,000 because he has some money in his savings account and in EPF. If he takes a 15-year loan, his monthly repayment will be RM203. For a 20-year loan, his monthly repayment will be RM180. In this case, the borrower would have to earn at least RM609 if he has taken out a 15 year loan and RM540 if the loan is for 20 years.

The longer the loan repayment period, the lower the monthly payment. Although the borrower may wish to opt for a longer-term loan, age will be a deciding factor. The older the borrower, the shorter the loan period. For example, the bank may insist that the loan be fully settled by the time the borrower reaches 50 years of age.

How much then would a person have to earn to qualify for a medium-cost housing unit? Let us say the borrower wishes to take up a RM80,000 housing loan. If it is a 15-year loan, then his monthly instalment would be RM811 and if the loan is for 20 years his instalment would be RM720. To qualify for the loan, the borrower's monthly income would have to be RM2,433 for the 15-year loan and RM2,160 for the 20-year loan. Thus, to buy a medium-cost house, you would have to be in the middle-income group.

Interest rates for housing loans above RM100,000 are determined by individual banks. The interest rate on a RM150,000 loan for house priced at RM200,000 averages 11 per cent per annum. This means a monthly repayment of RM1,705 for a 15-year loan and RM1,548 for a 20-year loan. A house buyer would have to earn RM5,115 and RM4,644 respectively to qualify for the loan. Since the majority of house buyers are not in that income bracket, many cannot afford such houses.

Clearly, given the rising cost of living in the urban areas, the amount of monthly repayments to be paid for housing loans is a factor inhibiting consumers in the lower and middle-income bracket from owning a house.

Need for market information

In March 1997, the government launched the national House Price Index (HPI) to monitor residential properties. Table 1 shows the relationship between the HPI, the per capita index and the consumer price index.

On average, prices of residential houses have risen more than two-fold from 1990 to 1996. In fact, house prices have gone up by 112.8 per cent. As a result, a property costing RM100,000 in 1990 would have cost RM212,800 in 1996.

In comparison, throughout the six years, the inflation rate has only gone up by 24.8 per cent. The increase in prices of residential properties has also outstripped the rise in average income in 1995 and 1996. For example, the HPI went up by 18.3 per cent in 1995 and 12.9 per cent in 1996. However, the Per Capita Income Index only went up by 12.2 per cent and 10.2 per cent in 1995 and 1996 respectively.

What is clear is that even those who are not in the low-income groups are facing difficulties owning their own homes, because their income cannot keep up with the rise in prices of housing units. At the rate that prices are going up, more consumers will have to resign themselves to the fact that they will never be able to own their own homes.

Table 1: House Price Index, Consumer Price Index and Per Capita Income Index

	1988	1989	1990	1991	1992	1993	1994	1995	1996
House Price Index	92.2	96.1	100.0	125.5	140.7	147.5	159.3	188.5	212.8
Change %	-	4.3	4.1	25.5	12.1	4.8	8.0	18.3	12.9
Per Capita Income Index	90.7	91.1	100.0	122.3	135.7	146.2	161.5	181.2	200.0
Change %	-	0.5	9.7	22.3	11.0	7.8	10.4	12.2	10.4
Consumer Price Index	94.1	97.0	100.0	104.4	108.5	112.4	116.5	120.5	124.8
Change %	2.5	3.0	3.0	4.4	3.9	3.6	3.7	3.4	3.6

Source: *The Star*, March 11, 1997

The introduction of the HPI by the government is certainly a step in the right direction. Prior to this, consumers were generally not in a position to assess price trends in the housing industry. With the regular publication of the HPI in the media, consumers will be better informed about the industry and be alert to unscrupulous developers. More importantly, the information is critical for policymakers in ensuring that appropriate measures are undertaken in the housing industry to meet consumer needs and demands.

Speculation

The Property Market Report 1996 shows that increases in residential property prices continued to be registered in most states although the percentage increases were lower than in 1995. However, the lower increase in residential property prices last year is no comfort to the potential buyer because prices of houses are already too high.

Of course it cannot be denied that the costs of materials, labour and land has gone up. Even then, these factors alone do not explain how houses prices could have more than doubled within six years. Neither can it simply be explained in terms of market forces of demand and supply even though the robust economy has brought about a greater demand for houses. Good demand would result in price increases but they would still not account for prices rising so much. What is the explanation then for the tremendous rise in prices?

One factor causing the hike in property prices is speculation. Investors with money to spare have found the property market to be an attractive venue for speculation. Some speculators just buy houses simply to sell them at huge profits. Then again there are some speculators who do not actually buy the houses but only make bookings for them. This 'booking' system has helped contribute to the rise in prices in the past, although it is less popular now that demand in the property market is not so high as before. The existence of this system certainly helps to explain why many housing projects are claimed to be 'sold out' immediately after they have just been launched. Housing industry sources say that some houses were not actually sold to genuine buyers but were only 'booked' by friends and relatives of the developers and their employees.

Bookings for these units could be done with deposit payments of as low as RM1,000 or RM2,000, depending on the prices of the housing unit. When the projects are officially launched, genuine buyers will be told that the project is completely 'sold-out'. However, the buyers could still get a unit if they were willing to pay an extra sum to have existing bookings transferred to their names. Speculators have been known to advertise their willingness to transfer their bookings to

buyers for the right price. Although the buyer may initially refuse to pay the inflated price, after a few unsuccessful attempts to get a unit at the advertised price he may prove willing to pay extra if he wanted the house badly enough.

The transferring of bookings in this manner artificially raises prices and at the same time creates a false impression of demand for the houses. The people who have booked the houses do not actually want to own them, much less live in them. However, their actions help to create the illusion that the housing projects are being snapped up as soon as they are launched. Developers encourage the booking system because this allows them to test the market. Naturally, when buyers are willing to pay so much more than the advertised price, the developer would realise that he can charge even more for the next phase of the housing project.

Compared to the speculator who makes a profit by transferring bookings, the speculator who actually buys the house for resale at a higher price, stands to gain an even greater windfall. This is in spite of the real property gains tax levied on properties which are resold within the first five years after the purchase. This is often circumvented because the price quoted in the sale and purchase agreement is usually less than the actual sale price, hence allowing part of the profit to escape taxation.

Speculation and the combined factors of increased cost of land, labour and materials have pushed prices of housing beyond the means of the average consumer.

Legal and administrative procedures

For a consumer who has found his dream house and has obtained a bank loan, there are still more expenses to be incurred in the process. At least a few thousand ringgit have to be set aside as legal expenses for processing the transaction.

The first step in purchasing a house is to draw up and sign the sale and purchase agreement. The house buyer is to be represented by a lawyer of his choice to ensure that his interests are protected, and that there is no conflict of interest, as would be the case if a lawyer were to act for both the seller and the buyer. What consumers must do is to read the agreement carefully before signing it to ensure a clear understanding of every clause in it. If unsure, the consumer must exercise his right by asking the lawyer to explain.

Following the signing of the sale and purchase agreement, the purchaser has to pay 10 per cent of the purchase price. This is then followed by necessary arrangements undertaken by the lawyers to have the transfer documents executed and submitted to the land office for registration, upon the payment of the balance of the purchase price.

Most consumers are not aware that the bill of costs for undertaking these procedures can come up to be quite a large sum. However, it is not all the lawyer's fault. Much of what is collected by the lawyer actually goes to the government, mostly to the Land Office and the Stamp Office. The lawyer's fees usually comprise two parts, professional fees and disbursements (see Appendix 1 for details).

Complaints and consumer protection

A consumer who has managed to secure a suitable house or apartment and has managed to obtain the financial means to settle this may still face other major problems.

The Complaints Department of the Consumers Association of Penang (CAP) has often received consumers' complaints on housing. A total of 1,181 housing complaints were received between 1992 to 1996 with the highest number of complaints from Penang, followed by Kedah and Perak (see Table 2 for details).

Many of the housing complaints result because we do not practise the 'build-then-sell' concept. Malaysians can get to examine the actual flat or house purchased, only for cases when it is not a new property or when the developer has not been successful in selling off all units. Consumers can consider themselves lucky if they get to see a model of the flat or house they are buying. If developers practised the 'build-then-sell' concept, allowing buyers to examine the finished house or flat first before purchase, then many of the problems currently faced by buyers would not occur.

Among the most common housing complaints are:

- Poor workmanship and failure to rectify defects;
- Interest charged on late release of progress payments;
- Late delivery of housing units;
- Units not built according to specifications;
- Developers demanding extra payments for sinking fund, consent fee etc;
- Delay in issuance of strata titles;
- Non-refund of deposits; and
- Long delays in obtaining low-cost housing.

Complaints about malpractice, though not as common as in the past, still exist. Such complaints include bogus housing developers who fleece unsuspecting house buyers and abandoned housing projects.

With the increased pace of urbanisation and development, we are witnessing a rise in complaints related to the quality of life and the surrounding environment. Such complaints include the development of businesses in residential areas, housing estates sited next to factories and

Table 2: Total number and breakdown of housing complaints received by Consumers Association of Penang by state, 1992-96

	1992	1993	1994	1995	1996	TOTAL
Penang	88	106	119	118	94	525
Kedah	49	44	46	26	42	207
Perak	34	33	27	24	18	136
Selangor	18	12	13	16	12	71
Johor	20	12	9	16	6	63
Kuala Lumpur	18	10	14	9	6	57
Negeri Sembilan	10	7	9	1	3	30
Pahang	10	1	3	2	5	21
Melaka	7	2	4	3	2	18
Sarawak	2	5	2	1	2	12
Perlis	3	1	4	1	1	10
Terengganu	3	2	3	0	0	8
Sabah	4	1	2	0	1	8
Kelantan	0	1	2	1	1	5
Singapore	0	2	0	1	5	8
Australia	1	0	0	0	0	1
Indonesia	1	0	0	0	0	1
TOTAL	268	239	257	219	198	1181

Source: Complaints Register of Consumers Association of Penang

quarries, high incidence of dust, air and noise pollution, and flash floods, and even concerns about the safety of buildings due to the cutting of hills and hillslopes in the neighbourhood.

Poor workmanship

In the past five years, complaints of poor workmanship and failure to rectify defects within the liability period topped the list of housing complaints received by the Consumers Association of Penang. Such complaints comprised 24 per cent of the total number of housing complaints received (see Table 3).

Table 3: Total number and breakdown of types of housing complaints received by Consumers Association of Penang, 1992-96

	1992	1993	1994	1995	1996	Total
1. Defects in construction	61	47	70	58	48	284
2. Interest charge on late payment	18	13	19	20	26	96
3. Compensation for late delivery	37	15	18	6	11	87
4. Abandoned project	28	13	18	16	10	85
5. Delay or non-refund of deposit after cancellation of sale and purchase agreement	24	15	23	15	7	84
6. Delay in receipt of certificate of fitness	13	6	17	11	18	65
7. Delay in construction of house within stipulated period	20	17	21	1	3	62
8. Deviation from specifications	14	10	13	13	7	57
9. Housing loan problem	7	16	9	10	5	47
10. Maintenance problem	6	10	5	18	9	47
11. Extra charges not stated in sale and purchase agreement	3	14	3	7	2	29
12. Delay in receipt of keys/vacant possession	2	11	5	5	0	23
13. Delay in strata title	4	6	8	3	2	23
14. Booking fees problem	3	6	2	3	8	22
15. High legal fees	4	6	2	5	3	20
16. Application rejected or delay in withdrawal of EPF funds	8	2	6	1	1	18
17. Application for low-cost house rejected/delayed/no response	1	1	0	7	6	15
18. No electricity and water supply	7	3	0	0	3	13
19. Sinking fund	1	2	7	1	1	12
20. High consent fees	0	2	3	2	1	8
21. Delay in receipt of sale and purchase agreement	2	2	0	0	4	8
22. Car park problem	0	1	0	2	4	7
23. Quit rent and assessment problem	0	0	0	4	2	6
24. Non-receipt or delay in receipt of title	1	3	0	1	0	5
25. Delay in transfer of house	0	2	0	0	3	5
26. Increase in purchase price	0	2	0	0	3	5
27. Misleading housing advertisement	0	1	0	2	1	4
28. Cheated in house allocation	0	0	0	0	4	4
29. Developer failed to refund EPF money	0	4	0	0	0	4
30. Low-cost sold as medium-cost	0	0	0	1	0	1
31. Others	4	9	8	8	6	35
Total	268	239	257	219	198	1181

Source: Complaints Register of Consumers Association of Penang

It is disappointing for a buyer to move into a brand-new house only to find it slowly breaking apart. Some of the common complaints are cracks in the walls, leaking ceilings, floor tiles coming off and use of inferior materials. In some cases, the defects are so bad that the structural soundness of the building becomes an issue.

The Housing Developers (Control and Licensing) Regulations 1989 stipulates that the developer is liable for any defects, shrinkage or other faults in the building which become apparent within a period of 18 months for a house and a flat, after the date of handing over of vacant possession, with the connection of water and electricity supply. The developer is required by law to rectify the defects within 30 days of receiving the written notice of the defects.

The Consumers Association of Penang complaints files are full of cases of consumers who have to go through tremendous difficulty to get developers to take any action to rectify defects. In some cases, the developers refuse to rectify the problem and the house buyer is forced to resort to the courts. Some case studies are cited here to illustrate the predicament of the consumers.

Housing regulations currently provide for a sum of five per cent of the purchase price to be withheld by the vendor's solicitor – out of which half (2.5 per cent of total purchase price) is to be paid to the developer after six months and the balance to be paid upon expiry of 18 months after handing over of vacant possession. This is to ensure that the developer makes good the defects appearing in the houses within the defects liability period.

In view of the experiences thus far, this sum should perhaps be raised to a more significant amount to ensure that developers make sufficient effort to rectify the defects that arise. There may also be a need to review the 18-month defects liability period and extend it to a more appropriate and reasonable time-frame so as to adequately protect consumers.

In 1992, some 50 low-cost house buyers in Seberang Jaya, Penang, lodged complaints with the Consumers Association of Penang about the poor conditions of their houses. Complaints of defects included poor quality wood used for beams, broken roofing tiles, window frames which were not properly fixed, cracks on the walls, paper being used to fill up walls instead of bricks, and electric wires not concealed. Despite complaints to the developer, no adequate action was taken. The buyers formed an action committee to take up their problems with the Ministry of Housing and Local Government and the Consumers Association of Penang. They also filed a legal case against the developer.

Interest on late release of progress payments

The second highest number of housing complaints received by the Consumers Association of Penang was the interest charged by developers

for the late release of progress payments. This comprised 8.1 per cent of the total complaints. The number of complaints in this category had increased from 1992 to 1996.

It does not seem fair that the house buyer should be penalised for late progress payment due to no fault of his own but it happens. The Ministry of Housing and Local Government must take appropriate measures to alleviate the sufferings of affected consumers.

In one case, house buyer P Y Chee was charged interest by a developer for the late release of the progress payment by the Treasury Housing Loan Department. The accrued interest amounted to RM5,779.33. The house buyer said the delay in the release of the progress payment could not be attributed to him and it was unfair to charge him interest for the late payment. He noted that, since signing the sale and purchase agreement, he had made all attempts to expedite the release of the loan. It was through no fault of his that the Treasury had been late in releasing the progress payment.

Compensation for late delivery of vacant possession

Another major cause of housing complaints is the compensation for late delivery of the house. This comprised 7.4 per cent of the total number of housing complaints received.

The buyer often faces difficulties in claiming compensation for late delivery from the developer, who would either refuse to pay, insisting that the causes of delay were beyond his control, or would only pay a portion of the compensation claimed. It is frustrating for the buyer to keep up with his housing loan payments and at the same time pay rent for his present premises.

Under the Housing Developers (Control and Licensing) Regulations 1989, the house should be completed by the developer and vacant possession delivered to the buyer within 24 months from the date the agreement is signed. The delivery period for apartments and other high-rise housing is 36 months. If the developer fails to deliver the building on time, he has to compensate the buyer, at a rate of 10 per cent of the purchase price calculated on a daily basis.

In a case highlighted to the Consumers Association of Penang, house buyer Abdul Y signed a sale and purchase agreement on July 14, 1988 with a developer for the purchase of a low-cost single-storey semi-detached house. According to the agreement, the house should have been completed by July 14, 1990. However, it was only ready in May 1993, after a delay of 2 years and 10 months. Many other purchasers were also similarly affected since this new housing estate in Taman Sri Bidor comprised 378 units of single-storey semi-

detached houses and six units of single-storey shophouses. The developer has tried to avoid having to pay the liquidated damages owing to the purchasers by asking them to sign an agreement to forgo their right to such compensation and not to take the case to court. In return, the developer would agree to forgo the interest charged for late release of progress payments by the banks and the Treasury. Should the purchasers refuse, the developer would refuse to hand over the keys to the house. Consumers should not be held to ransom by such unscrupulous methods.

Failure to comply with specifications

It is bad enough in most cases that the buyer does not get to see a model of the housing unit being purchased. When the unit is not built according to agreed specifications, the consumer is bound to feel cheated. In some cases, the developers refuse to make good on the specifications agreed on. This is a breach of the contract and the consumer usually has no choice but to file an action in court.

This is what happened in a case involving residents of a housing estate in Kedah, who sued the developer, the architect and the municipal authority for not building houses according to specifications. The trial, which began in the Alor Setar High Court in January 1995, was ongoing when this chapter was written. The residents claimed they have been facing various problems such as floods, stench from leaking sewerage tanks and dirty drains. They said these problems resulted because the developer did not follow the required specifications when building their houses. Floods occurred every time there is continuous rain for about two hours, causing much damage and inconvenience. Residents have attributed this to the fact that the ground level of their houses was lower than the level specified by the municipal authority. The residents also complained that the floods caused sewerage tanks to overflow, resulting in a terrible stench and rendering their toilets unusable. The drains were apparently poorly constructed, causing water to stagnate and turn into breeding grounds for mosquitoes. Residents also claimed that the walls and floors of the houses have cracked and that the foundation of their houses was sinking.

Charging of extra fees

It is common practice among developers to demand all kinds of 'extra' payments from buyers. Many house and apartment buyers give in to these demands, since they are unwilling to go through the process of taking court action and incurring more costs. Buyers can actually refuse to give in to these payments. According to Regulation 11(2) of the 1989 Housing

Developers Regulations, 'No housing developer shall collect any payment by whatever name called except as prescribed by the contract of sale'. Hence, strictly, the developer cannot demand any 'contribution' whatsoever to any funds such as management funds, maintenance or sinking funds, or as consent fees, booking fees, etc.

Several developers have adroitly circumvented the law by getting buyers to sign additional or side agreements in the form of 'house rules agreements' where such contributions are included. If the buyers refuse to do this, their keys are withheld and they are subject to harassment. Such practices should be checked by the Ministry of Housing and Local Government.

Management or sinking fund

In recent years it has become a practice for developers to demand a sum of money from buyers of high-rise buildings as a precondition to the delivery of keys for possession of the premises. Such a practice is not stated in the sale and purchase agreement. Neither is it provided for by law.

In one case, a consumer refused to pay the RM300 payment demanded by the developer prior to delivering the keys to her flat. The developer insisted on this payment as a contribution towards the 'management fund'. Since the consumer refused to make this payment, she was not given the keys to her premises. She turned to the Consumers Association of Penang. The Ministry of Housing and Local Government confirmed that the developer cannot refuse to deliver possession of the premises when all payments under the agreement have been made by the purchaser. The developer still refused to oblige. The consumer took the matter to court. In August 1993 the Penang High Court ruled against the developer and ordered the handing over of the keys. How many consumers are willing to go to court over RM300?

Consent fee

The owner of a flat, apartment or condominium whose strata title has not been issued, faces the problem of having to pay consent fee or administration fee. This is the fee the owner has to pay the developer when he wants to sell his unit. The buyer will need the developer's consent or endorsement to assign all his rights of ownership of the property to the new buyer. The buyer's bank will also want the developer's letter of undertaking for the transfer of the strata title or the developer's endorsement of the Deed of Assignment.

A house owner complained that she had been charged an exorbitant RM2,000 as consent fee by a developer. She had purchased a 14th storey flat at Greenlane Heights at a cost of RM76,200 in 1990. When she decided to

sell the flat, she was charged RM2,000 as consent fee. She reluctantly paid up because she was afraid that if she did not do so, she might hinder the progress of the transaction. When she questioned the developer later, it stated: 'Purchasers who wish to sell or assign their units shall have to pay administrative charges of RM2,000. These charges are for office administrative work such as recording, filing and the search to be made at the Land Office prior to the issuance of the strata title'. The complainant then asked the developer to show the justification for the payment, that is, the stages of the administrative work involved and the fees incurred at each stage. The developer did not supply the information required.

In another case, a consumer took a developer to court for demanding RM2,000 as administrative fees. In a landmark decision in November 1993, the Supreme Court ruled that purchasers who wish to sell their property prior to the issue of the strata title should pay no more than RM500 as administrative fees (see case of *Keepahead Holdings v Lim Seang Keang*). With this decision, any apartment owner can now seek the assistance of the court to prevent the developer from arbitrarily imposing exorbitant charges in the guise of administrative charges just for giving an endorsement of consent to the financier of the new buyer.

However, outside the court, the situation seems to be free for all. The Ministry of Housing and Local Government must act speedily to amend the current laws to prevent such incidences. The Consumers Association of Penang has brought this to the attention of the Ministry a few years ago and yet no action seems to be forthcoming.

Fees for strata titles

Many developers have coerced apartment buyers into signing agreements stating that the buyer must pay the costs for processing the strata title. This is illegal. The law clearly states that it is the developer's responsibility to do this. Even if the buyer has already signed one of these agreements, he cannot be bound by it as it is not allowed by law. Such a contract can be considered void.

The Strata Titles Act 1985 expressly states that it is the duty of the developer to bear the whole cost of obtaining the titles. Under the Act, a developer must apply for the titles within six months of signing the sale and purchase agreement. If he fails to make an application, he can be fined up to RM5,000, with an additional fine of RM1,000 for every day of delay. However, some developers use the excuse of the fee issue to delay giving out the titles.

This is what happened to a group of buyers in Kuala Lumpur. The owners of a block of walk-up flats signed an agreement with a developer which made them liable for all expenses involved in obtaining the strata

titles. Each buyer had to pay RM373. The developer threatened that any delay in settlement means that the buyers would have to bear the fines for the delay imposed by the Land Office. When the Consumers Association of Penang wrote to the Director of Land and Mines, he agreed that what the developer did was contrary to the law. However, he declined to act as it was viewed as a 'private matter' between the developer and the purchaser. The flat owners had no other recourse but to take the developer to court.

Non-refund of deposits

Another major complaint received from consumers is the non-refund of deposits paid by the house buyer after the buyer decides to withdraw from the sale and purchase agreement. Upon signing of the agreement, the purchaser has to make a payment of 10 per cent of the purchase price. Some purchasers, after signing the agreement, are not in a position to proceed with the purchase for several reasons. Such instances include situations where construction work did not commence, projects were subsequently abandoned, housing loan applications were not approved, and houses were sold by developers to other buyers.

The standard housing agreement as it now stands, does not provide for a refund of the 10 per cent deposit if the purchaser has a change of heart and does not proceed with the purchase. On the contrary, there are provisions that require the purchaser to make the necessary progress payments according to schedule. If the purchaser defaults on this, the vendor is entitled to forfeit a sum equal to 10 per cent of the purchase price. Even though the purchaser is not able to obtain a housing loan, he is obliged to fulfil the conditions of payment under the agreement. This being the case, consumers have to be warned and advised to be careful not to enter into an agreement without fully being prepared to proceed with the purchase.

However, in instances where the sale is not able to proceed due to the fault of the developer, the purchaser's only option is to commence legal action against the developer and this usually becomes a long-drawn out and costly affair.

Delay in issuance of certificates of fitness

This is another relatively common complaint of house buyers. According to Clause 21(1) of the sale and purchase agreement, a purchaser cannot occupy his housing unit until the certificate of fitness for occupation is obtained from the local authority. The rationale for this is understandable as it is to ensure the safety of the occupants.

However, there are many instances of developers handing over vacant possession of houses and flats before obtaining the certificates of fitness from the local authorities. This puts the purchaser at a considerable disadvantage and inconvenience since he is burdened with having to make repayments for loans already completely disbursed to the developer and at the same time continue to pay rental for alternative premises because he cannot occupy the completed house.

As noted earlier, the developer has to deliver vacant possession within a stipulated period – 24 months for houses and 36 months for apartments from the time of signing the sale and purchase agreement. According to Clause 23 of the standard agreement, the manner of delivery of vacant possession is as follows:

- The architect of the developer has to issue a certificate certifying that the construction of the building has been duly completed;
- The water and electricity supply has to be connected;
- The developer has to apply for the issuance of the certificate of fitness; and
- The purchaser has to settle all payments due.

Once the developer gives notice to the purchaser to take possession of the premises, the purchaser is considered to have done so after 14 days from the date of notice, whether or not he has actually entered into possession or occupation. To comply with delivery of vacant possession within the stipulated period, the developer can rush to deliver vacant possession, without actually ensuring that all the requirements for the issuance of the certificate of fitness have been complied with.

Common reasons cited by the local authorities for delays in the issuance of certificates of fitness result because of developers not completing the necessary infrastructure works such as sewerage, roads and drainage works, deviating from initial plans submitted, or failing to comply with the requirements of relevant agencies etc. It is unfair to burden house buyers with the current practice of allowing developers to hand over vacant possession without getting the necessary certificate of fitness. In the circumstances, it would be prudent to amend the present provisions to extend the present period of delivery of the building by one to three months to enable the developer to get the necessary certificate of fitness. Further, delivery of vacant possession must be accompanied with the issuance of certificates of fitness so that the purchaser is able to occupy the premises with all the facilities and services present.

Malpractices in the housing industry

In the above discussion, we have noted the prevalence of certain kinds of malpractices, such as the charging of illegal fees, building units contrary to conditions imposed by local planning authorities or contrary to specifications in agreements with buyers and so on. There are other malpractices which are equally if not more serious that amount to the cheating of innocent consumers. Such cases include bogus housing developers and abandoned projects.

Bogus developers

This complaint used to be much more rampant in the 1980s. Perhaps because of greater supervision on the part of the Ministry of Housing and Local Government, such complaints appear to have declined. Nevertheless, the Consumers Association of Penang still comes across such complaints once in a while. Recently, several buyers in Kulim, Kedah complained about the 'developer' of a low-medium cost housing scheme in Taman Bayu which had collected deposits amounting to 10 per cent of the purchase price from consumers without signing any agreements.

Collecting payments prior to signing any sale and purchase agreement contravenes the Housing Developers Regulations. Checking with the Ministry of Housing and Local Government, we were told that the company had no developer's licence, thus violating the Housing Developers (Control and Licensing) Act 1966. We also found that the Kulim District Council had not approved plans for such a housing scheme. A report was lodged with the Ministry of Housing and Local Government and the police and four suspects have since been detained in relation to this matter.

Usually, in cases of such nature, delays by the authorities in taking action results in the bogus developer absconding with the windfall collected from unsuspecting house buyers. Clearly, such cases reflect the ignorance of house buyers about their legal rights in house purchase. The buyers are also ignorant on how they can verify if a developer is indeed licensed and if the scheme is an approved one. Such inadequacies must be rectified in the interests of consumers.

Abandoned projects

Ministry of Housing and Local Government figures show that in 1987 there were a total of 184 abandoned housing projects involving more than 30,000 houses. It was reported that house buyers had lost over

RM1.6 billion because of these abandoned projects.⁷ Since a high portion of this sum was obtained as bank loans, which still require servicing, it is estimated that affected buyers stood to lose another RM2 billion in interest payments to financial institutions. At the end of 1995, a total of 447 projects involving 87,056 units of houses with an estimated value of RM4.5 billion were abandoned in Peninsular Malaysia. Of the abandoned projects, 254 were revived.⁸

There are a number of reasons why projects are 'abandoned'. In some cases, the developer reaps profits through progress payments, then absconds with the money. In other instances, the developer collects the 10 per cent payment but the project is stalled because of financial problems, conflicts with contractors or problems with government agencies or lack of experience and management. Projects are also affected when progress payments from buyers are not used for the particular projects but are instead channelled to other purposes such as share speculation or given out as loans, usually to company directors. The company usually has to be liquidated when it becomes unable to settle debts.⁹

Bank Negara Malaysia (the Central Bank) launched the Abandoned Housing Projects Fund in June 1990 with an initial allocation of RM300 million to assist deserving housing developers to revive projects abandoned during the recession period. The size of the fund was raised to RM600 million in February 1991. In view of the rapid improvement in the country's overall economic performance, the fund was discontinued with effect from March 1992. Of the applications received before March 1992, a total of 82 projects were approved in 1995 involving 24,062 units of houses, with financing assistance amounting to RM383 million. Of this, 27.5 per cent or 6,628 units were low-cost houses.¹⁰

The Consumers Association of Penang continues to receive complaints about long waits for schemes to be revived, as can be seen in this case. Some 77 buyers of a low-cost housing scheme in Taman Bukit Riah in Pengkalan Hulu, Perak complained to the Consumers Association of Penang in 1995 that the project which was supposed to be ready in 1989 had not taken off the ground. The house buyers were largely from the Orang Asli community and were members of the then Forest Police Force. The sale and purchase agreements were signed in 1987. According to the Ministry of Housing and Local Government, the project had stalled since 1987 as the developer faced financial difficulties.

7. *The Sunday Star*, March 27, 1988

8. *Bank Negara Annual Report 1995*

9. Khor Kok Peng (1989), *Housing for the People*, p33.

10. Khor (1989), *op cit*.

In an effort to revive the project, Bank Negara Malaysia initially agreed to provide financial assistance from the Abandoned Housing Projects Fund to revive the scheme. An accounting firm was appointed to monitor the revival scheme. However, it found that the cost of rehabilitation had to be increased from RM1.6 million to RM2.3 million due to the geological condition of the land which was subject to serious erosion and landslides. The application for financial assistance from the fund was rejected. This matter remains unresolved.

There are several such cases of abandoned projects involving low-cost and medium-cost housing which have yet to be revived, despite purchasers having to wait almost 10 years or more since the signing of their sale and purchase agreements. The usual difficulty cited in reviving these projects is that the costs involved in doing so are much more than the original price. Hence, either the application for money from the Abandoned Housing Projects Fund is rejected, no one is interested in 'rescue' efforts, or purchasers are not agreeable to new conditions such as increasing purchase price. The Ministry of Housing and Local Government and other government agencies must take a closer look and review this matter which remains a source of concern for consumers.

Improvements to housing laws

Over the years, there has been definite improvements to the law, in particular the Housing Developers (Control and Licensing) Act 1966 and the Housing Developers (Control and Licensing) Regulations 1989, in an effort to better protect consumers. Some noteworthy recent developments include the following.

- Before a firm can be given a developer's licence, it must have an issued and paid-up capital in cash of not less than RM250,000 as stipulated in Section 6(1)(a) of the Housing Developers (Control and Licensing) Act 1966.
- The Housing Developers (Housing Development Account) Regulations 1991 has been in effect since August 1991. Under these Regulations, a licensed housing developer has to open and maintain a Housing Development Account with a bank or finance company for each housing development. The payments received by the developer from the sale of housing accommodation are required to be kept in this account. No withdrawals can be made except in accordance with the Regulations. The purpose is to ensure that the payments are used to construct the houses paid for and not for other purposes. This move is certainly a step in the right direction.

- The penalties for offences under the Act have also been increased. For instance, any housing developer who carries out development without a licence is guilty of an offence which is punishable with a fine of not less than RM10,000 and not more than RM100,000, or to an imprisonment for a term not exceeding five years, or both. Previously, the fine for such an offence could not exceed RM20,000 or an imprisonment of five years, or both (Section 18, 1966 Act).

It can be acknowledged that the above legislative efforts have resulted in greater consumer protection. However, there is still scope for further improvements in the Housing Developers (Control and Licensing) Act 1966 and the 1989 Regulations. In view of this, there is certainly a need by the Ministry of Housing and Local Government to review all the existing legal provisions on housing to ascertain if they have been effective in combating malpractices within the housing industry and in alleviating the grievances of the consumers. What is also needed by the Ministry of Housing and Local Government is greater supervision and enforcement of existing laws and regulations to ensure greater compliance by the industry, and not wait for consumer complaints to emerge before action is taken. A proactive approach is needed in an effort to improve the present plight of house buyers.

Quality of life

While the availability and affordability of housing remains the foremost concern of most consumers, particularly those from the lower income group, another major concern is the quality of housing and the surrounding environment. Are we building mere pigeon-holes with inhuman living conditions or are we concerned about building homes for people? What about the surrounding environment? Is it conducive and safe for human living? These are very important concerns for consumers.

Quality of housing

The quality of housing provided has been discussed, to some extent, in relation to the poor quality materials used and the poor workmanship. Apart from the quality of the workmanship, a recurrent concern is the issue of the design and size of premises and the nature of housing projects.

As United Nations Habitat II Conference secretary-general Dr Wally N'Dow said: 'Adequate shelter means much more than just having a roof over one's head. It also means privacy, adequate space and security, a place with which to thrive, the structural stability and durability of a dwelling with proper

lighting and ventilation, and with adequate infrastructure for sanitation and waste management. It is also important for the shelter to be located close to work and basic facilities – all this at an affordable cost.⁷

Much has been said about conventional high-rise buildings which look more like pigeon-holes and concrete jungles than places to call home. It has become apparent that such tall, grey buildings are often unsuitable homes. The cold brutality of the architecture makes the blocks feel bleak and comfortless. Alienation, loneliness and stress become common experiences. Cramped apartments make life particularly difficult for families with young children and the lack of private space outside and the distance from the ground have meant that children have nowhere to play.¹¹

In recent times, the Deputy Prime Minister has called on housing developers to pay attention to the quality of low-cost housing. He has emphasised that the quality and design of low and medium-cost houses are as important as their price. 'What we are now seeing is a need to ensure that we build quality homes for the poor. There must be quality homes for them', he said.¹²

If we are concerned about rising social ills in this country, then sufficient attention must also be given to the living environment as it is well known that poor living conditions also contribute to social ills. It is not that there are no alternatives in providing the right type of housing for large numbers of people. As architect Charles Correa advocates, there is much room for low-rise high density housing concepts in our cities. Such concepts have been implemented in cities like Bombay and there is much to learn from such ideas. In such projects, there is opportunity for the individual owner to design and expand the existing housing to suit his own needs, taking into account social, cultural and religious sentiments, and ensuring easy maintenance, affordability and so on.¹³ There is a lot of scope for improvement in this country in terms of improving the quality of housing, as urged by the Deputy Prime Minister. What remains is the task of translating this call into action.

Lack of open spaces

One of the most important aspects to improve the quality of the living environment is the provision of green lungs or open spaces for

11. Girardet, Herbert (1996), *The GAIA Atlas of Cities: New Directions for Sustainable Living*, p80.

12. *New Straits Times*, November 20, 1996

13. Correa, Charles (1985), *The New Landscape*, p51.

community enjoyment and for children to play in. Some local governments have guidelines that impose an obligation on the developers to make such provisions in their housing plans.

In Penang, for instance, the municipal council guidelines stipulate that the size of the open spaces for neighbourhood recreation should be two hectares for every 5,000 inhabitants or an area of 4 sq m for each resident. The facilities should include a children's playground and a playing field.

Yet, one developer side-stepped this requirement by building a roof-top garden! The developer had appealed to the Penang Appeals Board, established under the Town and Country Planning Act, 1976. The municipal council refused to accept the roof-garden atop a four-storey block as a substitute for or replacement of the community facilities. Appeals Board chairman Tan Sri Chang Min Tat had decided in favour of the developer holding that the roof garden '...was consistent with good planning principles. It provided the facilities for the actual occupants for whom they were intended'.

Commenting on this, many quarters thought the chairman may have been under the misconception that such open spaces are meant solely for the enjoyment of residents in the housing projects or flats. However, open spaces should be for all to enjoy and for the public at large.

What is heartening to note is that the Town and Country Planning Department maintains that open spaces are a 'must' even when developers have rooftop gardens within their projects. The department has expressly stated that 'rooftop gardens cannot be considered as an open space even when a project faces land constraint'.¹⁴

Surrounding environment

With the rapid pace of urbanisation and commercialisation within the towns and cities in the country, major concerns have emerged about the quality of life and the state of our surrounding environment. Discussions about sustainable cities, which have been taking place in international meetings, have yet to emerge in this country in a big way. In contrast, the deteriorating quality of life and of the environment are commonly acknowledged. In particular, worsening air and noise pollution have become an accepted norm in the cities. Of late, some serious environmental problems have emerged. Such problems have been either reported in the media or have come to our attention through complaints.

14. *The Star*, May 18, 1996

Flash floods

Flash floods have become a common and regular occurrence in some housing areas, following short spells of continuous rain. The most well known is the plight of the 30,000 residents in Taman Sri Muda in Shah Alam. Many residents have expressed their frustration with the flooding problem and have even considered legal action against the local authorities for the losses they have suffered. Residents in many housing estates in this country face a similar plight. Despite promises and flood mitigation plans, the frustrations of these affected people continue.

Cutting of hills and hill-slopes

Any discussion of hill or hill-slope cutting immediately brings to mind the Highland Towers tragedy in Ulu Klang, Selangor in which many residents lost their lives and suffered severe property damage. The collapse of the condominium block is apparently blamed on the massive development projects going on around it and the cutting of surrounding hill-slopes. The fateful incident catapulted the nation's attention on the safety of buildings constructed on hills or hill-slopes. For a while, everyone was concerned and there was a nation-wide freeze on all hill-slope projects. However, in a matter of a few weeks, the fear of the Highland Towers' tragedy was forgotten and business carried on as usual.

For those living in the vicinity of hill-slope or hill-cutting activities for development works, the spectre of Highland Towers continues to pose a threat. Such is the case for thousands of residents of flats in Paya Terubong in Penang. The Paya Terubong hills have undergone massive cutting for major housing projects. Two projects in particular have caused much public outcry and both are constructed on hill-slopes of steep terrain. Residents of apartments at the foothill of the projects have complained about mudflows, soil erosion and overflow of drains after heavy downpours. They live in fear every time it rains and pray that the fate of Highland Towers will not happen to them.

Prompted by the concerns expressed by the residents and public-interest groups, the Penang state government has directed that an overall environmental impact study be done of the Paya Terubong valley before any further development is carried out on the hill-slopes. Although this is better late than never, we certainly hope that this action is not a case of too little too late!

Related to this is another issue of major concern to consumers. This is the question of who will be liable for the loss of lives and damage to properties when houses or apartments collapse due to activities being carried out in the surrounding environment, such as apparently happened

in the Highland Towers tragedy. Gauging from experience, tremendous financial resources and time will have to be expended by the victims to prove their case in court by engaging lawyers and experts. The onus on the part of the victims will indeed be high. Many may not even have the resources to start, let alone sustain, a long-drawn court battle!

Pollution

When buyers choose to buy housing units, they are usually unfamiliar with the surrounding environment and do not know the kind of environmental problems existing in the area. Problems peculiar to the area will only be experienced when they move into their homes and start living in the community. When there are factories, quarries or livestock-rearing activities in their neighbourhood, residents are subjected to noise, dust, unbearable stench, and other such nuisances.

In a densely-populated housing area in Paya Terubong, Penang, residents were taken aback when they began to experience the foul stench of rubber being processed in a nearby factory. When the smells became intolerable, the residents formed an action committee to address the problem, raising it to the attention of the authorities concerned and the factory management. To their dismay, they have realised there is no law in this country defining what an acceptable level of smell is. The residents subsequently pressured the state government to relocate the factory or to enforce measures within the factory to abate the smell. Since the factory had been sited in the area long before the residents moved in and housing estates were constructed, the option to relocate the factory was a difficult one. The company has decided to undertake measures to minimise the smell but we understand that this has not been completely effective. However, the residents have raised a fundamental issue: Why did the local authority approve the construction of the housing project next to the factory? Clearly, this was a case of incompatible land-use. Similar questions arise for housing estates sited next to quarries and poultry or pig-rearing sites where residents are unable to enjoy peace, calm and fresh air.

There are also numerous complaints about certain types of businesses being located in residential areas, such as automobile repair workshops, hair-salons, video centres, etc. Most of these businesses impinge on the right of residents to peaceful use and enjoyment of their premises. In most cases, the lack of enforcement on the part of the local authority by not cracking down on these businesses, when there do not have operating licenses, encourage their existence. It would be more appropriate to site these businesses away from residential areas.

Damage resulting from adjoining developments

In recent months, the fate of hundreds of residents living around the Prangin Mall project in Penang has caught national attention. The eight-storey Prangin Mall project involved very major excavation works for several levels of underground car parks. It began in September 1996, and not long after, serious cracks appeared on the walls, roof beams and pillars of houses and buildings in the vicinity. The safety of houses, buildings and roads in the vicinity, including the Komtar tower, became an issue of major concern. The developer was issued with a stop-work order and engineering consultants were called in by the state government to assess and advise on the situation. The problems have not been resolved as yet.

What this case highlights is the need for comprehensive earthworks plans to be submitted to the local authority before building plans are approved, so that the impact of such works on adjoining properties is taken into account. The existing laws, such as the Street, Drainage and Building Act 1974 and the Penang Earthworks By-laws are more than adequate to require developers of projects to submit details of their works and for an assessment of the impact of such works on adjoining properties.

What appears to be lacking is close inspection and scrutiny of such earthworks plans by the local authority. Unless such careful and thorough scrutiny is employed, residents and owners of adjoining properties of construction works will continue to face the likelihood of damage to their houses.

Comprehensive and integrated planning and co-ordination

In the above instances, what is apparent is a lack of comprehensive and integrated town planning and co-ordination between the various authorities. The Town and Country Planning Act 1976 was enacted to specifically ensure more integrated and co-ordinated planning and land-use management, zoning etc. The structure plans and the various local plans were supposed to be tools for better planning. Although structure plans have been adopted in many areas, the detailed local plans have not kept pace and hence ad hoc planning and development approval continues. Also, the value of integrating environmental concerns into planning is often not appreciated. Where environmental impact assessments are considered to be necessary as in the case of major projects on hills and hill-slopes, they are seen as a hindrance to development, rather than being regarded as a fundamental in ensuring protection of the environment.

Clearly, there is scope for tremendous improvement if we value the quality of life and the environment.

Role of consumer organisations

The Consumers Association of Penang has actively assisted consumers faced with problems related to the housing industry. The association has a Complaints Department that receives complaints from all parts of the country. Complaints are investigated and letters forwarded to the housing developer concerned and to the Ministry of Housing and Local Government or other relevant agencies. In cases where large numbers of consumers are affected, efforts are also made to group them together to form action committees so that they have a stronger voice in dealing with the problem at hand. In the event that negotiations and representations do not bear fruit, legal action may be pursued. Memorandums are also submitted to the Ministry when legal reform and policy changes are required.

Other consumer organisations dealing with such problems include the Federation of Consumer Organisations (Fomca). It is understood that Fomca is currently undertaking an exercise to gather the kinds of complaints related to the housing industry which are being handled by its affiliated organisations.

What consumers can do

Given the wide range of problems that consumers face in relation to housing, there is much to be done to improve the current state of affairs.

Firstly, it is critical to know one's rights as a house buyer. Armed with an adequate knowledge of the law, a consumer can protect himself against prevailing malpractices. To learn about one's rights as a house buyer, the Consumers Association of Penang has published several books providing tips on what to look out for. Seeking the assistance of consumer organisations is also a good idea.

The Ministry of Housing and Local Government should also play a role in producing simple pamphlets in all languages on the rights of house buyers, emulating the example set by the Human Resources Ministry. Housing and Local Government Minister Datuk Dr Ting Chew Peh recently announced plans to publish a guidebook for developers on housing and environmental laws to facilitate implementation and enforcement.¹⁵ Likewise, a guidebook for prospective house buyers will help the Ministry in checking abuses and malpractices within the industry.

15. *The Star*, January 5, 1996.

Besides these efforts, the Ministry of Housing and Local Government should regularly publicise the names of errant developers who have been blacklisted. This will help consumers to be on guard and act as a deterrent to other developers. This is a practice already followed by the Bar Council which regularly informs its members about lawyers who have committed grave misconduct. This information is widely circulated and is available to the public too. If this can be done for lawyers, there is no reason why errant developers should not be similarly disciplined.

Secondly, when faced with specific problems such as those encountered in our cases, consumers who group together to voice their complaints are adopting a crucial and critical step in resolving their issues. Apart from lodging complaints with the Ministry of Housing and Local Government, complaint letters should also be addressed to consumer organisations to seek their assistance in the matter. In cases where large numbers of buyers are affected, the best course of action is to work together to fight for their common cause. It is often advisable for these residents to form an action committee with other buyers as their bargaining power is stronger as a group than as an individual. This also helps to ensure that any specific problems the buyers have will be dealt with more effectively and speedily. Acting as a group, the individual buyers would save on legal fees if the matter were to be taken to court. Another advantage is that actions affecting larger numbers are more likely to attract media attention and this would help force the developer to come to a quicker settlement in order to avoid any negative publicity.

As can be seen in the cases cited, consumers in some instances have fought and won through determination and perseverance. Lodging complaints with consumer organisations also gives an indication of the types of problems that continue to persist despite the existence of laws. What this then shows is either that the law itself is not being enforced or that the law is inadequate and improvements are necessary. Prior to the introduction of the standard sale and purchase agreement, house buyers were at the mercy of developers with the agreement tending towards benefiting the developers only. The introduction of the standard agreement was the result of pressure from consumers and consumer organisations.

While it is important for consumers to be vigilant, what is even more necessary is a proactive and effective Ministry of Housing and Local Government. If existing laws are not effectively enforced, the consumer is left unprotected. Where the law is inadequate to cover

certain malpractices, then it is incumbent on the Ministry to take measures to plug these loopholes. It is our hope that the present state of affairs with regard to housing in this country will improve for the better in the interests of consumers.

Summary of issues and recommendations

In the light of the discussion here, these are some of the issues and recommendations to be considered in this matter.

- A primary issue for consumers is that of the availability of cheap and affordable housing. Much more needs to be done in this regard, both by the government and the housing industry, to ensure that the needs of lower-income consumers are met.
- Appropriate measures must be undertaken by the government to ensure that speculation in the property market is curbed.
- The government should also continue to provide timely and regular information about house prices. The national House Price Index is a step in the right direction and ought to be improved so as to make available proper and comprehensive market information about the housing industry.
- Consumers continue to face numerous problems and malpractices within the housing industry. Despite the existence and improvements to the Housing Developers (Control and Licensing) Act 1966 and related regulations, the widespread prevalence of housing complaints necessitates a review of the existing laws and enforcement measures by the Ministry of Housing and Local Government and related agencies, to effectively prevent such problems and malpractices.
- In an effort to educate consumers on their legal rights, the Ministry of Housing and Local Government should publish a guidebook for prospective house buyers to help prevent them from falling prey to abuses and malpractices within the industry.
- The Ministry of Housing and Local Government should regularly publicise, prominently, the names of errant developers who have been blacklisted.
- Insufficient attention is currently given to concerns relating to the quality of life, including the quality of housing, lack of open spaces, the quality of the surrounding environment, and environmental problems such as flash floods, hill cutting and public safety, pollution and the effects of adjoining developments.

- What is apparent is a lack of comprehensive and integrated town planning and co-ordination between the various government authorities. Much needs to be done in improving the quality of life of consumers and the surrounding environment.

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Appendix 1: Professional fees and disbursements

Professional fees

When buying a housing unit (house or flat) the consumer needs to complete two procedures – to transfer ownership of the unit from the seller to the buyer, and to mortgage the property to secure a housing loan. Legal fees are charged in carrying out these transactions. The amount of legal fees is fixed.

(a) Transfer fee

The amount depends on the price of the housing unit (whether it is a completed unit or is in the process of being built). For a completed housing unit or one bought from a developer costing more than RM100,000, the lawyer’s fee for the transfer is fixed under the Solicitors’ Remuneration Order 1991 as shown in the following table. However, note that the minimum charged is RM200.

Solicitors' Remuneration Order

Amount of transaction	Rate charged by lawyer
1. For the first RM100,000	1 per cent
2. For the next RM4,900,000	0.5 per cent
3. For the next RM5,000,000	0.25 per cent
4. Where the consideration/adjudicated value (whichever is higher) is in excess of RM10,000,000	Negotiable on the excess but shall not exceed 0.25 per cent

Source: Solicitors’ Remuneration Order 1980

In the case of an uncompleted housing unit bought from a developer, using the standard Sale and Purchase Agreement under the Housing Developers (Control and Licensing) Regulations 1989, there are three categories depending on the price of the unit:

- Where the value of the property is above RM100,000, the rates charged by the lawyer are shown in the above table.
- Where the value of the unit is in excess of RM30,000 but not more than RM100,000 the rate is as shown above, at a discount of 25 per cent of one per cent.
- Where the value of the property is below RM30,000 the rate is fixed at RM120.

Where the property has no qualified title yet (e.g. flat) then a Deed of Assignment has to be drawn up, assigning the rights of the seller to the buyer. Only when the property has been issued a title can it be transferred to the new owner.

(b) Charge fees/agreement fees

When the buyer takes a housing loan from a financial institution and his property has been issued a qualifying title, then the financial institution will insist that the property be charged to it. A charge is a form of security for the bank, for it gives the bank the right to sell off the property to repay the loan should the buyer default on his loan payments. The rates that the lawyer may charge are the same as those for transferring the property. Where the property bought has no qualifying title yet (like most apartments) then the lawyer will have to draw up a loan agreement-cum-assignment. This will transfer the rights of the owner of the property to the bank, thus protecting the bank's interest.

(c) Caveat

The lawyer will enter a caveat on behalf of the buyer or the buyer's bank. A caveat is a note in the land title stating that the caveator (the person entering the caveat) has an interest in the land. By entering a caveat, the buyer's bank is protecting its interest, for the seller will not be able to sell the property to another person while the property is being transferred to the buyer's name. The caveat will later be removed and the buyer's name will be entered into the land title. For his services, the lawyer can charge RM150 for entering a caveat and RM100 for removing the caveat.

Service charge

This is not part of the lawyer's professional fees. The tax collected has to be forwarded to the Department of Inland Revenue.

Disbursements

The following payments come under this section of the bill.

(a) Land Office fees

The fees imposed by the Land Office may vary from state to state. These are the types of fees a buyer needs to pay and the amount required in Penang.

- | | |
|--|-------|
| (i) Entry of a caveat | RM100 |
| (ii) Withdrawal of a caveat | RM40 |
| (iii) Noting of power of attorney
(paid when the bank's attorney signs on the charge or caveat) | RM2 |
| (iv) Registration of transfer (per title) | |
| Land valued up to RM50,000 | RM50 |
| Land valued above RM50,000 to RM100,000 | RM100 |
| Land valued above RM100,000 to RM200,000 | RM200 |
| Land valued above RM200,000 to RM300,000 | RM300 |
| Land valued above RM300,000 to RM400,000 | RM400 |

(The fee to be paid continues to increase by RM100 for every RM100,000 increase in the value of the land. For land valued above RM1,000,000 the amount charged is 0.2 per cent of the actual valuation calculated to the nearest ringgit above RM1,000,000.)

- (v) Registration of charges RM80
- (vi) Private search RM20

(A title search is necessary because it will, among other things reveal the real owner of the property, whether the government will be acquiring a part or whole of the land, whether there are restrictions on ownership of the property and also whether the property is free of any encumbrances (eg charges). It will also confirm whether the title is leasehold or freehold

If a leasehold (where you own it only for a limited period) you would be interested to know the period that remains before the lease runs out. Usually two searches are done as it may be three months later before the property can be charged to the bank. The second search will ensure that within that period no encumbrances have been entered by others.)

(b) Stamp Office fees

The documents to be stamped in a land transaction are as follows:

- (i) Agreement of Sale (per copy) RM3.00
- (ii) Charge (for properties with qualified title) Amount charged =
or Loan Agreement (properties with no loan x 0.5 + RM10
qualified title) (for every stamped copy)

(iii) Transfer of land title

<u>Value of transfer</u>	<u>Rate</u>
Up to RM100,000 or part thereof	RM1 per RM100
In excess of RM100,000 but not exceeding RM500,000	RM2 per RM100 or part thereof of that access
In excess of RM500,000 but not exceeding RM2 million	RM3 per RM100 or part thereof of that excess
In excess of RM2 million	RM4 per RM100 or part thereof of that excess

- (iv) Adjudication fee (to obtain official valuation of property) RM1

For properties without title deeds (like most flats) other documents that also need to be stamped are:

- | | |
|--|------|
| (i) Deed of assignment (per copy) | RM10 |
| (ii) Power of attorney clause (per copy) | RM10 |

(The power of attorney is a requirement by the bank to protect its interest. When the borrower gives the bank the power of attorney it is appointing the bank to act on his behalf. The bank wants to ensure that there is no problem in selling the property when the borrower defaults.)

(c) Statutory declaration fees

To apply for a caveat on a piece of property a statutory declaration is also required. The fee paid to the Commissioner of Oaths is RM4 for each statutory declaration.

(d) Bankruptcy search fees

The bank will only lend to a person who is not a bankrupt. A bankruptcy search must be carried out on the borrower or borrowers. The cost is RM5 per search.

(e) Filing fee on power of attorney

The power of attorney has to be registered with the High Court. The amount of fees varies with the length of the power of attorney.

(f) Miscellaneous charges

This item includes reimbursements for postage stamps, telephone calls, etc. The maximum that can be charged by the lawyer is RM50.

Examples

Here are examples of how the costs can differ for the purchase of a property with and without a qualified title.

Case 1

Assumptions:

- (a) RM150,000 house with qualifying title.
- (b) House is to be registered in the names of both husband and wife.
- (c) Same lawyer handles the transfer of property as well as the loan application of RM100,000 from a bank.

	RM	RM
Professional fees for the preparation of:		
Agreement of Sale & Transfer (RM150,000)	1,250	
Charge of property (RM100,000)	1,000	
Caveat	150	
Withdrawal of caveat	100	
		2,500
5 per cent service charge		125
Disbursements		
Stamp duty on Agreement of Sale	12	
Stamp duty on Charge	530	
Stamp duty on Transfer of Title (subject to govt valuation)	2,000	
Adjudication	1	
Registration fee for Transfer (subject to govt valuation)	200	
Registration fee for caveat	100	
Registration fee for withdrawal of caveat	40	
Registration of charge	80	
Noting fee for Power of Attorney	6	
Search fees	40	
Bankruptcy search	10	
Affirmation fee for Statutory Declaration	8	
Miscellaneous	50	
		3,077
TOTAL		5,702

Case 2**Assumptions:**

- (a) RM90,000 uncompleted flat with no title, bought from a developer.
- (b) Flat is to be registered in the names of both husband and wife.
- (c) Same lawyer handles the transfer of property as well as the loan application of RM60,000 from a bank.

	RM	RM
Professional fees for the preparation of:		
Sale Agreement & Transfer of Property (Deed of Assignment)	900	
Loan Agreement cum Assignment	600	
Less 25 per cent	(375)	
Caveat	150	
Withdrawal of caveat	100	
		1,375.00
5 per cent service tax		68.75
Disbursements		
Stamp duty on Agreement of Sale	12	
Stamp duty on Loan Agreement (3 copies)	330	
Stamp duty on Loan's Agreement	40	
Stamp duty on Power of Attorney	40	
Stamp duty on Deed of Assignment (subject to govt valuation)	900	
Adjudication fee	1	
Noting fee for Power of Attorney	4	
Registration fee for caveat	100	
Registration fee for withdrawal of caveat	40	
Search fees	40	
Bankruptcy search	10	
Affirmation fee for Statutory Declaration	8	
Filing fee for Power of Attorney	50	
Miscellaneous	50	
		1,625.00
Total		3068.75

Productivity in Housing and International Experiences I

Howard Choo

Introduction

Housing for the masses is a policy domain that requires active and judicious assessment by governments. Population growth and household formation constantly present challenges to governments in tackling the problem of shelter. The discussion in this chapter focuses on domestic housing productivity and the international experience. Attempts are made to distil relevant lessons from efforts of other nations. Although not all efforts culminate in success stories, valuable lessons can still be learnt from these experiences. An in-depth survey of the housing situation in the international context is beyond the scope of this chapter. However, within the regional context, the experiences of two city-states which have shown remarkable achievements are discussed in detail to provide a frame of reference. The haphazard housing situation in metropolitan Bangkok is also presented in contrast with the orderly housing configuration of Hong Kong and Singapore.

The bulk of population growth in Asia is concentrated in its cities. In 1970, Asia was home to 503 million urban dwellers. By 1994, this had grown to 1.2 billion. By the year 2025, the United Nations has forecast a popula-

tion of 2.7 billion in Asia, concentrated in urban dwellings and accounting for half of the world’s urban dwellers. The provision of housing in urban areas, particularly large cities, has to take centre-stage.

Available statistics support the argument that housing woes are more widespread in cities. Firstly, data collected in 1990 has shown that over 35 per cent of Asia’s urban population resided in cities with over a million inhabitants. Secondly, over one-fifth are living in slums and squatter settlements. Thirdly, population growth in these areas exceeds urban population by twice the rate. Fourthly, a huge proportion of the population of some Asian cities are still living below the poverty line, for example, Manila (35 per cent), Mumbai (45 per cent) and Calcutta (60 per cent).

On the home front, Malaysia’s urban population is also on the increase. The pace of urbanisation has accelerated considerably since the 1980s as shown in Table 1.

Under the Sixth Malaysia Plan (1991-95), the government concentrated on intensity in housing development to ensure that all Malaysians have access to adequate and affordable housing. Notwithstanding the impressive success of achieving 113 per cent of the target of 573,000 units of houses, the distribution of houses built according to price categories did not reflect the real housing needs pattern of a substantial portion of households in the poor, low and low medium income groups.

The income-price matrix in Table 2 shows the income groups compared with price category of housing units. This is to provide a framework for comparing the supply of houses with the respective income groups.

The poor and low income group category constitutes a population group in urban Kuala Lumpur whose housing needs have to be closely

Table 1 : Percentage of urban dwellers in Malaysia

Year	Total population (million)	No of urban dwellers (million)	Percentage of urban dwellers
1970	10.4 million	2.78 million	26.8 %
1981	13.1 million	4.48 million	34.2 %
1991	17.6 million	8.85 million	50.3 %
2020* (F)	32.0 million	25.6 million	80.0 %

Source: Ministry of Housing and Local Government, Malaysia

Note: * 2020 is the target date set for Malaysia to achieve fully developed nation status

Table 2: Income - price matrix

Income groups	Monthly income	Housing type	Cost of housing unit
Poor	< RM 500	Housing for the poor	< RM25,000
Low	RM501 - RM750	Low-cost	≤ RM25,000
Lower medium	RM751 - RM2,000	Low medium cost	RM25,001 - RM50,000
Medium	RM2,001 - RM3,000	High medium cost	RM50,001 - RM100,000
High	> RM3,000	High	≥ RM100,001

Source: Ministry of Housing and Local Government, Malaysia

monitored. If not checked, this may proliferate into huge city slums and squatters, as experienced in the Bangkok Metropolitan Area.

A 1992 survey by Universiti Sains Malaysia shows that there are no less than 240 squatter settlements in the Federal Territory of Kuala Lumpur alone. As determined in the 1990 Census, Kuala Lumpur had a population of about 1,145,075 and this was projected to reach 2.2 million by the year 2000. In Kuala Lumpur alone the projected demand for new houses over the 1996-2000 period was 92,600 units as compared to 76,500 units from 1991-95.

To prepare for the rapid economic development and urbanisation, the Ministry of Housing and Local Government recently announced the possible formation of at least five new municipalities to provide a more effective urban administration. Municipality status is accorded to an area with a population of more than 100,000 and where the district council generates at least RM5 million annual revenue. The Ministry also announced the possible addition of one more city (Kota Kinabalu) by the year 2000. Currently Malaysia has five cities – Kuala Lumpur, Ipoh, Johor Bahru, Kuching Utama and Kuching Selatan – and 25 municipalities. There is ample evidence that there will be greater urbanisation in Malaysia which will challenge the government's faculty in the provision of adequate and affordable shelters. The government's plan to launch the Multimedia Super Corridor stretching from the Kuala Lumpur City Centre via the new federal government administrative centre at Putrajaya to the new international airport at Sepang will see Selangor as the state with the most industrial activity.

Selangor is, economically, the strongest state in Malaysia with a 10.8 per cent GDP growth with the manufacturing sector accounting for 58.7 per cent of the state's GDP. Inevitably the above activities will see a greater influx of urban migration to areas in the Klang Valley. In terms of private

sector development, the Guthrie Group recently announced the development of the Guthrie corridor, a massive area covering 4,705 hectares (11,628 acres) to cater for the expected rise in demand for housing and property in the Klang Valley. The Guthrie corridor extends from Bukit Jelutong in Shah Alam to Rawang.

Against this background of the need to meet demand for housing caused by a more pronounced rate of urbanisation, it is appropriate to look at the achievements elsewhere, particularly city-states, in assessing international experiences. Two examples highlighted are Hong Kong and Singapore.

Productivity in Malaysia's housing sector

Demand for housing is partly a function of the increase in households resulting from population growth. This is in turn a function of social patterns affecting the housing needs of existing families. Therefore, productivity in housing has to be viewed as the industry's ability to produce housing units to meet demand in a timely manner, at an affordable cost, with a well-planned living environment of acceptable quality and supported by easy access to public transportation and communication channels. While there is no universal definition of housing productivity, the terminology itself could be approached from two standards.

A basic standard measures productivity and efficiency as units of time, cost, output and quality. A secondary standard covers other intangible attributes such as environmental impact, aesthetic value, overall maintenance, ancillary public services such as community halls, public transportation, sewerage and drainage considerations, construction methods and technology, a fair system of allocation and distribution to the needy and, last but not least, an optimum planning mix. The ideal measure of productivity and efficiency should be a combination of the two standards.

In discussing international experiences, some of these factors and their influence on urban planning are highlighted as well as the pace and policies of other nations in managing their housing sector.

How have we fared so far?

Generally, the Malaysian housing sector can be described as a dynamic sector. Since the economic recovery in the late 1980s, the sector has remained vibrant due to rising disposable income, a growing population base and a trend towards property ownership as a hedge against inflation.

In the Sixth Malaysia Plan, the total housing need was projected at 602,723 units. However, the target was set at a lower 573,000 units of which

the private sector contribution was targeted at 399,000 units or 69.6 per cent with the balance of 174,000 units from the public sector. The actual number of houses completed and brought into the market was an impressive 647,460 units, surpassing the target by 13 per cent. The private sector was apparently more efficient in housing production, exceeding its target of 399,000 units by 163,918 units or 41.1 per cent. On the other hand, public sector housing failed to achieve its target of 174,000 units by a shortfall of 51.4 per cent or approximately 89,500 units. In this context private sector developers played the key role in the provision of housing during the Sixth Malaysia Plan period.

However, private developers did not meet the real housing needs of the low and low-medium income segments of the population. Taking urban Kuala Lumpur as an example, there is a significant level of squatter population in the city scattered over 240 settlements. Most of these squatter settlements are located on unused state land along roads, riverbanks and railway tracks, and on public and private disused mining land. Some settlements are located within urban limits while others can be considered suburban although still closely linked to urban Kuala Lumpur. Contributory factors for the increase in squatter settlements are urban migration and increase due to childbirth by existing squatters. Job opportunities, shopping convenience, entertainment and the city lifestyle are strong pull factors instigating the rural-urban drift. Those with marginal incomes usually choose to stay in squatter settlements. Table 3 shows the extent of the squatter population in urban Kuala Lumpur between 1970 and 1992.

Against a total population of 1.1 million for Kuala Lumpur, in 1992 the number of squatters represented 20 per cent of the urban population. Table 4

Table 3 : Estimates of squatter population in Kuala Lumpur

Year	No of squatter households	No of squatters
1970	20,674	103,370
1976	29,308	175,360
1978	40,954	243,154
1980	36,502	233,109
1982	34,600	220,055
1992	37,804	225,689

Source: Kuala Lumpur City Hall and Universiti Sains Malaysia Study, 1993

Table 4: Distribution of squatter settlements

Area	No of squatter settlements	Percentage
Kepong	31	12.2
Batu	39	15.3
Titiwangsa	43	16.9
Bukit Bintang	23	9.0
Sungei Besi	49	19.2
Seputih	33	12.9
Lembah Pantai	37	14.5
TOTAL	255	100.0

Source: Kuala Lumpur City Hall and Universiti Sains Malaysia Study, 1993

shows the distribution of squatter settlements in Kuala Lumpur. Squatter settlements have poor sanitation and hygiene. There is no proper drainage for the discharge of waste water and rubbish is dumped indiscriminately. Almost 50 per cent of the squatter population are involved in business and manufacturing activities, generally unlicensed. Public amenities such as roads, public telephone, schools and playgrounds are lacking. Squatter settlements are usually potential fire traps since dwellings are congested and constructed of wood and other easily combustible materials. There is no proper planning in the layout of the settlements.

The squatter population can be classified into poor, low and low medium income groups, as supported by findings of a Universiti Sains Malaysia survey in 1992. Between 17.3 per cent and 27.9 per cent of Kuala Lumpur's squatter population of 225,689 are in the poor income category while almost 54.3 per cent are below the low medium income group. Matching this against the income-price matrix, it would be reasonable to expect the proportion of housing mix built in urban KL to reflect the affordability level of this segment of the population. However, housing statistics proved otherwise. From 1991-95, the number of private housing marketed totalled 53,968 units, of which only 11,188 are low-cost houses and 5,347 of the low medium-cost type. This is a marked contrast to the high medium-cost and high-cost categories of 19,695 and 17,738 units respectively. The public sector units were even less with 288 low medium-cost units, none in the low-cost category, while the rest were in the high medium and above category. The total output by the public sector was 5,974 units.

Table 5: Matrix of housing output in Kuala Lumpur against estimated demand for squatter housing, 1991-95

Developer	Cost (RM)	≤ 25,000	25,001-50,000	50,001-100,000	≥ 100,000	Total
		Low-cost	Low-medium cost	High-medium cost	High-cost	
Private sector units		11,188	5,347	19,695	17,738	53,968
Public sector units		0	288	5,157	529	5,974
Total units		16,823		24,852	18,267	59,942
Squatter units to be resettled		22,282				40,591

Several conclusions can be drawn from this analysis, which is tabulated as a matrix of housing output in Kuala Lumpur against the estimated demand for housing by squatters (see Table 5).

- In terms of price breakdown, low-cost and low medium-cost houses are insufficient to meet the urban housing needs for the resettlement of squatters.
- The distribution of houses built does not reflect the underlying real needs of the urban poor, the urban low income and urban low medium income groups.
- The private sector was better able to satisfy the productivity criteria of production output and time.

Housing and cost considerations

The three major cost elements in housing development are construction, infrastructure and land. A study by the Research and Development Division of the National Housing Department has established that construction costs take up 54.5 per cent of total costs, infrastructure costs another 18 per cent and land costs, depending on location, add another 14 per cent, with the balance being financing and other ancillary costs.

Under the Seventh Malaysia Plan (1996-2000), the government has spelt out various cost-reduction measures to aid the local housing industry. In terms of construction and land costs, solutions will take the form of new designs to optimise land use through increased density. This is achieved through the adoption of new construction technology and the greater use of domestic building materials as well as increasing land plot utilisation

from the current 26 units to 41 units per hectare for low-cost housing. To ensure that infrastructure costs are not excessive, the government will provide grants to cover such costs.

Another form of cost reduction is through government subsidies to enable those in the relevant income groups to buy their own houses. These subsidies are in the form of setting a ceiling on selling price, special discounts for Bumiputeras, specifying the type of materials used in construction and design specifications, and regulating financing costs of loan providers. Another effort made on a macro level to control costs is to closely monitor the private housing market and, where necessary, introduce measures to curb speculation and control property prices through direct intervention.

International experiences

The challenge in housing the nation is to maintain a balance between the demand and supply of housing, and between cost and affordability, while creating the elements that will allow communities to live together in a socially and environmentally sustainable landscape. The level of housing supply and demand is determined by a country's socio-economic conditions and the government's housing policies.

Housing supply generally comes from two sources: Firstly, houses provided by the government under public housing development programmes and secondly, from private sector development. Demand is determined by the increase in households resulting from population growth, income level, economic conditions and price level of properties. In this context housing demand refers to the requirement of adequate housing which arises from marriages, divorces, splitting of existing households, new immigrants, rural-urban migration and clearance of temporary housing areas (particularly slums and squatters).

International experiences highlighted focus on Hong Kong and Singapore because of their remarkable and noteworthy successes in public housing programmes. Just three decades ago, the housing conditions in these two countries were poor and of low environmental quality. Provision of quality living was then the domain of the private sector. Due to natural disasters, the governments were pushed into providing housing for the masses. As examples, we look at how Hong Kong resettled its population and developed housing projects to accommodate six million people within a land area of 1,078 sq km and how Singapore housed its three million population on 648 sq km of land. In contrast we look at Thailand, more specifically the Bangkok Metropolitan Area which has an urban population of eight million with over 1.3 million people (about 16 per cent) living in slums and squatter conditions.

From these examples, a striking feature that distinguishes the socialist housing development from free market interplay to meet housing needs is the degree of governmental participation in taking upon itself the role of being a housing provider. Ultimately this is reflected by conspicuous differences in housing prices, building quality, infrastructure, and affordability.

Hong Kong

Housing is, without doubt, one of Hong Kong's great success stories. In a matter of decades, Hong Kong has transformed its once inadequate and often appalling accommodation (associated with cubicle living), to one in which over half of its population of six million is decently housed. Hong Kong's population growth is projected at around 1.3 to 2.0 per cent per annum up to the year 2011. Demographic factors affecting Hong Kong's housing needs are its population growth and its household formation rates. Its population growth has increased at a faster-than-expected 2.5 per cent to an estimated 6.311 million in mid 1996. The decrease in average household size has contributed to a faster pace of household formation. From 1991-96 there was a surge in net immigration into Hong Kong caused by expatriate workers, immigrants from China as well as emigrants returning from overseas. During this period the number of households increased by 273,338 to 1.853 million.

Hong Kong has over the past few decades successfully converted a quarter of its developed land into private residential areas housing about 1.85 million households with the balance in public housing. From 1986-96, the private sector produced an average 31,000 units per year with the public sector contributing another 41,000 units per year. Over the next five to six years, the private sector is projected to supply, on average, 32,500 units per year against private housing needs of 33,000 units per annum. Demand for housing will remain unabated as the population trend looks set to accelerate after July 1997. Hong Kong's population is projected to reach around 7.5 million to 8.1 million by the year 2011.

What has triggered the evolution of housing competence in Hong Kong and what were its critical success factors? What could Malaysia learn from Hong Kong's experience to manage its urban housing needs?

Historical background and overview

Long before the 1940s, the housing situation in Hong Kong was of great concern. The damage subsequently caused by the Second World War, coupled with the high influx of refugees from China, accentuated the problem.

However, public housing then was not important to the government – not until 1953 when a fire destroyed the Shek Kip Mei squatter settlement, making 50,000 people homeless overnight. This event triggered the necessity for public housing and the Hong Kong government responded by launching an urgent programme to resettle the victims. In 1954, the Hong Kong Housing Authority (HKHA) was formed with an initial government grant of HK\$50 million to provide an orderly development of public housing. By 1964, over 240 ‘resettlement’ blocks were completed which accommodated about 500,000 people.

Under the Housing Ordinance, a reconstituted Housing Authority was formed on April 1, 1973. The Housing Authority is now a statutory body, responsible for planning, construction, operation, management and co-ordination of all aspects of public housing and associated amenities. The Housing Authority’s policies are implemented through its executive arm, the Housing Department. The major role of the Housing Department is to build public rental and ‘Home Ownership Scheme’ flats. The Housing Department has built 800,000 rental flats and 220,000 home ownership flats, and provided permanent homes for over half of the Hong Kong population.

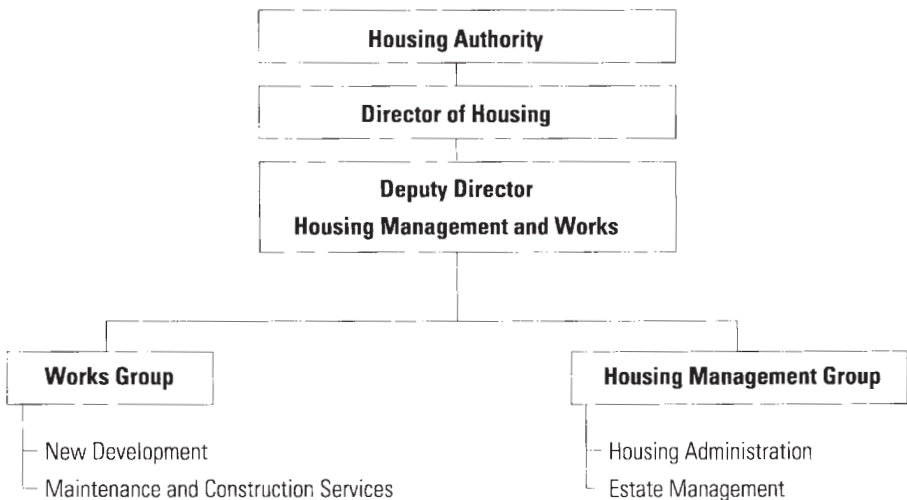
From the 1970s onwards, the Hong Kong government embarked on a massive public housing programme. At the same time various forms of housing subsidies were introduced to promote home ownership. These schemes include the ‘Home Ownership Scheme’ in 1978, the ‘Private Sector Participation Scheme’ in 1978, the ‘Home Purchase Loan Scheme’ in 1988 and the ‘Sandwich Class Housing Scheme’ in 1993. Added to the public sector efforts, the private initiatives made a significant contribution in providing homes for those who could afford more expensive housing. In the past five years, the annual housing production in Hong Kong was about 71,000 units per annum, of which 55 per cent were public housing flats.

By March 1995, with a stock of 657,324 rental units, the Housing Authority has become the largest landlord in the world, taking care of over 50 per cent of the housing needs of Hong Kong’s six million population. It is responsible for the management and maintenance of all public rented housing in Hong Kong.

Besides the Housing Authority, the Hong Kong Housing Society formed in 1948 also provides low-cost housing for people living in overcrowded and unsatisfactory conditions.

Hong Kong Housing Authority organisation structure

The executive arm of the Hong Kong Housing Authority is the Housing Department. The Director of Housing, who is the chief executive officer of the authority, is responsible for policy implementation. The organisational set up of the Housing Authority is set out in Chart 1.

Chart 1: Hong Kong Housing Authority organisation chart

The New Development branch is responsible for the design and construction of public housing projects. It is headed by a senior assistant director supervising three divisions – Architectural Division; Development Division responsible for planning, design and standards, building services and quality management; and Engineering Division.

In new projects undertaken by the Housing Authority, the Building Committee is the client as well as the authority for approving client briefs, control plans, project estimates, scheme designs, project budgets and tenders for construction works. Authority for initial review, endorsement and checking, is delegated to the Project Design Review Committee and Detailed Design Review Panel. In the case of Public Housing Development projects which may comprise buildings for clients other than the Housing Authority, the Works Group serves as the design and construction agency.

Every Public Housing Development Programme Project undertaken by the Works Group follows a standard scheduled programme of 61 months for a standard domestic block from feasibility to completion. The overall programme takes into account site clearance (nine months), demolition (eight months), piling (nine months) and actual construction (27 months).

Assessment of Hong Kong's strategy

The main factors affecting the housing market in Hong Kong are, like anywhere else, land supply, house prices, quality, affordability, living

environment, transportation and communication. These factors must be addressed by town planners, housing authorities and the local government. The balanced interplay of these factors and the ability to successfully manage them are critical for housing policies to be considered sound and efficient. One reason for housing policy failures is attributed to a neglect in viewing housing as an economic sector rather than as social welfare. Indiscriminate subsidisation has, more often than not, produced expensive and badly located housing. Public sector investment in residential infrastructure is also critical to produce stimulatory effects on private housing investment which has long term beneficial effects.

The major thrust recommended by the World Bank's Housing Policy Paper today is that governments should be encouraged to adopt policies which enable housing markets to work. In short, this is known as the 'enabling' policy.

Hong Kong is facing a growing population in a limited land area and with rising aspirations of a community expecting better standards than before. The government is faced with the daunting task of providing for and meeting the population's housing needs. Other factors influencing the government's policy are the growing number of elderly people and the risks of property speculation.

Since the 1970s, the Hong Kong government has adopted a somewhat consistent approach to these problems. In 1987, its approach and philosophy were formalised in a document known as the Long Term Housing Strategy, which forms the framework for meeting housing needs.

The philosophies adopted by the government are:

- Families are stakeholders in the community;
- A government policy of subsidised rental accommodation;
- Public housing as a stepping stone to ownership;
- Home ownership is not just a dream for the many and a privilege for the few;
- Encouragement of families to own their own homes, thus freeing up a flat for another family more in need;
- Treating public rental accommodation as, ultimately, a finite stock;
- Equitable use of resources;
- Taking care of the special needs of the elderly;
- Administrative competence over land supply; and
- Streamlining of development approval procedures.

The housing goals of the Hong Kong government, as set out in the 1987 document, are:

- To help all households gain access to adequate and affordable housing; and
- To encourage home ownership in the community.

These goals were reaffirmed in a 1993 mid-term review. Following the first 10-year period, the government is undertaking a review to prepare for the next phase of meeting housing needs till the year 2006.

The strategies underlying the first 10 years of the government's success under the Long Term Housing Strategy were:

- Providing a steady and sufficient supply of land, together with supporting infrastructure, for both public and private housing;
- Creating the conditions to enable the private sector to make the fullest possible contribution towards meeting the demand for housing;
- Implementing subsidised housing schemes to enable those in the relevant income groups to buy their own homes;
- Providing quality public rental housing at reasonable rents for those who cannot afford any other type of housing; and
- Monitoring the private housing market and, where necessary, introducing measures to curb speculation.

Although the achievements of the policies and programmes of this strategy are clearly evident, the government is currently identifying and implementing changes necessary to achieve new goals in the light of the changing needs and aspirations of the community.

Progress of development

The Hong Kong experience is discussed in the light of the critical factors which contributed to its remarkable success in housing its population. These factors are:

- Land supply;
- Supply of flats;
- Redevelopment;
- Private sector contribution;
- Affordable rents;
- Encouraging home ownership;
- Dampening speculation; and
- Mortgage finance.

Some economic statistics of Hong Kong (based on 1995 figures) are presented for reference:

- | | | |
|-------------------------------------|---|------------------------|
| ● Gross Domestic Product (GDP) | : | US\$144 billion |
| ● Economic growth (last five years) | : | 5.5 per cent per annum |
| ● Per capita income per person | : | US\$23,200 |
| ● Land area | : | 1,078 sq km |

Land supply

This is met by rezoning or increasing the density of development. It is estimated that this process could produce an average 9,000 units per year. Land previously designated for industrial or unspecified community uses, in excess of requirements, could be rezoned. Old flatted factory estates could also be designated for rezoning. Increase in development density is brought about by redesigning new development areas as well as adding on to existing residential sites which have spare capacity.

From 1995 to 2001, the plan calls for an annual average output of 85,200 new housing units (flats). The authorities have allocated sufficient land to cater for the above output. However from 2001 to 2006, there is a further need to meet an average annual demand of 78,000 flats. Land supply to meet this is expected to be met from developing new strategic growth areas, rezoning and increasing development density.

A Territorial Development Strategy Review was formulated to strike a balance between various land uses, transport and environmental factors. As for resource availability, the plan serves to enable Hong Kong to continue its growth as a regional and an international city providing a better living environment.

From 1986-96, the government had provided a total of some 680 hectares of land for public and private housing. This is a sizeable amount compared to its size of 1,078 sq km and considering its geography. Hong Kong Island has only 77.5 sq km, Kowloon has 45.5 sq km and the New Territories (plus 235 outlying islands) has only 955 sq km land area. Comparatively, urban Kuala Lumpur has a land area of 243.6 sq km.

Supply of flats

Hong Kong boasts a record of delivering 200 flats a day, a combined effort of the public and private sector. On average the public sector produces some 41,000 flats per year while the private sector contributes another 31,000. With this efficient supply rate, the number of inadequately housed families, defined as those in makeshift dwellings or dwellings without their own water supply, toilet and kitchen facilities, has declined from 30 per cent to below nine per cent by 1997. The authorities have also pledged to reduce the waiting time of 6 1/2 years for public rental housing to less than five years by the year 2001.

To effectively gauge changes in housing demand due to the increasing number of elderly people living on their own, newly married couples wanting to have their own homes, reduction in average household size and an increase in immigration, the Planning Department has commissioned the creation of a computerised model to forecast housing needs.

To ensure that the production of flats is sufficient to meet requirements, the government has emphasised the need to secure a steady supply of land and supporting infrastructure, a system of processing housing projects and related land transactions quickly and efficiently, the maximisation of redevelopment opportunities both in the private and public sectors, and initiating pre-emptive action to deal with labour supply.

Redevelopment

From 1995 to 2006, the Hong Kong government has projected an annual requirement of 80,000 units of flats. The private sector is expected to contribute about 41 per cent or an annual average of 31,000 units towards meeting the demand. Over the past 10 years, private sector development in Hong Kong has come principally from the redevelopment of existing sites or properties. Private sector redevelopment has also contributed towards improving the urban environment. However the price to pay for redevelopment is high taking into account the costs of land acquisition and of relocating tenants. With the costs of private sector redevelopment increasing, the viability of private redevelopment projects has become more difficult to establish. In view of this, the public sector has taken a more active role in the urban renewal process.

In June 1996, a policy statement on urban renewal was published to realise more effectively the potential of urban renewal agencies. This calls for the Housing Society to act as a re-housing agent using new sites, while the Land Development Corporation concentrates on planning, site assembly and implementation. As an alternative to redevelopment, repair and renovation of existing buildings are encouraged. It is estimated that in the next 10 years, buildings over 40 years old or more will be on the increase at a rate of 900 units a year. It becomes crucial for proper building maintenance and upkeep activities to be carried out to prolong building life. In the longer term, advanced building technology should be the answer to produce more durable buildings.

Private sector contribution

Although the private sector plays a major role in solving the housing needs of the Hong Kong population, the government nonetheless monitors this sector closely to ensure that it operates in a fair and competitive manner and to guard against speculative activities which were pronounced in 1993 and 1994. Notwithstanding the occasional speculative play, private sector investment in housing production serves to provide the necessary price equilibrium adjustment to lower the pressure on domestic property prices by narrowing the gap

between demand and supply. The government's encouragement of private sector development takes the form of providing an adequate and steady supply of new land and supporting infrastructure, streamlining and speeding up government processes and procedures for project approvals, applying rules and procedures flexibly and pragmatically, and providing assistance in overcoming constraints in construction capacity.

Joint venture schemes to tap the experience and resources of private sector developments are widely encouraged. Under the Private Sector Participation Scheme introduced in 1978, the government offers sites for sale by tender to private developers to build flats for sale at a fixed price to purchasers nominated by the Housing Authority. The scheme has made a strong contribution to the overall supply of subsidised flats for sale to the private sector. From 1978-86, over 66,000 units were built under this scheme, about a third of the total supply of subsidised flats.

With the rising aspirations and sophisticated demand for better living environments, joint ventures in Hong Kong have now taken a new approach. Private developers are invited to build subsidised home ownership flats as part of a mixed development. Under this approach, the developer is required to make a specified number of flats within the development available for sale to eligible purchasers, at designated prices. The subsidised flats form part of the development of private housing blocks at the same site. However, the developer is required to provide and manage common facilities for both types of flats. Purchasers of subsidised home ownership flats will thus get to enjoy higher standards in terms of building design, finish, facilities and management. Purchasers will also have more selections of houses to choose from.

Affordable rental

To ensure that the deserving population eligible for subsidised housing are not excessively burdened by hefty monthly rentals, the rent for public housing is determined on the basis of a tenant's ability to pay. The principle of affordability is guided by a rent-to-income ratio depending on the floor space requirement. For a space allocation of 5.5 sq m per person, the ratio is 15 per cent and for the higher space allocation standard of 7 sq m or more, the ratio increases to 18.5 per cent. For financially distressed tenants, temporary rent relief is permitted for up to two years but is subject to review after 12 months. Should the tenant continue to face difficulties in meeting rental obligations after the two-year-period, the tenant may be required to relocate to other cheaper housing within the same district. In this case, a domestic renewal allowance and a one month rent-free benefit is provided to facilitate the relocation.

Public housing rents represent on average 27 per cent of the market rental for comparable private sector flats. This is clearly reflective of the authority's desire to provide affordable accommodation to manage urban population. Lately, with increasing operating costs in maintaining and managing public rental estates there is a need to reset the existing rental level to bring it closer in line with individual estate values.

Encouraging home ownership

In 1991, the Housing Authority introduced a pilot scheme to enable tenants to purchase their own flats. The scheme proved to be rather unsatisfactory since prices of the flats were set too high relative to prevailing rents and there was uncertainty over future maintenance costs. Existing tenants were not motivated to buy the units they occupied since they were enjoying the security of tenure at low rents. Resale restrictions also placed a damper on this scheme. The Housing Authority is reviewing the scheme.

By and large, Hong Kong households favour home ownership as they value independence and prefer control over their own homes. Property owners know that after paying off their mortgage they will have the benefit of an asset to help them maintain their standard of living. Up to March 1996, over 200,000 flats have been sold under the Home Ownership Scheme introduced in 1978. Purchasers can borrow up to 95 per cent of the property price at a favourable interest rate, with repayment periods of up to 20 years. Eligible households are those with monthly incomes below HK\$26,000.

The Sandwich Class Housing Scheme introduced in 1993 aims to help families living in private rented accommodation with monthly incomes of between HK\$26,001 and HK\$60,000. This scheme involves the granting of land on concessionary terms by the government to the Housing Society. The loan scheme, set up with a grant of HK\$2 billion from public funds, was designed to initially assist 4,000 families to purchase their own homes from the private sector. Its success spells an increase in the infusion of new funds for this scheme.

The Home Purchase Loan Scheme introduced in 1988 is to assist families currently renting public housing flats to purchase private housing units. With their purchase, existing public housing flats will become available for reallocation. Eligible applicants with monthly incomes of below HK\$26,000 are granted interest-free loans from the Housing Authority which are repayable over 20 years. Alternatively, they may opt for a four-year monthly subsidy, which need not be repaid. Current limits set are HK\$600,000 for interest free loans and HK\$5,100 for the monthly subsidy.

Dampening speculation

Government intervention is necessary to provide the regulatory framework for a fair and orderly operation of the private sector housing market. However, to ensure fair competition and prevent distortion, market intervention is kept to a minimum. In 1994, the government intervened by introducing a series of measures to dampen property speculation in the short term. Such measures include freezing or imposing quotas on new development, tightening credit available for housing, controlling prices through direct price setting by the authorities, and restricting foreign ownership.

Mortgage finance

The Home Purchase Loan, the Home Ownership and the Sandwich Class Housing schemes were aimed at providing financial assistance for home ownership. The Hong Kong government believes that home ownership helps to foster social stability and a sense of belonging and to provide personal financial stability.

The government's financial assistance scheme directed at middle and lower income families serves to meet this objective. However, private sector home ownership is taken care of by finance corporations and commercial banks. To continuously provide funding for the growing property market, the government announced in June 1996 the intention to set up a mortgage corporation to be initially owned by the government through the Exchange Fund. The corporation will serve as a provider of liquidity by purchasing mortgage loans from authorised banks and deposit taking companies and issuing mortgage backed securities. Besides enhancing banking and monetary stability and promoting the debt market, the corporation will help to channel funds to provide mortgage finance to home buyers. This initiative is expected to boost the overall home ownership rate in Hong Kong.

Problems and obstacles

The Housing Authority faced considerable challenges as a statutory body charged with the responsibility of planning, construction, management and co-ordinating all aspects of public housing and social amenities. A growing population, with an increasing demand for housing on a limited land area of 1,078 sq km, is a major consideration in planning the supply of affordable houses. Another major issue is the setting of rental rates for public housing. This is a delicate area as the Housing Department has over 800,000 rental flats which are homes to about 40 per cent of the population.

The authorities adopted several architectural and planning directions from European planners in the early 1900s when European cities were

responding to mass housing in older city centres and newly urbanised areas. However, modifications and adaptations of the European concepts were necessary as Hong Kong could not afford to have low urban densities. Driven by economic necessity and helped by the lack of a strong historical urban centre in the new town areas, the Housing Authority initiated its own ideas of a 'housing superblock' as the means to provide affordable housing. Almost all housing areas on reclaimed land were constructed on this concept. The 'superblock' consisted of a two to three storey podium containing retail, office and social facilities with a number of high rise residential towers above. The potential problems with these 'superblocks' were mainly social and environmental in nature. Thus great care was taken in the design stage to create a development that could be modified to meet the changing needs of the residents. The design agenda was broadened to include community architecture, society and continuity, cultural wholeness, environment sensitivity and energy efficiency. The planners also faced challenges in building techniques as there were limitations in the local building and constructional skills in the 1950s and 1960s.

Adopting innovative building technology and allowing foreign expertise in construction and building to participate in their plans, the Housing Authority was able to deliver results and at the same time acquire technology transfer overnight. Coupled with the commitment of local planners and architects, a strong sense of innovation and creativity was employed to develop sustainable integrated development for the masses. Great emphasis was placed on the maximisation of topographical conditions such as natural ventilation and sunlight to create a socially pleasing landscape.

The setting of rental rates by the Housing Authority for its public rent policy is an area beset with difficulties. The main question revolves around affordability levels and equity. What is an equitable approach to price rental for public housing flats? One solution argued as simplistic is the normative approach of a median rent-to-income ratio. The Housing Authority adopted a benchmark 15 per cent maximum. However, this approach has its own weakness as well since anomalies are likely to arise if applied rigidly. For example, tenants may choose to over-spend on housing and to allocate a higher proportion of their income on rental of a more luxurious public housing flat. Poorer tenants may choose to pay much less than the 15 per cent maximum and opt for a much lower rental type of unit. As a result, measuring rent-to-income ratio may result in classifying the better-off tenants as unaffordable whereas the poorer tenants may be classified affordable.

An alternative 'affordability' measure was proposed by Hancock in 1991, who argued that what is important is the income left after housing costs have been paid. This approach, the residual income measurement, was

developed and adopted by the Housing Authority to rectify the earlier anomalies. Using the national poverty line as a reference, a household would be regarded as living in unaffordable housing if the residual income after meeting housing costs does not allow a family to live a decent life. Using this criterion in setting domestic rates, coupled with adjustments for inflation, maintenance charges and trends in household income increase, an explicit formula of rent setting was devised. While the formula works well technically, there are political issues which question the sustainability of a relatively low level of rent in the public sector. There is increasing pressure for more floor space than the standard 5.5 sq m per person floor area.

In the long run there is the obvious question of financing burden. The Hong Kong Housing Authority has the avenue to resort to the Hong Kong government as financier in a worst case scenario. Heavy subsidies are already dished out by the Housing Authority for rental flats in the form of free land and capital funds for construction supplied by the Hong Kong government. Additional resources are gained from cross-subsidies through the sale of owner-occupied flats and profits from commercial premises. With the reversion of Hong Kong to China in 1997, there is the political consideration over the use of this approach in the longer term vis-a-vis the overall housing policies of the Chinese central government.

Another hurdle faced by the Housing Authority is building maintenance, even more so for older housing estates built in the 1960s and 1970s. The commitment of resources and the establishment of procedures for implementing major maintenance works posed major challenges to the Housing Authority. There is also the question of identifying technical and financial requirements and then committing the appropriate resources thereon. Through a consultation process between the authorities and the tenants, maintenance programmes were developed over and above the daily reactive maintenance carried out by the building maintenance section in response to the breakdown of lifts and power failures. As an example, videos explaining the methodology for identifying major maintenance needs and realisation processes have been shown to residents, followed by question and answer sessions to resolve all concerns. Pipe samples were cut in agreed locations as justification for a major overhaul. Site inspections with tenants and owners' representatives were carried out to verify and agree on the scope of works such as roof defects maintenance, pump and water services upgrading and drainage clearance. Through the process of consultation, tenants and owners alike were able to co-operate on the maintenance programme. At the same time they gained the opportunity to identify and prioritise the implementation process. Improvement works

include providing new main entrance lobby finishes, new lift car interiors, improving the decor of common areas and general improvement in the lighting of common areas.

In summary, the Hong Kong Housing Authority faced many challenges to provide adequate and affordable housing for the population. The problems and obstacles were identified as land supply, supply of flats, maintenance and redevelopment, managing the role of the private sector as a source of providing housing to complement government housing programmes, rent setting, changing and influencing social trends in home ownership, controlling property price escalation brought about by speculative elements and mortgage finance provision. Assisted by a streamlined and orderly administrative machinery, gradual rezoning of land use and increasing the density of development, the authority is capable of adding on an average of 9,000 units of new housing units each year. However, the higher density of development is balanced by a more proactive environmental and socio-development approach emphasising a better living environment.

Through the harnessing of computer-aided and advanced technology in architectural design and building materials, the Housing Authority has targeted to produce a record 65,000 flats a year by the end of the decade. This translates to an average of one unit every eight minutes. The Hong Kong government allocates over a third of its annual public sector capital expenditure on housing alone. In Hong Kong, between 120,000 and 150,000 flats are under construction at any one time. In view of this, the Hong Kong Housing Authority claims to be 'one of the world's largest home-makers'. There is a definite focus by the authorities in their objective of providing adequate and affordable housing. In the process of redevelopment and building maintenance, the use of policy statements were found to be an effective means of creating a more focused approach in handling the function. As an example, the policy statement on urban renewal, which began in 1996, effectively created greater potential in urban renewal agencies.

The organisational roles were more defined with the Housing Society acting as a re-housing agent using new sites while the Land Development Corporation concentrated on planning and implementation. Prior to the policy statement, urban renewal in Hong Kong was undertaken without central co-ordination and lacked a comprehensive strategy. With the formation of the Land Development Corporation in 1988 under the Land Development Ordinance, the agency was empowered to undertake land acquisition and negotiate for the best compromises between conflicting requirements of socio-political issues in urban renewal. With this, a more effective and realistic approach took shape in Hong Kong without losing sight of social responsibili-

ties. To ensure customer focus and quality, the Housing Authority requires all consultants and contractors working for the authority to be in the category of ISO 9000 quality standard professionals.

The Hong Kong government's policies on housing are contained in its Long Term Housing Strategy, a document released in 1987. The primary goal is to help all households to gain access to adequate and affordable housing. It is argued that house-ownership creates a more stable political base for national development. To achieve the first 10 years of success under the Long Term Housing Strategy, the Hong Kong government provided a steady land supply and implemented subsidised housing schemes to enable citizens to buy their own houses. Through the control of supply and occasional policy interventions in the housing market, the authority was able to reduce excessive property market speculation through the setting of quotas for new development, tightening credit supply for housing, restricting foreign ownership and exerting price controls.

Singapore

Singapore occupies a land area of 648 sq km with a population of approximately three million. Its population growth rate was 1.9 per cent in 1995, decreasing from 2.0 per cent in 1994. A General Household Survey in 1995 showed that almost 90 per cent of the population were house owners, increasing from 88 per cent in 1994 which was based on the 1990 Census of Population.

Economic statistics of Singapore as at 1995 are as follows:

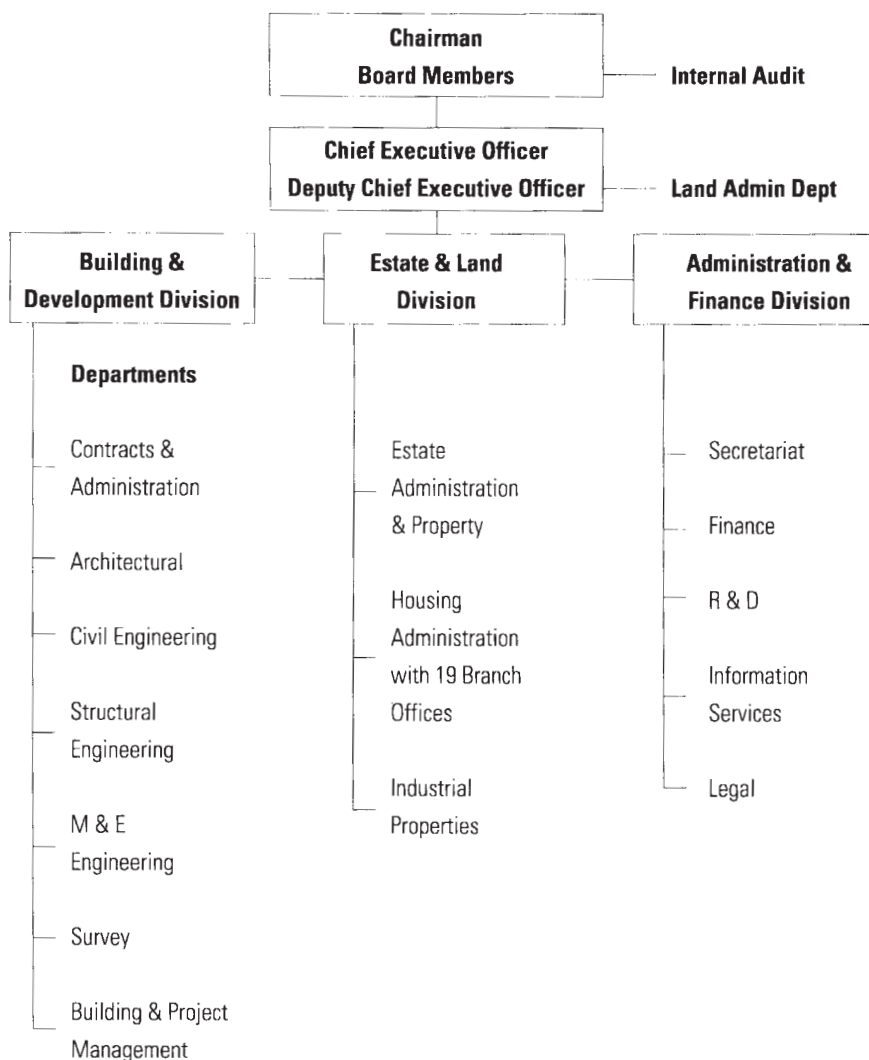
- Gross domestic product (GDP) : S\$121 billion
- Economic growth (last five years) : 7.5 per cent per annum
- Per capita income per person : S\$34,788
- Land area : 648 sq km

Ironically, like Hong Kong, the housing conditions underwent a radical change only after a major fire. Back in 1960, a quarter of a million Singaporeans lived in slums and another one-third of a million in squatter settlements. In that fateful year a fire broke out in a populous squatter area leaving 16,000 families homeless overnight. It was under such critical circumstances that the Housing and Development Board (HDB) was established. In the early period of inception, its major challenges were to build enough decent homes to fulfil pressing needs and to upgrade slums, coupled with improvement of basic urban services. The objectives were to provide affordable housing for the poor, achieve cost recovery and create conditions for large-scale replication of projects. By 1964, after only four years in operation, the Housing and Development Board had built over 54,000 public housing units. At that time it was by any standard a staggering feat of completing one unit every 45 minutes.

Housing and Development Board organisation structure

The Housing and Development Board was set up as a statutory board on February 1, 1960 with the objective of building houses for the Singapore people. By the mid-1990s, the Housing and Development Board had built over 700,000 units of housing for 86 per cent of the population. Of the people living in HDB flats, house ownership status stood at nine out of 10 units.

Chart 2: Housing and Development Board organisation chart



Critical success factors instrumental in Singapore's public housing development were:

- Strong government support;
- Home ownership scheme;
- Comprehensive new town planning; and
- Good estate management

Phases of change

The 1960s period onwards saw the Singapore government providing quality public housing, starting from the mass supply of decent shelter in the early years and subsequently building homes with innovative designs to cater to a more quality-conscious population. The board's early strategy was to centralise functions and focus only on the essentials to meet its ambitious building targets. By the end of 1970, the housing situation had been reduced from crisis to manageable proportions.

Initially the Housing and Development Board provided standard-type housing, distributed to the needy through an allocation system. Meeting with early success, the concept evolved into the provision of self-sufficient public housing estates. This marked the second phase of the Housing and Development Board's progress as a provider of houses in Singapore. As a result, townships built during this era had full social and recreational needs infrastructure included with the housing blocks. It was also during this period that the blueprint for subsequent housing developments was conceived. By this time over 40 per cent of the population were comfortably housed in HDB towns.

The HDB also initiated a five-year building programme to continuously cater for population growth and demand for houses. By the mid 1980s, over 80 per cent of the population lived in HDB flats. The growing economy and industrialisation saw the population profile changing. As a result of higher income and education, housing needs became more sophisticated with a refinement in demand for quality and aesthetic homes. The shift in preference proved to be a watershed in the development of the HDB's focus and strategy in delivering public housing. Gradually town identities took on a distinctive character arising from refinements in planning concepts and neighbourhood design. Emphasis was further placed on designs to promote greater community ties and facilitation of greater social interaction. Not only were changes taking shape in terms of design and planning in the 1980s, enhancements in construction technology also became inevitable. The Housing and Development Board turned to prefabrication technology which promised construction efficiency, durability, cost effectiveness and quality. It also facilitated the birth of town councils by gradually devolving its powers in estate management and

functions. The introduction of town councils was a response to the community's desire for a more direct involvement in estate management. It was also considered a timely move as it allowed the Housing and Development Board to concentrate on its core functions as a provider of housing.

Over the past three decades public housing in Singapore underwent sweeping changes which redefined its meaning and public perception. Public housing estates have quality standards which are at par with private projects. For the majority of the Singaporeans, public housing ownership is preferred to rental accommodation. Demand for HDB housing has been consistently robust with the number of applications for new flats reaching around 55,000 in 1996 and secondary market trading at a level of 34,000 transactions.

To date, the Housing and Development Board has built more than 760,000 housing units in well-planned townships and estates providing affordable housing for almost 85 per cent of the three million population. Key success factors include sound and efficient estate management and the right policy approach. The board's estate management is categorised into two components – physical management and maintenance, and housing administration. Its philosophy is influenced by the changes in Singapore's socio-economic profile and expectations of the residents. Given the land scarcity in Singapore, high rise density development is the only option. The main obstacle then was how to convince the people to accept this kind of living in high rise buildings as a viable way of life. There was a need to assure the populace that they were moving into significantly better living conditions.

Physical management and maintenance were given top priority. Lifts, water pumps, public lighting and common areas must be properly maintained, otherwise confidence will be lost for this kind of living. The board's dictum is to deliver efficient and reliable repair and maintenance services and to provide a clean, hygienic and green environment.

Housing and Development Board model

The evolution of the 'Singapore model' started in the 1960s with the rehabilitation of slums and squatter residences into mass produced public housing flats of a basic design. This progressed into the 1970s with greater emphasis on infrastructure to promote community ties and social interaction. The 1980s gradually saw a growing emphasis on quality and aesthetic design. Finally in the late 1980s, public housing joined the widely favoured economic stratagem of the 20th century – privatisation.

The early public housing units were based on the self-contained principle wherein each flat has its own kitchen with bath/toilet cum wash area. To cater for the lower income group and to meet the acute shortage of housing, the

Housing and Development Board's standard designs were the one-room, two-room and three-room flats. The typical one-room flat has one bedsitting room of 14 sq m (about 150 sq ft) with 9 sq m (96 sq ft) for the kitchen, bath/toilet and a small balcony. The two-room standard flat started initially with 39 sq m (420 sq ft) and was subsequently upgraded to a larger layout of 42 sq m (450 sq ft) in the late 1960s. The three-room flat occupied 59 sq m (635 sq ft) with a bigger kitchen and a separate bath and toilet facility. Improvements in design were made and the three-room flat progressed into having two separate bath cum water closets, one of which is adjoined to the master room.

The economic improvement in the 1970s saw an increase in the per capita income of the population. The early squatter settlements had given way to one-room and two-room mass produced flats, but there was a fading demand for the smaller units. Purchasers opted for the new generation larger three-room units. To manage the new trend in demand, the Housing and Development Board adopted a conversion programme by either demolishing the smaller unit blocks for redevelopment into larger flats or converting the one-room and two-room flats into larger units. The popular larger units of the 1980s are the four and five-room flats of 105 sq m (1,130 sq ft) and 123 sq m (1,320 sq ft). The four-room flat has an additional bedroom with a bigger living room than the three-room flat. The five-room flat of three bedrooms comes with a separate dining area from the living room.

The baby boomers of the 1960s and 1970s, who had dictated an increasing demand for bigger flats, soon changed in the 1980s and 1990s when a more affluent lifestyle paradoxically witnessed a declining family size. Coupled with rising construction costs and scarce land resources, there was sufficient justification to reduce flat sizes to achieve optimum land usage to meet growing demand.

The HDB's household survey of 600,000 households over two survey periods in 1987 and 1993 validated that the overall mean household income had increased from S\$1,558 to S\$2,653 – an increase of 70 per cent over the six-year period. To cater for this fast growing segment of the middle income group, executive apartments with sizes ranging between 110 sq m (1,180 sq ft) and 130 sq m (1,400 sq ft) were introduced into the market.

Urban design strategy

The early housing blocks came in a standard town block design rising as high as 30 storeys. These blocks were straight and simple. Design changes gradually offered variations of mixing high rise with low rise, and block designs took the form of bends and curves. By the 1970s the blocks took on geometric shapes of H-shaped, T-shaped and Y-shaped blocks. With varying heights and design variety in housing estates, Singapore's housing domain soon took on an interesting skyline.

The Housing and Development Board is also charged with the responsibility of building communities in addition to bricks and mortars. To facilitate community development among residents, attention was placed on the design of communal spaces in housing estates. The corridor of housing blocks formed the communal space shared by families living along that corridor. Accordingly, special attention was given to its design which included widening the floor space and enhancing the corridor in conjunction with lift and stair lobbies for better communal usage. The void deck area at the first floor provided the space for community facilities such as kindergartens, child-care centres and clubs for senior citizens. Residents are also able to host parties and social functions in this area.

Through the treatment of the building facade, architectural variety and character were also created. From facades which were kept simple yet disciplined, more humane and interesting textures surfaced through the use of pre-cast materials. The addition of klinker tiles to pre-cast facade panels produced yet another interesting and attractive scene combined with low maintenance. Through creative use of building materials, interesting patterns and motifs were formed giving rise to the modern characteristics of HDB flats.

The provision of car parks was another design consideration. Each housing estate was planned to be self-sufficient in terms of car park space. To provide an aesthetic yet practical solution, surface car parks were replaced by multi-storey carparking lots which contributed greatly towards freeing up the outdoor space for more greenery and landscape.

Solar orientation was another design element. To minimise solar penetration in a tropical climate and perhaps add a little bit of 'feng shui' influence, slab blocks were oriented with their short sides, usually a blank end-wall, facing east-west.

Unique identities were created for each township. Gradually each town was built on its own design theme. One social consideration was to enable residents to cultivate a sense of pride and belonging to their locality. The basic planning concept was moulded from the neighbourhood principle. Each neighbourhood consisted of 4,000 to 6,000 units to ensure the support of community services. In the 1970s, the American-style precinct living consisting of 500 to 700 households emanated in Singapore after the urgency of public housing for the masses had been assuaged. The concept of a total living environment emerged and town planners arduously struggled to create self-sufficient townships with a full range of facilities from shopping amenities to schools, recreation grounds and factories. This arrangement was viewed by the government as an ideal set-up for community spirit to develop. All new towns in Singapore are now designed along the above configuration which allows for expression of character and township individualism. As an integral part of

housing development, landscape design helps to accentuate an environmentally friendly and conducive housing habitat.

In a nutshell, the positive aspects of the urban design strategy of the Housing and Development Board is one of the key success factors of Singapore housing. The board is not just building housing estates but also towns and 'cities'. The comprehensive nature of each development had spawned character and unique identity in public housing. Each design process involves examining the structure of the town, the desired character and appropriate magnitude of the masses to produce a deliberate pronouncement of dwelling pleasantries and picturesque settings distinguishing Singapore housing from the mundane and terrestrial offerings associated with public housing in other cities.

Urban renewal programme

Urban renewal is a deliberate planning process in the rehabilitation of old urban areas in a city. Rehabilitation includes renovation of external parts of old buildings, rectification of any structural weaknesses including upgrading of internal facilities such as lifts and stairways, comprehensive restructuring and environmental upgrading of old urban blocks or districts, as well as wholesale replacement of existing aged buildings.

The scale and magnitude of an urban renewal programme varies from project to project. Whatever the case, the intention of urban renewal has to be one of the following:

- To result in an updated urban structure with improved infrastructure such as road systems and layout;
- To regenerate old urban districts to stimulate economic activities;
- To produce better living and working accommodation;
- To construct a more balanced townscape and streetscape habitat;
- To optimise land usage; and
- To create a generally improved environment.

In its urban renewal process, the Singapore Housing and Development Board adopted what is known as the 'total approach'. This started in the mid-1970s when old estates and certain old urban areas were upgraded. The essence of the HDB's renewal strategies focused on its re-planning philosophy, redevelopment boldness, giving special consideration to socio-economic implications in the upgrading process and the management of logistics in en bloc redevelopment.

In the early 1960s when the HDB was formed to handle the housing shortage, its preoccupation was to build as many flats as possible in the quickest time at the lowest possible cost. This process went on during the first and second five-year building programmes.

Table 6: Changes in size of housing units

Type of apartments	Percentage distribution		
	1970	1985	1986
1-room	34%	12%	3.7%
2-room	24%	10%	5.0%
3-room	39%	45%	34%
4-room	2%	23%	34%
5-room	0.1%	8%	16%
Executive apartments	0%	1%	6%
Total units	118,544	508,242	701,498

Source: LW Cheong, Housing and Development Board, Singapore

Economic progress and expectation of a higher standard of living in the 1980s soon saw the need to re-plan the earlier housing estates. Public housing built in the 1960s and early 1970s were considered substandard to those implemented in the 1980s. The most serious defect was the lack of educational, communal or recreational facilities. Shops, public transport systems, markets and schools were inadequate to serve the local population. Poor layout and design, excessive density, structural defects, and the inappropriate orientation of the flats of the 1960s, were compelling reasons to push forth a programme of urban renewal. Taking cognisance of these facts, new planning standards were adopted by the relevant authorities. Factors such as density, building spacing, setback requirements for roads frontage, car parks, flats and social mix ratio, public transport convenience, road networks and flow, schools, and recreational amenities became the guiding framework for the systematic re-planning of all the HDB towns and estates. Sizeable towns such as Queenstown, Bukit Merah, Kallang Whampoa and Geylang emerged. The redevelopment process saw the introduction of the more practical four-room and five-room apartments replacing the smaller units of the 1960s. The changes in accommodation sizes in 1970 compared to 1986 are shown in Table 6.

In the course of the upgrading and urban renewal programme, the government was mindful of its policy of encouraging home ownership. As mentioned in the Hong Kong case, home ownership helps to foster greater social stability and to instil a sense of belonging to a community. With the implementation of the Central Provident Fund (CPF) Scheme and the low interest rate regime in Singapore, HDB flats became extremely affordable.

The domestic banks played a supporting role in encouraging home ownership by providing attractive housing loan schemes with a 25-year repayment period and a high financing margin of up to 80 per cent of the sale price. With the resources at hand, home ownership of HDB flats increased significantly from 26.3 per cent in 1970 to 74.4 per cent in 1985 and 90 per cent in 1996.

To redevelop old estates without residents having to leave the neighbourhood, the Housing and Development Board introduced in 1995 a strategy known as the Selective En-bloc Redevelopment Strategy. The strategy calls for the building of new and better quality housing units on vacant sites in close proximity to the blocks earmarked for redevelopment. The new flats will be offered to the affected residents/tenants before the old blocks are demolished to make way for more new flats on the existing site.

For owners of the demolished flats, their property will first be acquired under the Land Acquisition Act. The compensation package, designed to be a fair form of restitution, includes:

- A land acquisition award plus ex gratia payment.
- Assured allocation of a new unit nearby.
- A discount of 20 per cent on the price of the new flats subject to a maximum of S\$30,000.
- Exemption from payment of the resale levy or the 20 per cent premium on the replacement flats they buy from the HDB.
- Permission to transfer entitlements to those buying over their current flats, provided the buyers are eligible to buy new flats directly from the HDB.

A pilot scheme was implemented in the Boon Tiong/Tiong Bahru Road area where 16 blocks of four-storey flats comprising 192 units of three-room flats and 192 units of four-room flats were demolished. The renewal scheme would produce an enlarged and upgraded precinct of 706 units of four-room flats and 696 units of five-room flats. A compensation scheme as shown in Table 7 formed the basis for the exchange.

Table 7: Compensation scheme

Flat Type	Compensation (S\$)	Price of new unit (S\$)
3-room	140,000 - 175,000	-
4-room	200,000 - 255,000	190,000 - 260,000
5-room	-	310,000 - 380,000

Source: Housing and Development Board, Singapore

HDB housing estates are living communities functioning round the clock 365 days a year. Over time, housing estates age and as children grow up, family patterns change. The provision of public housing alone without recognising such facts is not sufficient. Public housing should also generate wholesome residential communities. Good estate management is one of the key factors for the success of Singapore's public housing programme. One of the Housing and Development Board's priorities is to deliver efficient and reliable repair and maintenance services. On the spot routine repairs were carried out by decentralised area offices. For building, electrical and sanitation maintenance, external contractors were appointed on an annual basis. The HDB also implemented a tree planting programme, which served to provide shade against the tropical sun and to enhance the natural beauty amidst a concrete environment. To maintain a clean surrounding, area offices provide daily sweeping and regular washing of common areas.

Round-the-clock essential maintenance service units were initiated by the HDB in 1971 to replace the standard emergency repair unit of area offices which only operate for a specific duration after office hours.

The board also institutionalised a 'feedback loop' system linking the estate management to planning and design. With the feedback system, aspirations of residents were taken into consideration at the planning and design stage. The feedback system anticipated and prevented problems, thus saving millions of dollars in maintenance cost which otherwise would have incurred arising from poor planning and design.

Town councils

In 1988, the Singapore legislature passed the Town Councils Act to enable the involvement of residents in the management of HDB estates. Town councils were designed to give Singaporeans the chance to decide for themselves the environment in which they want to live and to participate in the daily management of their housing estates. The enabling legislation hoped to galvanise the residents' commitment towards their communities and to the nation. The town council was a form of nation-building apparatus to forge a more committed community spirit and identity. The council was empowered to make by-laws to regulate the management and maintenance of the common property in the housing estates. A typical town council structure comprises all the Members of Parliament from the constituencies making up the town. Between six and 30 members, at least two-thirds of whom are local residents, are appointed to constitute the council. Under the Town Council Act, town councils are empowered to control, manage, maintain and improve the common areas of the HDB housing estates.

Private sector participation

With over 90 per cent of Singapore’s population staying in HDB flats either as owners or tenants, private sector participation in the Singapore housing sector is considered inconsequential unlike in Hong Kong where the private sector contributed to roughly over 40 per cent of housing needs. To encourage greater private sector participation, the Singapore government is slowly moving away from its socialistic mode in housing towards a more free market approach by embracing privatisation. In 1996, the Executive Condominium Housing Scheme Act was introduced in Parliament. This would pave the way for land to be sold to selected private developers at a subsidised price (about 30 per cent discount off market price) for the building of executive condominiums which will be of comparable quality and size to private condominiums, but at a lower price.

Recent developments

Spurred by a buoyant economic growth of over 6.5 per cent in GDP since 1987, housing trends have shifted from the past demand for public housing towards demand for private housing. At the same time the number of people upgrading public sector housing is also on the rise.

The population growth forecast of between 1.5 per cent and 2.0 per cent for the period 1996-2010 coupled with a steady increase in the number of marriages is likely to see an increase in household formation of around 25,000 per year. In 1994 and 1995 there were a total of 24,654 and 24,965 marriages respectively. According to 1995 statistics, the average age at marriage was 29.4 for males and 26.4 for females.

Table 8: Performance of Singapore economy in percentage change, 1987-93

Year	GDP	Real wages
1987	9.7	2.7
1988	11.6	6.6
1989	9.6	7.5
1990	9.0	5.9
1991	7.3	5.8
1992	6.2	5.8
1993	10.4	4.1

Source: DBS Research

Table 8 illustrates the performance of Singapore's economy between 1987 and 1993. Given the sustained earnings which had fuelled demand for private residential properties, property prices had edged up by 15.5 per cent as recorded by the property price index. Two distinct trends have emerged – an increase in demand for first-timers of HDB flats and upgraders; and a keener interest in private sector residential units.

In June this year, the Housing and Development Board announced a series of revised policies for the purchase of new HDB flats to cater for the new demand and changing trends brought about largely by the factors discussed earlier, namely, the continuous growth in GDP, increase in household formation, higher income pattern, population growth and reduction in household size.

The board saw an urgent need to restructure the supply of HDB flats and reprioritise the demand to benefit those who are in more urgent need for housing. Even though there was no housing shortage, the HDB's waiting list had grown from 80,000 in October 1994 to 146,000 in April 1997. In the list, 49 per cent (or 71,000 registrations) are first-timers and 51 per cent (or 75,000) are those who wish to upgrade their flats.

The revised policies for the purchase of new HDB apartments are:

- Separate building programmes for first-timers and upgraders. The HDB will increase its overall building programme from 30,000 in 1996 to 33,000 in 1997 and 35,000 from 1998 onwards. The additional flats will be allocated to first-timers so that this would facilitate a waiting time of about one year for first-timers.
- Separate queues for Punggol 21, Simpang 21 and Seletar 21. Of the three queues, only the Punggol 21 queue will be started. Under the Punggol 21 concept, 48,000 HDB flats will be built.
- Those wanting to purchase a second new HDB flat must wait for 10 years from the purchase of their first flat and not five. However, they can still sell their first flat after five years and buy a HDB resale flat on the open market or a private property.
- Except for those in executive flats, all owners would have to pay a higher levy of up to 25 per cent to the HDB on the sale of their first flat and only then would they be able to purchase another new HDB flat.
- Under the fiance/fiancee scheme, couples would have to reapply for flats if they change their partners and lose the newly imposed S\$5,000 deposit which would be paid upon registration.

Future directions

The Singapore government considers housing of the masses to be a productive sector and, more importantly, a means to achieve social order and economic

objectives. After alleviating the housing shortage in the 1960s and 1970s, the government housing machinery (the Housing and Development Board) took the next course of exploring and improving the physical design and living environment of the housing estates. To a large extent, Singapore's housing success is credited to its sustained rapid economic growth, an effective and efficient civil service, well-defined planning procedures and a strong political will. The basic planning document to guide Singapore's overall development, known as the Concept Plan, was revised in 1991 to accommodate the changing aspirations of Singaporeans including their housing needs, which is seen as an evolving commodity in Singapore.

In planning and meeting the challenges in the 21st century, the HDB's public housing programme aims to meet as many of the needs of its citizens as possible and within reasonable limits. It is estimated that based on population growth and household formation, the number of households is expected to exceed 1.16 million by the year 2020 from the last 1990 census of 745,000 households. However, the average household size is expected to dip from 4.1 to 3.2 by 2020 owing to an expected population growth slowdown from 1.3 per cent during 1990-95 to 0.2 per cent during 2015-2020. From this estimate, it is forecast that demand for new housing will reach a moderate 115,000 units by 2020.

While challenges are faced in providing new housing units to meet future demand, there is also the task of upgrading existing townships to attain their optimum level. New townships being developed or to be developed will ideally be highly integrated in terms of land use, transportation and infrastructure development. The so-called futuristic towns will be highly functional as well as unique and built around scenic surroundings. Such aesthetic features will accord residents maximum enjoyment from the surrounding amenities and facilities. Planning for the 21st century will also have to consider the aging population. With modern healthcare and improved hygiene standards, the life expectancy of Singaporeans has increased. In 1984, the average life expectancy was 70.9 years whereas in the 1990s, it has increased to between 74 and 78 years. About 9.7 per cent of the population are currently above 60 years of age, accounting for over 15 per cent of the town population in some housing estates.

Physical considerations to provide for the aged include new features such as lifts that stop on every floor, handle bars in the toilets and emergency alarm systems to be installed in every unit. More voluntary care organisations will be set up to meet the special needs of the elderly. To inculcate and promote family values, the Housing and Development Board has adopted an allocation policy giving priority to extended families to encourage the young and elderly family members to live together.

The definitive trend into the next century for the Housing and Development Board is the creation of self-sustaining and self-contained suburban centres to absorb and deflect city centre congestion.

Problem and obstacles

Not unlike Hong Kong, Singapore is faced with land scarcity with a limited land area of 648 sq km. The earlier problems faced by the Housing and Development Board were an urgent demand for decent houses in the 1960s and slums upgrading to create better living conditions. The authorities were faced with the question of how to achieve large scale replication of projects and cost recovery. Another major obstacle was to convince the citizens to accept high rise living which was the only solution to provide adequate and affordable houses when constrained by land supply. This was achieved through public education via the media and other government communication channels. Assurances of better living conditions supported by physical management and maintenance were assertions provided by the Housing and Development Board.

The promise and subsequent delivery of hygienic and green environments brought about by dedicated and creative planning of housing estates soon encouraged a wider acceptance of the high-rise living concept. By the 1970s over 40 per cent of Singapore's population were living in HDB flats. In the 1980s this increased to 80 per cent. The use of prefabrication technology was a new area introduced to overcome the construction lead time amidst the urgent demand for dwelling units. Initially the objective was to create only the basic essentials to support living conditions with the least cost in the shortest possible time. After meeting the initial targets set, the Housing and Development Board gradually redefined the objectives to include the instilling of the community spirit in housing estates, improving the housing environment and creating a more balanced townscape and streetscape habitat.

This was achieved through bold steps in urban renewal programmes. Mundane and dilapidated housing blocks gave way to new and bold housing communities surrounded by picturesque settings. Each development was intended to spawn character with its own unique public housing identity. To encourage house ownership, the conditions on withdrawal of funds from the Central Provident Fund Scheme for the purchase of HDB flats were relaxed. Coupled with a deliberate monetary policy of keeping a low interest rate regime, HDB flats became extremely affordable among the growing population. Rising construction costs owing to labour shortage were ameliorated by importing cheaper foreign workers to operate in construction sites. Building construction costs were successfully managed

by turning to prefabrication technology with its assurance of construction efficiency, productivity and quality. The problems of meeting constantly rising expectations by a population which enjoys one of the highest living standards in the region have constantly challenged the Housing and Development Board. The rising economic progress over the years had led to changes in the national socio-demographic profile. New building concepts such as the Design-and-Build Scheme introduced in 1991 had allowed the private sector to build higher-end public sector housing in HDB towns. The new generation of HDB flats now come with more and better internal and external features and facilities to meet changing needs.

Thailand: A synopsis of Bangkok housing situation

Bangkok is often said to epitomise the 'unplanned' urban agglomeration. The city gives the impression of extreme chaos and haphazard growth. Although there is a General Planning Act and Detail Planning Act, traditionally there is a low-level of intervention by local authorities in urban development.

In assessing urban housing in Thailand, the focus is on the Bangkok Metropolitan Region – the largest urban province in Thailand with a population of eight million and over 1.5 million households with an average household size of 3.6 persons. For the country as a whole, Thailand with a population of 60 million has about 14 million households (1994 Census) with an average 4.2 persons.

In the Bangkok area, the types of housing are townhouses, shophouses, apartments, condominiums and flats alongside the slums and squatters. A survey on slums in metropolitan Bangkok indicated there were 1,715 slum communities scattered throughout Bangkok comprising of 330,000 households with a population over 1.3 million people. Slum living is increasingly getting tougher as communities become more crowded and short of necessary public services and facilities. The average income of a slum household is about 6,000 baht per month, hardly sufficient to pay for housing in the market.

Without more governmental effort as in Hong Kong or Singapore, housing problems in Bangkok will continue to exacerbate. Although private sector development continues to churn out housing, these units are targeted at the middle and upper income strata of the Bangkok population. The supply of houses in Bangkok is considered erratic (the likely result of insufficient governmental intervention). During the 1992 recession, the private housing sector dropped its supply from 81,600 units in 1991 to only 58,400 units. However when the economy recovered in 1993, the market was flooded with over 380,000 housing units by 1994 of which approximately 270,000 units were sold. Table 9 shows the housing supply structure in metropolitan Bangkok between 1991 and 1994.

Table 9: Structure of housing supply in thousand units, 1991-94

Types of housing	1991	1992	1993	1994
Detached house	11.2	5.4	11.1	36.9
Town house	20.6	15.3	48.9	97.1
Condominium	43.1	34.2	47.2	108.0
Others	6.6	3.5	5.7	19.4
Total	81.5	58.4	112.9	261.4

Source: National Housing Authority of Thailand

Although an annual output of 86,572 units of housing was brought into the Bangkok metropolitan market during the Sixth National Plan (1987-91), housing for the low income or the urban poor is still in short supply due to the problem of affordability and speculation from the higher income group. As noted earlier, the supply of housing from the private sector is highly erratic in Bangkok. During the Sixth National Plan period, although supply exceeded housing needs by 73 per cent, it failed to provide relief to the urban poor. The houses built were beyond the affordability level of the slum dwellers.

Resulting from the above pattern, the National Housing Authority in its effort to alleviate the housing problems of the country drafted a Housing Development and Slums Improvement Plan under the Eighth National Plan (1997-2001). The plan calls for the use of city planning as a measure to direct controlled land development, social services and environmental improvements. Financially, the plan calls for a sound and enabling monetary policy to support the people to own houses, to encourage savings and to mobilise long-term funds for a more equitable housing development programme. Although the Eighth National Plan calls for a slum improvement agenda of 75,000 units, this is still a far cry from solving the slum problems of metropolitan Bangkok.

Another worrying factor is that since most urban renewal projects in Thailand are owner-initiated, the economic boom which had caused land prices to appreciate substantially led a spate of land-owners to cash in by overbuilding. While these 'market-led' initiatives have caused much social and economic hardship for the displaced families there is also the runaway oversupply caused by a sudden surge in short term supply. Ironically the Thai property market bubble has just burst this month (April 1997) causing a property crisis as prices kept spiralling downwards. This in turn has

shaken the health of Thai financial institutions which have very high exposure to the property market.

Bangkok alone has a glut of 850,000 residential units in the property market with more than 300,000 empty units. The slowing economy has reduced demand for residential units to 70,000 units per year from a high of 130,000 previously. In the next 18 to 21 months, the completion of additional property projects is expected to further aggravate the problem of oversupply and push property prices lower.

To stabilise the market, the government has lately implemented measures to stimulate buyer interest. Positive action steps include lengthening loan repayment periods, lowering of interest rates and initiating a 20 billion baht lending programme for civil servants. Foreign ownership of condominium projects is expected to increase from 40 per cent to 100 per cent in the future.

Conclusion

The purpose of this discussion is to provide a general assessment of housing productivity in Malaysia. At the same time, by extending the assessment into the international sector, some aspirations can hopefully be drawn from other nations' experiences in managing their housing needs. Undoubtedly, it is acknowledged that both Hong Kong and Singapore have been extremely successful in providing affordable housing for their populations. These two examples are ideal when relating to urban housing studies. Statistics support the view that urban housing, if not managed judiciously, will lead to slums and squatter settlements developing alongside the modern commercial hub of the cities. Furthermore, as land prices in urban cities are higher than rural areas, urban private housing may be beyond the reach of many city dwellers. Consequently it is not surprising to find squatter settlements expanding in household size as this form of accommodation is the only viable alternative. Squatter settlements are also potential fire hazards and may pose various social problems due to lack of community development.

The issue of housing productivity and efficiency should therefore really focus on the nation's ability to meet these challenges in urban housing. The challenge is to accommodate the ever increasing urban population, principally caused by rural-urban migration, and to determine what formula should be embraced to govern future housing policies.

Housing productivity has been defined as the ability to meet housing demand with quality houses at affordable prices, in aesthetic surroundings and well served by public transportation and other social amenities. On the premise of this definition, the Hong Kong and Singapore experiences provided an

understanding of how these various problems and obstacles posed challenges to their respective housing authorities. Key success factors were identified in the international experiences presented by these two countries. Discussion focused on how the problem of limited land supply was overcome by changing the perception of high rise and high density living to one which included a caring and well balanced living environment.

The Malaysian situation discussed is restricted to urban Kuala Lumpur since it shares more comparable characteristics with the city states of Singapore and Hong Kong. Furthermore housing problems in Malaysia have always converged in urban areas due to land shortage for development. The major problem area faced by Malaysia over the last five years or so was the influx of settlers in the cities, in particular, Kuala Lumpur. The strong pull factors of city life and job opportunities instigated a rapid rural-urban drift.

The construction industry supporting the housing sector also has its own set of problems. With the high levels of economic growth experienced since 1989, the manufacturing base for building materials was not able to cater to the ever-increasing demand for construction and building materials such as cement, steel bars, wall and floor tiles, roofing tiles and other related building products. Even with the manufacturing sector expanding its production capacity, there is still a lead time before additional production comes onstream.

At the same time, Malaysia's economic expansion over the years had created a high level of employment. The changing trends in education and technology have produced a new generation of employees suitable only for commerce and manufacturing. In the artisan trades of brick-laying, carpentry and masonry, there has been a diminishing supply of apprentices and younger working groups prepared to enter this field. Consequently the country is now faced with a labour shortage in the construction industry. This has necessitated the import of foreign labourers to this sector which has brought along a new dimension in social problems. Faced with a more urban population, most of whom are in the lower and middle income groups, there is no denying that tremendous pressure is exerted on the authorities to manage the housing needs of the ever increasing urban population in Kuala Lumpur without the ugliness of more slums and squatter settlements. If we do not adopt a proactive and anticipatory approach urban Kuala Lumpur may well become another lesser Bangkok in the making.

Housing productivity is often contingent upon the efficiency of the government machinery in dealing with land matters. Private sector developers often lament the delays in planning approvals, land conversion and other prerequisites before development can proceed. We have observed how two city-states in the last three decades managed their largely urban population beginning with controlled mass production of housing units and gradually

evolving as a refinement process in line with economic progress and eventual striving for greater awareness towards living conditions.

Malaysia's housing productivity under the Sixth Malaysia Plan had not been quite satisfactory notwithstanding an overall 113 per cent target achievement. A breakdown of the figures revealed that the public sector housing production fell below its target by 51.4 per cent or 89,500 units while the private sector housing units largely ignored the affordability level of demand for housing by the low and low medium income groups, particularly in urban Kuala Lumpur.

Combining the experiences of metropolitan Bangkok with the assessments of Hong Kong and Singapore, some possible solutions for the urban Kuala Lumpur situation are suggested:

- Greater emphasis should be placed on the provision of public housing either in the form of subsidised rental or build at affordable prices. This approach is a definitive and time proven method to house the lower income groups.
- The government should take over the lead in developing housing with the private sector playing a complementary role.
- There should be a greater degree of administrative and policy level involvement by local residents in building a more committed community spirit.
- Greater encouragement should be given towards house ownership.
- Squatter settlements should be further prevented by stern and committed enforcement action.
- The government should focus on a programme of urban renewal in areas where economic progress has outgrown the surrounding environment especially the older housing estates in urban Kuala Lumpur.
- A greater commitment should be made to provide infrastructure development to facilitate private sector participation in housing all income classes of the population.

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Productivity in Housing and International Experiences II

Nathaniel von Einsiedel and Pura Abdullah

Introduction

Productivity in housing for a country may be defined as the ability of its housing production and delivery system to meet the housing needs of its population. Most countries have policy objectives to ensure that housing is available for the entire population. In developed countries, this objective is often implemented to respond not simply to overall housing needs but also effective demand. This suggests that a distinction is made between needs and demand. For instance, the lowest income group of the population may be in dire need of housing but may not be able to afford what the formal housing production and delivery system is able to provide. In this situation there is no willingness to pay, hence no effective demand – thereby requiring some form of government subsidy.

This situation prevails in many countries, especially developing countries with large proportions of the population living in poverty. With rapidly increasing populations and an accompanying need for housing, these countries have struggled with the issue for several decades, albeit with largely dismal results. In some countries, large numbers of people are still without decent

housing and the situation is getting worse, not only in terms of people's housing needs but also in terms of their social and environmental conditions.

Housing production and delivery are influenced by a number of inter-related factors, several outside the realm of housing *per se*. This involves a variety of players; each with their own perspectives on the qualitative norms representing desired housing outcomes. This chapter attempts to provide a framework for improving productivity in housing, particularly in terms of desired housing outcomes based on the perspectives of the key players in housing production and delivery, its relationship to national economic growth, and an understanding of the impacts of the influencing factors. It advocates certain reforms to current policies, institutional arrangements, and regulations to enable housing production and delivery mechanisms to work more efficiently.

Urbanisation and housing trends

World population has been growing at an annual average of 1.9 per cent since 1950 and this has resulted in a doubling of population over the last 35 years. Since then, the population growth has increasingly been concentrated in the developing countries, which have been undergoing rapid growth. By the year 2000, eight out of 10 people are expected to be living in developing countries.

Similarly, urban population has been increasing at a faster pace than before. In 1950, only about a third of the world's population lived in urban areas. However, by the year 2000, it is expected that nearly half of the estimated world's population or three billion people will live in urban settlements. As in the case of population growth, the rate of urbanisation will be particularly rapid in the less developed and developing countries. In 1975, the less developed countries were overwhelmingly rural with three-fourths of the total population living in rural settlements. By year 2000, it is projected that the urban population in the less developed countries will reach 41 per cent with only two countries having less than 10 per cent urbanised areas (Table 1). The rapid growth of the developing countries' population living in urban areas is attributed principally to the natural increase in the already large urban population rather than to rural-urban migration.

The sheer size of the urban population distinguishes this as a global problem. The challenge for policy makers is to accommodate an additional 140,000 people everyday with shelter, services and employment. Even with conservative estimates, the extent of the global housing crisis is such that more than 100 million people are living in a state of absolute homelessness, while more than a billion people are forced by circumstances to reside in inadequate housing conditions threatening their health, safety and dignity.

Table 1: Urbanisation: Trends, size and growth of urban population, 1975-2025

Year	More developed region		Less developed region		World total	
	Urban population ('000)	Level of urbanisation (%)	Urban population ('000)	Level of urbanisation (%)	Urban population ('000)	Level of urbanisation (%)
1975	729,285	64.84	809,062	26.68	809,062	26.68
2000	904,288	76.20	2,022,156	40.67	2,022,156	40.67
2025	1,040,049	83.98	4,025,286	57.05	4,025,286	57.05
Average						
growth	1975-2000	0.86		3.66		2.57
rate (%)	2000-2025	0.56		2.75		2.19

Source: UNCHS (Habitat) (1996), *An Urbanising World: Global Report on Human Settlements, 1996*, p447.

The right to adequate housing is recognised in the Universal Declaration of Human Rights (1948) and the International Covenant on Economics, Social and Cultural Rights (1966). In 1987, the United Nations sponsored the International Year for the Homeless and, following this, the United Nations adopted a resolution titled Realisation of the Right to Adequate Housing. In 1988, the enabling framework outlined in the United Nations Global Strategy for Shelter to the Year 2000 (GSS) was launched. This advocates national governments to take on the role of being ‘enabler’ and to establish the legislation for the development of institutional and financial frameworks to enable public and private sectors, community organisations and individual households to contribute most effectively to shelter development. The key elements of such an ‘enabling framework’ are:

- Reorganisation of the housing sector by including the establishment of an organisation for better co-ordination of macroeconomic and housing policy, and to put in place more supportive legal and regulatory frameworks;
- Mobilisation and allocation of resources for infrastructure and housing finance, and to rationalise subsidies; and
- Ensuring that key inputs to the housing production process – particularly land, infrastructure and building materials – are adequately supplied.

The enabling strategies require that national governments, rather than providing housing or subsidies directly, should facilitate the provision of

housing by liberalising the market, building up support systems for housing, and integrating housing markets with broader capital markets and macro-economic policy.

The Second United Nations Conference on Human Settlements (Habitat II), held in June 1996 in Istanbul, Turkey re-emphasised the enabling framework. It resulted in the adoption by the participating countries (including Malaysia) of the Habitat Agenda which addresses the two interrelated themes of Adequate Shelter for All and Sustainable Human Settlements in an Urbanising World. This agenda is based on the belief that human beings are at the centre of sustainable development, including adequate shelter for all and sustainable human settlements, and they are entitled to a healthy and productive life in harmony with nature.

Productivity in housing is directly related to both themes of the Habitat Agenda. In the first theme, it was recognised that a large segment of the world's population lacks shelter and sanitation, particularly in developing countries. The Habitat Agenda recognises that access to safe and healthy shelter, and basic services is essential to a person's physical, psychological, social and economic well being and should be a fundamental part of urgent actions of the countries concerned. The agenda's objective is to achieve adequate shelter for all through an enabling approach to the development and improvement of shelter that is environmentally sound.

For the second theme, it was recognised that sustainable development of human settlements combines economic development, social development and environmental protection with respect for human rights and fundamental freedom, including the right to development. Within this context, the Habitat Agenda considered effective participation by civil society to be an indispensable foundation for the realisation of sustainable development. It provided a useful framework for remedies to commonly experienced shelter problems, particularly in improving productivity in housing.

Box 1: Housing and gross national product

In the United States, housing investment is between 4 and 5 per cent of annual GNP and national income and accounts for over 6 per cent of total employment. Moreover, its multiplier effects are high, relative to other sectors. US\$1 spent on residential construction results in almost US\$7 of final national product. For the entire real estate sector, the ratio is 4:1. Thailand, Chile and Colombia, which are all developing countries, have a similar experience. The annual value of housing construction in these three countries typically accounts for between 3 and 8 per cent of GNP.

Examples from various countries indicate that the only way to proceed towards the goal of adequate housing for all is the efficient and equitable operation of housing production and delivery systems within an 'enabling framework'. This requires a new agenda for action to unite and guide governments, the private sector and the community in addressing the growing need for housing.

The cornerstone of this new action agenda is the recognition and acceptance of the absolute necessity to foster co-operation between the public and private sectors. It is clear from many countries' experiences over the last two decades that the public sector cannot undertake the job alone. Non-governmental economic and human resources need to be fully mobilised in housing production and delivery systems, including the formal and informal private sectors and community groups. All these groups have a role in establishing a productive, efficient and equitable shelter strategy.

Clearly, improving productivity in housing is directly dependent on effective public/private co-operation based upon a precise definition and separation of roles. Specifically, the public sector has the responsibility to:

- Ensure that macroeconomic policies are not subject to market distortions and are conducive to economic growth through private sector initiatives;
- Encourage the mobilisation of domestic financial resources and ensure adequate access to domestic savings by the private sector;
- Support pricing policies of both public and private goods and services which permit markets to function productively;
- Ensure efficiency in urban management, infrastructure provision, land policy, including the provision of secure land tenure, and freedom of land title transfer; and
- Restrict public sector activities to those which cannot be carried out effectively by the private sector and the people themselves.

Box 2: Increasing Thailand's housing supply

Notwithstanding the recent downtrend of its economy, Thailand demonstrated in the late 1980s and early 1990s the positive effects on housing of sound macroeconomic development policy. Thailand's economic growth since 1960 up to recently has been impressive, averaging over five per cent a year. Combined with a supportive regulatory environment and wide access to housing finance, the formal private sector has responded with a massive increase in housing supply which is affordable down to the 20th income percentile of households. This demonstrates dramatically the potential for the private formal sector to supply housing to a wide range of income groups.

In turn, the private sector's responsibility to the partnership is to:

- Balance the essential need for operating profits with a response to the social needs of all income groups;
- Mobilise investment capital for housing and urban development;
- Accept prudent business risks, competitive principles and market results; and
- Develop entrepreneurship and innovation.

A generic definition of public and private roles in the different phases of the housing process is shown in Chart 1.

With the wide range of economic agents and social groups involved in the construction of housing, the success of this public/private partnership in improving housing productivity depends on cultivating a good working relationship between these groups and the government. Such a relationship is, in turn, often dependent on a political climate which fosters co-operation and participation. However, the establishment of this climate is usually determined by factors outside the realm of the housing sector. The improvement of housing productivity as well as the achievement of sustainable development may not only depend on new partnerships, but also on the resolution of domestic and international political, economic and social conflicts as a prerequisite step towards achieving an effective partnership for development.

Defining housing productivity

Housing production and delivery systems involve a varied group of players including, particularly, housing consumers. Each of these players has a key role (see Chart 1) in the process and contributes one way or another to the overall performance of the housing sector. The five most important players are housing consumers, housing producers, housing finance institutions, local governments, and central governments.

Each of these players represents different perspectives as well as expectations of housing production and delivery systems. Thus, each one has specific notions of how the system could work better. Given the variations in perspectives and the fact that a good working relationship among these players is essential to achieve an effective public/private partnership in meeting housing needs, a definition of housing productivity based solely on one or two perspectives is too limited. It is more desirable to define housing productivity based on the desired outcomes of each of the key players. Obviously such desired outcomes are neither universally attainable nor entirely compatible. However, they exert an influence on the behaviours of the key players. At the Third International Shelter Conference held in 1990, the participants listed the desired outcomes of each key player, as follows:

Chart 1: Definition of public and private roles in the planning, construction, marketing and management processes for housing

P R I V A T E S E C T O R R O L E	1	2	3	4
	Developer Land Owner Lawyer Real Estate Broker Title Company Architect/Engineer Surveyor Soil Testing Lending Institution Community Groups & NGOs	Developer/Builder Lending Institution Insurance Company Contractors Sub-contractors Craftsmen & Union Material Manufacturers Distributors Architect/Engineer Lawyer	Developer/Builder Real Estate Broker Lawyer Lending Institution Title Company Mortgage Insurer Advertising & Marketing	Developer/Owner Maintenance Firms Property Manager Insurance Utilities Lending Institution Unions Architect/Engineer Contractor Sub-contractor Marketing Material Distribu. Brokerage
P U B L I C S E C T O R R O L E	1. Planning Phase Land Acquisition Planning Zoning Change	2. Construction Phase Site Preparation Construction Financing	3. Marketing Phase Sale & Resale Financing	4. Management Phase Maintenance Management Improvement Additions Property Taxes Income Taxes Health/Safety Codes Utility Regulations Building Inspector Banking Laws Zoning Regulations Building Codes Liability Laws Fire/Police
	Title registration Environmental Regulations Planning Board Zoning Classification Subdivision Regulations Deed Restrictions Official Plans	Contract Law Building Inspector Building Codes Utility regulations Banking Laws Rules Governing Trade & Prof. Assoc. Insurance Laws Transportation Laws	Recording Regulations & Fees Contract Laws Real Estate Laws Transfer Taxes Banking Laws Occupancy Permits	

For housing consumers

- Everyone is housed, with a separate unit of adequate living space for every household.
- The housing unit is affordable.
- Housing prices are stable and predictable.
- Structures are safe and provide adequate protection from the elements, fire and natural disasters.
- Services and amenities are available and reliable.
- Location provides a good access to employment.
- Tenure is secure and protected by due process of law.
- Tenurial options are available (owning or renting).
- Housing finance is available and affordable.
- Adequate information is available to ensure efficient choice.
- Housing consumers are able to participate in policy decisions that affect their housing and neighbourhood.

For housing producers

- Adequate supply of residential land is available at reasonable prices.
- Infrastructure networks are adequate and supportive of residential development.
- Building materials, equipment and skilled labour are available at reasonable prices.
- Entry of new firms into residential construction is not difficult.
- The residential construction sector is not discriminated against by special tariffs or controls.
- Adequate financing is available.
- Contracts are enforceable.
- Regulations on land-use, land development, building, land tenure, taxation or special programmes are well-defined and predictable, and government application of these is efficient, timely, and uniform.
- Adequate information exists to enable producers to forecast housing demand with reasonable certainty.
- Rates of return on all types of housing investment, including rental housing, are sufficient to maintain incentives for investments.

For housing finance institutions

- Housing finance institutions are allowed to compete for deposits on equal terms with other financial institutions; the role of credit is minimised.
- Housing finance institutions are not forced to compete unfairly with subsidised finance.

- Lending is at positive real interest rates with a sufficient margin to maintain institutional stability.
- There are sufficient deposits of an appropriate term structure for long-term mortgage lending.
- Mortgage lending instruments in demand by households, and that provide adequate protection for the housing finance institutions, are permitted.
- Systems of property rights, tenure security and foreclosure are such that the financial interests of lenders can be protected.
- Appropriate institutions exist that protect housing finance institutions against undue mortgage lending risks.

For local governments

- Housing and related infrastructure are of adequate quality to maintain public health, safety standards, and environmental quality.
- Infrastructure networks and services are extended in a timely manner to all communities.
- Communities can participate effectively in decisions affecting their well being.
- The location of new communities is in close proximity to existing main roads, public transport and utility networks.
- Land use is productive and efficient, and in harmony with the natural environment.
- Sufficient land can be obtained for laying infrastructure networks and providing public services and local amenities.
- Housing provides a major source of municipal revenues for building and maintaining infrastructure services and neighbourhood amenities.

For central governments

- Adequate, affordable housing is available to all.
- Targeted subsidies are available to assist households that cannot afford minimum housing.
- Housing sector policy is integrated into national social and economic planning.
- Housing sector performance is monitored regularly.
- The housing sector contributes toward broad social and economic objectives: (i) alleviating poverty; (ii) controlling inflation; (iii) generating household savings and mobilising household productive resources; (iv) generating employment and income growth; (v) enabling social and spatial mobility; (vi) increasing productivity; (vii) generating investment

growth; (viii) accumulating national wealth; (ix) reducing the balance of payments deficit; (x) reducing the government's budget deficit; (xi) developing the financial system; and (xii) protecting the environment.

This list of desired outcomes, from the perspectives of the housing sector's key players, is not necessarily mutually consistent. What may benefit one may be damaging to another. Rent control, for example, may benefit families already occupying rental units, but may prevent further investment in rental housing or may discriminate against new residents. Extending infrastructure networks to increase the supply of land suitable for development may be at the expense of environmental quality. Stronger foreclosure laws may increase mortgage financing at the expense of evictions for some. Resolving these incompatible interests is a fundamental task in improving housing production and delivery systems.

It is obvious that housing productivity cannot be improved without the appropriate intervention of public authorities. However, such intervention has to be based on a positive understanding of the way the housing sector actually works in a particular country's situation. Without this understanding, inappropriate intervention can block supply and frustrate demand, reduce quality and choice, increase costs, and damage the economy as a whole.

Increasing productivity in housing

Housing policy and enabling strategies

Worldwide experiences over the last two decades confirm that the 'enabling framework' for public and private action offers the best hope to address the housing needs of people at all income levels, particularly the poor. While this framework needs to be adapted to the particular circumstances of individual countries, its underlying concept requires a continuing partnership between governments, private institutions and citizens. This partnership is one in which great emphasis is placed upon creating and maintaining appropriate incentives for the private sector, including local communities, to devote a significant portion of its energies towards meeting housing needs.

In developing countries in the past, national policies dealing with shelter in urban areas included eviction, demolition and stringent migration controls. However, these policies have repercussions, not only through the destruction of assets of the poor households who invested in these dwellings but also the elimination of informal sector jobs which in turn worsened the situation as sources of livelihood are taken from their hands. Low-cost housing schemes often impose great financial burdens on the governments, as the projects have to be heavily subsidised to make them affordable to the

poor. On the other hand, the principles of self-help and mutual aid have been increasingly accepted in many countries, particularly in squatter settlement upgrading and site-and-services schemes.

Given its forward and backward linkages to other sectors, the development and implementation of housing policy is too important to be the responsibility solely of housing ministries. Through its interaction with

Box 3: Kampong Improvement Programme in Indonesia

In 1985, the urban population in Indonesia was already 40.2 million or 27 per cent of the total population. The population is estimated to increase to 76 million by the year 2000. The implication is that the urban areas will probably have to absorb 2.2 million new residents per year. It further implied the need to provide shelter and basic needs to this number of people. The first programme under the Urban Basic Need Strategies approach identified in the Jakarta Master Plan was initiated by the city government of Jakarta in the form of a Kampong Improvement Programme (KIP) in 1969. This programme was then replicated in other urban areas throughout the country by the central government with major support from the World Bank. One of the first KIP projects was started in Surabaya in 1976.

The list of kampongs eligible for improvements continues to be monitored by the Institute of Technology Surabaya (ITS), the institution responsible for the initial preparation of the technical plan of the KIP in Surabaya. The selection criteria were based on physical aspects, with flooding, water supply, sanitation, and health as the main factors, followed by the age of the kampong, residents' attitude, density, income, land use, location and physical layout of the kampong. The improvement elements consist mainly of vehicular road, footpath, drainage, public bath and toilet, water supply, education and health facilities. The plan was drafted and presented to the kampong elders who then discussed it with the community for any adjustments to the plan. In this programme, the communities decide on the priorities and preferences of project components within the project's budget and standards. Adjustments were taken into account provided that any changes in the plan do not exceed US\$10 to \$15 per hectare. A contractor would then be selected in open bidding and introduced to the community to ensure that community involvement in the improvement programme right from the start. In the KIP, the local community is effectively the 'supervisor' of the programme.

Source: Silas, Johan, *Housing in Surabaya: Context, Practice and Experience*, Institute of Technology, Surabaya.

macroeconomic performance, housing policy should be determined in co-ordination with, but not subordinated to, ministries of finance and of economic development. Housing policies in some countries have been ineffective because of the tendency to delegate responsibility for such policies entirely to the housing ministry, which is often not well connected to the macroeconomic decision makers and is relatively weaker compared to other ministries. Obviously, housing ministries will have to be represented in the policy-making process but the responsibility for housing policy should be vested in the highest levels of governments.

To be effective, national housing policy must have stability so that all implementing partners, public or private, have confidence in the long-term implications of policy directions. The experiences in some countries show that the lack of a stable and enduring policy direction for long-term implementation frustrates effective housing development and can even result in a severe housing crisis. Long-term stability must apply not only to the objectives of housing policy but, equally if not more importantly, to the instruments employed in the implementation of such policy including political and economic support.

Such housing policies, which incorporate the enabling framework, must realistically reflect the social, economic and demographic conditions within the country. The critical consideration is whether the housing policy and its related institutional structure and regulatory environment can cope with both current and future population growth and housing needs. Even where positive support for public/private partnership in housing production and delivery exists, it is essential to ensure that the housing policy instruments are capable of supporting implementation on the scale and cost required.

Regulatory environment in housing

As numerous case studies of housing development experiences in various countries show, probably the most cost-effective action a government can take to increase housing production is to ensure that its regulatory environment is supportive of private sector initiative. This is supported by the fact that many countries today, both industrialised but especially developing economies, face a shortage of resources for public investment in housing. It is increasingly recognised that government spending programmes in the housing sector are less important than the government's role in defining regulatory frameworks, pricing policies, and related policies affecting the financial sector, in enabling the mobilisation of private sector resources to provide for housing needs, particularly for low-income households.

Box 4: Sri Lanka: National-level shelter provision through aided self-help programmes - Shifting of government's role from provider to enabler

The 100,000 Houses Programme was undertaken from 1978-83 and focused on housing provision on a national coverage. It is a shift from the previous programme that targeted 7,000 to 10,000 units for the seven-year period to 100,000 for a five-year period. The programme consisted mainly of the Aided Self Help Programme (ASHP) in rural areas. Only 30,000 were built due to the considerable inflation of construction costs (35 per cent higher than forecasted) and the high level of subsidy required. It was realised in 1981 that this housing programme was in need of a revamp. It was revamped under a 1,000,000 Houses Programme launched in 1984.

The 1,000,000 Houses Programme represented a remarkable transformation from the government as provider to the government as facilitator. The most fundamental lessons learnt from the 100,000 Houses Program were that the direct involvement of the state in the design, planning and construction of houses was not an effective solution and that the role of the state should be to actively support the mainstream house building process by the people. Under this programme the target families were mainly low income people in cities, towns and plantation. The programme was based on the recognition that housing investment must cover a wide range of housing needs and services, taking into account the requirements of land and finance, skill training and technical advice. Community participation and self help was encouraged. The programme consisted of 19 different loan packages – 16 to low income earners and three to middle income earners, made through the National Housing Development Authority (NHDA). The loan package was widely publicised to inform the people of the ranges to suit their affordability. The National Housing Development Authority determines national policy and programmes, provides loans and technical advice.

By 1990, 85 per cent of the target had been reached, prompting the government to launch the 1.5 Million Houses Programme in 1990-95. However, despite the acclaimed success in terms of quantity of houses, a census in 1981 indicated that out of a total 2.8 million occupied housing units, only 42 per cent of the units in the country were constructed of permanent materials, eight per cent had piped water within the premises, only five per cent had flush toilets and 22 per cent had water-sealed latrines.

Source: UNCHS (Habitat), *Human Settlements Sector Study*, Sri Lanka, 1993.

A case in point is the United States where, in recent years, the problem of affordability has had a negative impact on lower-income households. A report of the President's Commission on Housing stated that regulation has unnecessarily pushed up costs in some localities by as much as 25 per cent of the final selling price. A more recent demonstration by the US Department of Housing and Urban Development showed conclusively that by merely updating regulatory requirements and deleting unnecessary ones, savings of 10 to 30 per cent can be achieved in the selling price of housing.

Box 5: The Indian Urban Land Ceiling Act

Poorly designed policies aimed at improving the access of the poor to urban land might not only fail to help but could actually prove counter-productive. The Indian Land Ceiling and Regulation Act of 1976 (ULCA) was intended to reduce land speculation and to distribute land to the poor more equitably in urban areas by imposing a ceiling on the amount of vacant land that could be sold to the government, primarily to provide sites for affordable housing, for not more than Rs 10 per square metre (about US\$1.30 at that time). This was significantly less than the market price that the Land Acquisition Act of 1894 required the public sector to pay.

The government estimated that there were approximately 166,000 hectares of 'excess' land. By 1987, the government had taken physical possession of 3,852 hectares and constructed housing on 621 hectares (0.37 per cent of the estimated total excess). In addition, the majority of the resulting housing was not aimed at low income households.

The ULCA effectively froze the urban land market as property owners took advantage of its slow appeal process. As a result of this contraction in the supply of land, the price of land remaining on the market, primarily small parcels and land outside the municipal limits, significantly increased. In the city of Ahmedabad, land prices in 1975 ranged from Rs55 to Rs300 (US\$7 to US\$39) per square metre. In 1980, they were Rs110 to Rs1,800 (US\$14 to US\$234) per square metre. These increases are well in excess of the annual inflation rate of approximately 7.7 per cent. In contrast, the minimum price of land for Madras in 1981, where a different, less stringent version of the ULCA was implemented, was still only Rs4 (US\$0.40) per square metre. This is in spite of the fact that the city's population had increased 120 per cent in 20 years. As an Indian member of a Regional Policy Seminar Expert Group observed, 'The ULCA has been a disaster in terms of implementation, and has resulted in the single largest increase in the cost of housing'.

Source: US Agency for International Development, 1990

There is a baseline of desirable regulation from which additional regulatory costs should be measured. For instance, regulation may increase costs and limit access to housing although it can also generate significant public benefits especially in terms of health and safety. For each specific regulation, therefore, it is necessary to determine the benefits relative to the costs. The ideal scenario is to eliminate 'unproductive' regulations, thus enabling direct reductions in housing costs.

An appropriate regulatory environment is one with effective guidelines for use both in devising the regulations themselves and in fostering co-operation among the parties involved in housing production and delivery. For instance, the high cost of housing in India is largely due to inappropriate regulations that constrain land and housing supply. Participants at the Third International Shelter Conference suggested a set of guidelines for a regulatory environment supportive of the enabling framework:

- **Create an effective incentive system.** Regulatory systems create incentives, which if implemented correctly, enable the housing

Box 6: Standards for social housing in the Philippines

In the mid-1980s, the Philippine government passed a law to make housing produced by the formal private sector more affordable to low-income households. The law, commonly known as Batas Pambansa 220: Socialised Housing Standards, was a direct response to the need to change the 'minimum' housing standards provided for in the National Building Code and the National Land Subdivision and Development Regulations which were being uniformly enforced regardless of the sub-market intended to be served. The implementation of these regulations resulted in housing prices that were unaffordable to the majority of the population and, thus, a huge backlog in housing needs were not met. As these regulations were also the responsibility of central government agencies, they were unenforceable by local authorities, thereby resulting in widespread circumvention.

The Socialised Housing Standards recognised the need to match housing price and affordability. It provided alternative options in terms of physical standards for housing units and community infrastructure services based on an affordability analysis of the intended beneficiaries. The options ranged from a 'shell' house with a minimum floor area of 18 square metres to a complete house of 36 square metres. Recognising that homeowners tend to improve their houses as their incomes improve, the law also allowed incremental construction over time. Since the law was passed, the number of small private companies engaged in producing housing for the low-income households has increased.

market to flourish. Inappropriate regulations, conversely, add unnecessary costs and reduce production, or cause housing producers to circumvent regulations.

- **Use regulatory controls to organise markets.** A regulatory system that clarifies the use of land and specifies the infrastructure required to support that use would provide housing producers with a clear road map for construction. Reducing uncertainty over the stability of a given housing project allows for mass production and thus cost reduction.
- **Enforce reasonable standards.** A huge gap exists in many countries between what housing technicians and vested interest groups believe to be 'reasonable' standards and what the community can afford. Building codes designed to reflect affordable housing could increase housing demand and encourage private housing development companies to produce housing for low-income groups.
- **Create a system that provides long-term confidence.** The most enduring benefit of housing regulation is its ability to provide the confidence essential to the smooth functioning of the housing system. A regulatory system that provides for healthy and safe financial institutions would go far in mobilising savings that can fund the creation of housing. Deposit insurance plays an important part in a financial system. If it is used as a substitute for ensuring the soundness of financial institutions, as has been the case in the United States, it will be counter-productive.
- **Match regulations to the scope of the market.** Housing markets and sub-markets are often local markets with specific locational characteristics. Regulations such as land use and construction standards should, therefore, be local standards to match the scope of the market. In the financial area, national regulation is appropriate as it applies to national scale market.
- **Minimise the transaction cost of compliance.** A highly complex regulatory system extends the period of housing construction, adding substantial costs to housing. High regulatory costs undermine both public and private initiative, reduce incentives, and result in lower housing productivity.

Housing and land

Land policy and its management systems are key to efficient land markets which, in turn, are critical to efficient housing production and delivery. A country should have a clearly defined land policy, the aim of which is to make building plots available at the right time, in the right place, and at reasonable prices for people wanting to build. Such a policy should also

ensure, by providing services and infrastructure, that the building plots can be used for building purposes without delay in accordance with the conditions laid down in planning laws.

A critical element of a land policy is security of tenure, which is a prerequisite to efficient housing delivery systems. In many countries, both developed and developing, land can either be an advantage or disadvantage in seeking solutions to their housing problems. Studies have proven that housing delivery is more efficient when well-defined property rights and security of tenure are in practice, such as in the United States, Germany and Thailand. On the other hand, studies from China and the former Soviet Union recognise that their unclear property rights are major constraints on their reform programmes.

Establishing clear property rights and security of tenure requires an effective and affordable system of land registration and transfer. In several developing countries, the constraints of land supply, title and tenure are often the culprits leading to their inefficient land markets since they affect, first and foremost, the supply of formal sector housing. In many of these countries, the informal sector finds ways to operate with less secure land rights. Key areas to be improved are simplification and acceleration of the land acquisition and title processes to reduce costs.

Moreover, efficient land markets are strongly linked to the mobilisation of housing finance. Where households have no potential for obtaining secure title to land, there is a disincentive toward saving for housing investment. Without secure tenure, obtaining access to housing finance is more difficult, if not outright impossible. Inefficient and costly regulations and procedures, inadequate cadastral surveys, and long delays in processing land title transfers, all add unnecessarily to the high cost of housing.

Housing finance and development

Developing countries are increasingly recognising the critical importance of a viable national housing finance system not only to support housing production but also as an integral part of the overall national financial system and capital markets. Housing is a capital investment that generates a stream of services over a considerable period of time. Even in developing countries where house prices are relatively modest, the initial outlay is still considered high in relation to the buyer's income. These characteristics underlie the fundamental need for long term financing if a country is to meet the housing needs of its population, and to realise both the direct and indirect positive development effects of a strong and vibrant housing sector.

The efficiency of housing finance, in terms of mobilising savings and providing house construction and house purchase loans, directly affects the scale of housing delivery. In turn, housing finance efficiency depends on the institutional structure and techniques most appropriate to a country's culture, resources and economic circumstances. Recent studies indicate national policy moving towards the trend of placing greater reliance on private sector initiatives in providing housing and housing finance, and adopting a role of support and facilitation rather

Box 7: Land sharing in Bangkok

Land sharing between land owners and slum dwellers is practised in Bangkok and has proved to be quite successful. For Bangkok slum dwellers, the arrangement enables the poor to stay where they are and gain formal land tenure. For the landlords, it makes land available for immediate development and saves costs associated with long eviction cases. For the government, it is an opportunity to house the poor without taxing its limited resources and yet remain neutral on the sensitive issue of eviction of the poor.

Ban Manangkasi is an area in Bangkok occupying a prime location near the city centre. The community had resided in the area for 60 years when the government finally decided in 1978 to lease the land to a private developer. The developer offered a compensation of US\$7.50 per square metre of the occupied land which was accepted by 32 out of over 500 families. Resistance from the community prompted the Finance Ministry to ask the developer and the community to resolve the issue to the satisfaction of all concerned. The first meeting between the developer and the community was in 1979. It was only resolved in 1982 with an agreement to share the land ranging from 20 to 40 square metre plots according to the length of time the land was occupied by the slum dwellers. The building of dwelling units was made possible with a mix of formal and non-formal arrangements for financing and management of housing construction.

Land sharing may be quite successful in Bangkok but some critics argue that it is only applicable to a limited extent and depends on other factors such as land prices, institutional structure and cultural values of the communities. The concept of land sharing requires a developer to surrender a certain area of land to the occupiers at a reasonable price. This has not met with much success in other areas in Bangkok because developers/landlords are often not willing to surrender land at the prices offered by the community. In addition, the lack of suitable land for relocation acts a deterrent.

Source: UNCHS (Habitat), *Land for Housing: A Training Module for Government Officials*.

than direct intervention by the public sector. The successes of Grameen Bank in Bangladesh and the Housing Development and Finance Corporation in India, for example, demonstrate that a viable housing finance system requires private initiative within a government-defined regulatory framework.

Formal housing finance mechanisms can develop if there is a policy framework that encourages them to do so. A clear system of land tenure and foreclosure is also essential. A viable housing finance system cannot develop in a situation where financial institutions are required by government to lend to people who do not repay because they cannot afford to do so. This is not to suggest that forbearance for those who are unable to pay is inappropriate. Rather, it is to ensure that reasonable rules and fair protection for borrowers should be exactly that – reasonable and fair. The systems in place should not encourage people not to repay or be so protective of borrowers that no lender will make funds available to them. Experiences in some countries indicate that loan delinquency declines when households borrow from private rather than public institutions.

The more efficient a housing finance mechanism is, the more people will have access to home ownership. The more efficient a housing finance system is, the lower the margin will be between the cost of funds an institution raises and the rate at which it can lend money. Thailand and India are two examples of countries with highly successful housing finance institutions which can be considered models for other countries (see Box 8).

A related aspect that is also important is the use of explicit subsidies. In Chile, explicit subsidies consist of a one-time free contribution of the state of a determined amount to new home purchasers. The government uses budgetary resources, financed with internal cash or international loans, to provide non-repayable grants to eligible home buyers. The importance of this contribution is reflected by the fact that 88 per cent of the population have access to formal housing production. With a high percentage of subsidies directed to lower-priced housing units, the system is progressive since subsidies are not given at the expense of developing sustainable finance.

In many developing countries, informal housing finance systems are a valuable means of enabling access to housing for the poor. However, governments often consider the informal finance sector to be undesirable because it generates excessive costs for the household. But when formal housing finance systems cannot meet the need for long-term affordable mortgages, lower income households have no choice. Instead of government suppression of informal housing finance, it is more desirable to develop some means of linking formal and informal systems while the overall housing finance system deepens and matures.

Box 8: Housing finance in Thailand and India

Thailand

A major reason for the success of the housing sector in Thailand has been the massive expansion of housing finance for long-term mortgages. Started in 1984, the Government Housing Bank undertook a series of bold steps which included:

- Lowering the bank's overhead and improving operational efficiency, allowing it to offer higher interest rates on savings deposits and to create a range of attractive savings instruments. As of 1991, all of the funding needs were met by adjusting the bank's deposit rates in tandem with market situations, rather than relying on funds obtained wholesale from overseas and other financial intermediaries.
- Improving the bank's lending efficiency, permitting it to offer loans at interest rates below the competitive market, while still sustaining adequate profit margins.
- Stimulating competition by highlighting the visible market success of the bank. Commercial banks began to compete, in part because of an overall high liquidity in the banking sector and in part because the bank had demonstrated the profitability of housing loans to consumers. Commercial banks began to provide terms of up to 20 years on home loans.

As a result, the outstanding mortgage loan portfolio of all institutions grew at a compound rate of 16.4 per cent from 1982-86 and then exploded to 33.1 per cent in 1987 and 42.9 per cent in 1988. As a result of this public/private partnership for the creation of an efficient housing finance system, housing finance in Thailand has become an integral part of the whole financial system without 'special channels' or subsidies.

India

Over the last decade, the Housing Development and Finance Corporation (HDFC) in India has grown into a highly successful institution now viewed as an international model for public/private partnership in housing finance. Its accomplishment is all the more noteworthy in that HDFC developed a market-oriented housing finance institution without a major amendment to government housing policy. It was structured to take advantage of existing laws and credit facilities and found a niche in the system that allowed HDFC to function just like any other market-driven bank.

The corporation's successful growth was not without obstacles especially in an environment not designed to support and facilitate the development of housing finance institutions. However, its success spurred the government to take steps toward rationalising housing policy. Of particular importance, the government has established a National Housing Bank aimed at encouraging private initiative and providing the framework in which a workable private housing finance system can flourish to help overcome India's serious housing problem.

Source: Proceedings of the Third International Shelter Conference, 1990, Washington, DC.

Housing and the construction industry

Chronic shortages of building materials for residential and infrastructure construction are a major constraint to efficient housing production. This is often the result of underproduction of necessary building materials, lack of variety, and inefficiencies in production and distribution by the building materials industry. These problems are particularly acute in countries with monopolies in materials production and in countries where import restrictions and tariff barriers hinder competition in building materials markets.

Often, difficulties in entering the building industry are encountered by small producers who cannot obtain the necessary licences from the government. In some cases, monopolies extend to land assembly and subdivision, and to house construction as well, when the regulatory system is especially cumbersome, leading to long delays in obtaining permits. Small developers and contractors usually cannot assemble the necessary capital to have several projects in the pipeline while permits are sought.

Box 9: Linking formal and informal housing finance systems

The Co-operative Housing Foundation (CHF) has been working to make housing finance accessible to lower income households for many years, principally in Central America and the Philippines. It is gradually expanding its activities to other countries in Asia, Africa and South America. It essentially promotes a financing and development model that transforms the enabling strategy from a concept to a replicable programme.

The CHF model routes funds through intermediary institutions to affiliate credit unions and individuals and community associations. CHF lends to intermediary institutions at slightly below market rates for three to five years. The intermediary marks up the funds slightly but also provides below market rate loans to its affiliates. The affiliates lend funds to beneficiaries at market rates. The spread helps each level to service its costs. The security for the loan is flexible, and may involve mortgage of property, co-signers on the loan, and payroll deductions. Peer pressure is built into the programme to facilitate repayment.

This model is flexible and permits a variety of relationships between the formal institutions and the intermediary organisation. It is a beginning that attempts to forge and nurture links between the formal and informal sectors of the economy. However, it does need to be further developed into a sustainable system in the long-term, especially with regard to the resource flows necessary to make it work over time.

To increase housing productivity, therefore, it is necessary to ensure a smoothly functioning building industry. The key is to eliminate monopolistic practices, break down artificial barriers to competition through appropriate antitrust legislation, and encourage the entry of small firms into the housing sector in all phases of production and distribution. Governments should encourage the building industry by reducing import controls and by facilitating licensing requirements for small producers, transporters, contractors and developers. It would also be helpful for governments to support building research institutes to help establish the development and use of local construction materials and building technologies while helping to train local producers in new technologies and efficient construction management.

Institutional framework for managing housing sector

Government involvement in the housing sector is generally restricted to the cities, often in response to the perceived failure of markets to produce adequate housing and to the unacceptable housing conditions of the urban poor. In some countries, the government has focused mainly on the provision of housing to civil servants, while in others their efforts are to complement the clearing of slums, in offering the poor some compensation for their outright eviction. The general experience with this kind of government intervention in many countries has been the creation of a multipurpose housing agency, combining the administration of subsidies with the direct production of housing units. The limited availability of subsidies typically resulted in low production and left many households without access to government-produced housing.

Government housing agencies, which typically measured their performance by the number of units produced, did not see themselves as responsible for the performance of other producers. Underlying this attitude was the rationale that since the private sector was not formally producing low-cost housing, public agencies were required to do so. These public agencies typically requested for a housing budget based on a housing needs assessment which suggested that government housing budgets were inadequate to meet all housing needs and should, therefore, be increased. Such a stance usually circumvented the question of who should be engaged in housing production and ignored the contribution of the informal sector which produced large volumes of uncontrolled and officially unrecognised housing.

In many developing countries, government housing agencies usually failed to take responsibility for the housing sector as a whole, typically restricting their activities to producing housing or issuing generally subsidised mortgages. They were rarely involved in direct encouragement of the private sector. They were also usually separated from other public works agencies,

which proceeded independently without necessarily paying attention to residential land development needs. In many instances, they were typically perceived as welfare agencies, unable to perform their job properly because of shortage of funds, rather than as capable of managing a productive sector.

There has also been a general failure of central government housing agencies to acknowledge the critical role played by local governments and local utility agencies in shaping housing outcomes, when the most critical policies affecting housing markets are often enforced at the local level such as land use and zoning regulations, building ordinances, rent control, property taxation, and infrastructure investment decisions.

Improving housing productivity requires institutional development in the housing sector to move away from direct housing production by governments towards managing the housing sector to ensure that markets produce adequate and affordable housing for all. This requires a broad, sector-wide approach. In many instances, what is needed is a better institutional framework to bring together the major public agencies whose policies and actions influence the performance of the housing sector as a whole. A co-ordinating mechanism should be established in consultation with other agencies, non-governmental organisations, and community groups to:

- Set broad policies for the housing sector;

Box 10: Provision of housing by private sector in Malaysia

The implementation of housing programmes in Malaysia continues to give priority to the development of low-cost houses and low medium cost houses. The private sector plays a major role in the implementation of the housing programmes. During the Sixth Malaysia Plan (1991-95), the overall achievement of housing construction was 113 per cent, exceeding the target of 573,000 units by 74,460 units. From this total, the private sector exceeded the target by 141 per cent – constructing 562,918 units of the targeted 399,000 units. In terms of low-cost houses, the private sector supplied 214,889 units in comparison to 46,497 units constructed by the public sector. One of the ways to expedite the construction of low-cost houses and to encourage private sector participation is through the establishment of the Special Low-Cost Housing Fund in the form of loans to the private sector to finance the construction of low-cost houses. The private sector is also required to allocate at least 30 per cent of the total number of constructed units as low-cost units.

Source: *Seventh Malaysia Plan 1996-2000*, Kuala Lumpur, 1996.

- Collect, analyse, interpret and publish data on housing sector performance;
- Provide institutional linkage between housing and macroeconomic planning;
- Generate long-term plans for housing sector development in conjunction with the central planning agency;
- Provide a forum for participation of the private sector, the non-governmental organisations (NGOs), the community-based organisations, and the general public in housing policy formulation;
- Co-ordinate infrastructure provision among agencies to ensure an adequate supply of developed land;
- Review the effects of the regulatory environment on the quality, quantity and price of housing;
- Engage in housing research; and
- Influence housing-related agencies to act in a manner that improves housing sector performance.

If such a co-ordinating mechanism is to exert a meaningful influence on local housing markets, it should work closely with its counterpart institutions at the local government level. Data should be collected on key housing determinants and outcomes through both national and local housing information systems. Key outcomes include: the distribution of housing prices and rents in the entire sector; investment and production; homelessness; median living space per person; quality and safety of structures; availability of basic infrastructure services; accessibility to job opportunities; security of tenure, mobility, and choice; and the degree of residential segregation. Variables that influence housing demand and supply such as the availability of credit and subsidies, the adequacy of residential infrastructure, the efficiency of the building industry and the effectiveness of the regulatory environment, all help to determine outcomes. Research and evaluation which links local and national housing outcomes to their social and economic antecedents can be especially useful in highlighting desirable policy changes at both the local and national levels.

Public/private partnerships for community housing

The majority of the innovative, workable initiatives for improving housing by no means emanate from central, state or provincial governments, international lending institutions or the ranks of academic or professional consultants. Instead, they are generated by people at the community level, out of necessity or simply the will to survive. In most developing countries the informal sector, as an aggregation of local groups at the community level, has produced 80 to 90 per cent of the housing built during the last 30 to 40 years. In contrast, initiatives by central governments to provide improved housing for low and

moderate-income families have largely failed because their products were not affordable to the target population. Furthermore, such output could not be produced in the quantities necessary to make a significant contribution toward meeting large-scale endemic housing needs.

Part of the institutional reform would be to increase community participation in the decision-making and implementation process to

Box 11: Co-operatives of low income groups in Cebu City, the Philippines, for acquisition of land for housing

Cebu City has a population of 800,000 which is growing at approximately 40,000 per year. About 130,000 of its population live in slums and the rate is estimated to increase at 1,000 families per year. The government has estimated that 320,000 new dwellings are needed in urban areas each year. In Cebu, undeveloped land is only sold in parcels of several hectares while a parcel of 100 to 200 square metres is enough for the needs of one family. The families therefore pool their savings to buy a parcel of land which is later subdivided among themselves to construct their houses. In one instance, 43 people formed a group and bought a 6.2 hectare land plot, then subdivided it into 43 plots of about 100 square metres each leaving one-fifth of the area for roads and common purposes. The cost of each plot was under US\$100.

The effort was replicated by another group of 23 people who bought a four-hectare plot. The initiative became popular as more people became interested to acquire land for houses in the same way. Pagtambayayong ('Mutual Help') Foundation, a non-governmental organisation, formalised the activity. Loans were extended through the foundation for groups to buy houses on the basis of fixed contribution of US\$15 per family per month for a period of 10 to 16 years. Interest at 1 per cent per month is included calculated on the declining balance. The title is passed to the purchaser but the individual contract allows the families to sell the houses once the repayment is completed. By November 1987, the foundation had sponsored 16 groups of land buyers. Four of the groups, with a total of 274 members, are in the low-income group and 765 members from another 12 groups are in the lower-middle income group. Funding for further purchase of land is from organisations such as the Philippine Business for Social Progress (PBSP) and Aboitiz Foundation at interest rates lower than commercial rates with no collateral. The foundation may not have reached the poorest people but at least it has helped those with regular means of payments. This may not be replicable in other areas but the process seems to be appropriate to the scale and resources of the areas served.

Source: UNCHS (Habitat), *Co-operative Housing: Experiences of Mutual Self Help*; Nairobi 1989.

improve living conditions. It is important that support be provided to the lower income population to encourage access to housing through forming self-help groups such as co-operatives and encouraging networking among community groups, NGOs, training institutes and various government bodies. Poor communities possess the skills, motivation and sometimes resources to provide or improve basic shelter for themselves. The need and motivation of the urban poor can be tapped and further enhanced by mobilising the energy and resources of the NGOs and community-based organisations in various community projects involving the upgrading of shelter for the poor. The progressive transformation of non-governmental and community-based organisations into local-level planning and implementation bodies would pave the way to forms of participation responsive to the requirements of the poor and establish a forum for self-help and self-determination.

On their own, neither the governments nor the private sector, nor citizens groups, nor individuals, can fully resolve housing needs on the scale required. However, working together in partnership and combining their diverse skills, experience and resources, they have a much greater chance to successfully meet

Box 12: Women and community self-help

Bangladesh: Grameen Bank Model

One of the best examples of a majority of women participating in a programme to improve their housing and living conditions is the case of Grameen Bank in Bangladesh. The loan programme was launched in 1984 to help members, more than 90 per cent of whom are women, to build their own houses. The bank catered for three types of low-cost houses – basic housing, moderate housing and normal housing – with different sets of loan values. Loans averaging US\$190 each were given out to members to undertake various income generating activities. By October 1994, a total of US\$107.23 million was disbursed as loans to about 305,603 members.

The majority of the participants were women who were required to form themselves into groups of five in order to receive loans for which no collateral is required. The bank operated in slightly over 50 per cent of the total 68,000 villages in the country. The housing loans are without collateral and are paid back in weekly instalments for a maximum of 10 years. Loan repayment was almost 100 per cent. A total of 94 per cent of the borrowers were women.

Source: Ali, Shaikh Liakat, 'Housing for the Rural Poor: The Grameen Bank Experience', paper presented at International Symposium and Workshop on Housing Finance in Asia, Kuala Lumpur, September 1994.

their country's housing challenges. To be sure, the government's role is crucial at all levels, not to directly provide or produce housing, but to establish the essential regulatory framework and carry out the duties assigned to it effectively and efficiently. Land use planning and zoning, infrastructure provision, and land title functions must be efficiently discharged. Access to land and

Box 12: Women and community self-help ...continued

India: Self-Employed Women's Association

The Self-Employed Women's Association (Sewa) considered women to be the major home-users, home-makers and home-based producers. To these women, homes not only provide shelter but also a productive asset. Their shelter is their place of work and living. Realising this, Sewa provided opportunities for these poor women to obtain financing for their houses. The Sewa Bank provides housing finance to about 3,200 households each year to improve, add, renovate, alter or buy new house of their own. In one case, Sewa, Sewa Bank and Ahmedabad Urban Development Authority (Auda) collaborated on a housing scheme and built 110 houses for homeless beedi (tobacco) workers. In India, about 90 per cent of beedi workers are women. A similar collaboration is ongoing with the State Housing Board to provide houses for the homeless. Collaboration with the Ahmedabad Municipal Corporation includes parivartan or slum upgradation programme, the Greening Ahmedabad Programme and the Clean Ahmedabad campaign.

Over the past 20 years, Sewa Bank has generated new jobs for 26,000 women worth Rs4.5 crore or US\$1.5 million. Sewa members have developed vacant municipal plots to plant trees and grow nurseries. They have also organised themselves into co-operatives and taken up cleaning and waste disposal across localities, recycling tons of waste paper and garbage. One such co-operative called 'Lokswasthya' was even invited by the Ahmedabad Municipal Corporation to set up medical counters of generic drugs in municipal hospitals to provide cheaper drugs and medicine when the economic liberalisation policies of the country increased the cost of medicine 10-fold in the open market. The members have also formed and maintained their own day-care centres across the city, providing over 4,600 children with nutrition, healthcare and education. The basic principles of Sewa are that economic investment in poor women generates sustained and substantial profits; health-related investment generates healthy and productive workers and entrepreneurs; while political investment in terms of civic education generates citizen participation in governance and more educated children for the future.

Source: Batt, Ela R, 'The Future of Cities is Their Poor and Women', paper presented at International Conference on The Future of Asia's Cities, Jakarta, December 1996.

security of tenure as well as capital are essential at the community level with the goal of developing local capability to produce housing.

The role of women is of particular importance to public/private partnerships for housing at the community. The majority of the urban poor are from households headed by women. Particularly in developing countries, women play an important role in protecting the environment, practising family planning and providing education for the children. It is therefore important to involve women in productive income-generating activities and enable them to earn a living to provide secure shelter for their families.

Conclusion

As mentioned at the beginning of this chapter, most countries have policy objectives to ensure that housing is available for all their population. This means that the country's housing production and delivery system should be functioning well so as to meet its housing needs. The basic objectives of a smoothly functioning housing sector are as follows:

- Productive and efficient, using resources to get the best possible housing for the funds expended;
- Responsive to the needs of all segments of the population, especially the poor, enabling them to be adequately housed at reasonable prices; and
- Environmentally sound, accommodating growth without damaging consequences for the natural and urban environments.

Achieving these objectives is directly dependent on effective co-operation among the key players in housing, based on a clear definition and separation of roles. Such co-operation, as expressed in public/private partnerships, provides the foundation for an 'enabling strategy' that creates and maintains appropriate incentives for the private sector, including local communities, to contribute meaningfully towards meeting housing needs.

Enhancing productivity in housing requires analysis of the housing sector as a whole, and its relationship to economic growth and to market conditions. Based on international experiences, seven major lessons may be drawn for developing actions appropriate in improving housing productivity in Malaysia. These are:

- Developing property rights by regularising land tenure; expanding and improving land registration and transfers; privatisation of public housing stock; and strengthening property taxation.
- Developing mortgage finance by eliminating 'hidden' subsidies

through the financial system (such as interest rate subsidies); expanding mortgage lending to rental housing development and house improvements; expanding the role of private lenders; lending at positive market rates; enforcing foreclosure laws; and introducing better loan instruments.

- Rationalising housing subsidies, by making subsidies transparent; targeting subsidies to the poor (such as through one-time grants) where eligible borrowers, not their houses, are subsidised; and reviewing the impact of subsidies regularly.
- Providing infrastructure by co-ordinating land development; emphasising cost recovery; basing provision of infrastructure on demand; and improving infrastructure services in slums.
- Rationalising land and housing development regulations by reducing regulatory complexity; assessing the cost of regulations; removing compliance requirements which result in price distortions; and by removing artificial shortages brought about by unreasonable standards.
- Organising the construction industry by eliminating monopoly practices; encouraging entry of small firms; reducing impact controls; and supporting building materials and technology research.
- Strengthening the institutional framework by developing enabling strategies; balancing public/private sector roles; monitoring housing sector performance continuously; and creating a multi-sectoral forum for managing the housing sector as a whole.

These lessons from other countries characterise the ‘enabling approach’ which means that the key players in the housing sector – the consumer, the producer, the financier, the central and local governments – work in harmony, complementing each other in what each one does best to achieve the objectives of a smoothly functioning housing sector.

Achieving this objective necessarily requires change and improvement in the manner in which housing policies and practices are established and the way the implementation process is introduced and managed. It requires a mind-set that recognises the role of the community, its governmental structure, and its ability to perform; and that guarantees the rights of citizens to participate in the decision-making process.

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International Experiences III: Low-Cost Housing

Parid Wardi Sudin

Introduction

This chapter examines the concept of low-cost housing in relation to the overall housing scenario, discusses the premise on which the programmes were developed and assesses the performance of the programmes. It questions the practice of treating low-cost housing as separate from the overall housing problem, and explores alternative views of housing, including their role, nature and importance. With this in mind, the chapter examines methods which can further develop the low-cost housing provision.

The importance of housing to the national economy is demonstrated in the way governments use it to generate economic activities and create employment. Housing construction has implications in many sectors such as finance and manufacturing, and the production of building materials and building components. Equally important is the value of good housing to the well being of the community in terms of good physical environment, crime free

neighbourhood, and good social and cultural environment. Good housing is a reflection of the well being of the community.

The perception of what low-cost housing is, its importance and its role, has a major influence on the way the housing problem is perceived; hence the attitude and approach to the solution. As Turner (1971) puts it, the moment housing is defined as a problem then a problem industry is created.

In the United States, where housing is viewed more as a consumer item like TV sets and cars, the role and responsibility of providing houses lies with the individual. In Eastern European countries, housing is viewed as a social right that the state provides for the workers. Thus the government is actively involved in housing construction. It is seen as its problem. In Malaysia housing is viewed as being somewhere in between the two extremes. At the same time it is recognised that the housing industry has strong linkages with the national economy, through material manufacturing, construction industry, services industry and finance.

Turner (1971) views housing as a universal human activity which started when man first walked the earth. If seen as a problem, it is not of recent origin nor is it unique to the 20th century. Throughout history, there has been a rich heritage of solutions and ideas on housing. In *Architecture Without Architects*, Rudofsky (1964) explores this heritage of buildings built by the people. The idea suggested is that there are two distinct roles in housing – house building and infrastructure planning – and that the former is best left to the people. Throughout history the people have demonstrated their ability to build good housing. The role of the government is to provide central planning and co-ordination. The squatter houses are excellent examples of this. They reflect a tremendous capacity and ingenuity to build but lack any central support, co-ordination or control.

The Sixth Malaysia Plan defines housing in terms of the human settlement. It takes into consideration the physical, economic and social environment as well as the needs for employment, education, recreation, religious facilities, shopping and health.

Housing for the poor, those who very often cannot afford to buy or build their own houses, are referred to by different names in different countries. In Malaysia it is low-cost housing. This is defined by the Ministry of Housing and Local Government as houses which are a minimum of 650 sq ft in area, and cost not more than RM 25,000. These houses are meant for those earning less than RM1,000 per month. Currently this definition is being revised to allow for increases in land and construction costs

In Europe, housing for the poor is referred to as social housing. This generally refers to the houses that are built for the very poor who normally would not be able to buy a house on their own. If rented, they would be below the market rate, as stated by Power (1993). In Britain the houses are built by the local authorities. In Europe they are built by housing companies.

Malaysia's experience

In Malaysia housing is regarded as an end; a product. Importance is placed on the physical form of the building – its space standards, facilities, quality of construction and finishes and the physical infrastructure. The effect of such housing on the people, whether it improves their lifestyle or whether the distance to work is further or that they have to pay more for travelling, is not often viewed as a housing issue. Perceived as a product, the only approach an intended house owner can take is to work and save enough money to buy the house. Consistent with this, the housing programme revolves around a simple approach – to build as many houses as possible, quickly and cheaply and to provide the necessary financial support to the buyer in terms of end financing. The notion of setting a housing target supports this approach. The concept of housing targets also gives rise to the idea that, given the necessary resources and effort, it is possible to eventually provide decent houses for all, that is, to solve the problem.

Since the Third Malaysia Plan, the government has explored various avenues to improve the housing production and delivery system. These include methods to speed up the plan processing system through the setting up of one-stop agencies, the introduction of new technologies such as prefabricated housing to speed up the construction process, introduction of better construction management system and a variety of programmes such as the Special Low-Cost Housing Programme and the site and services scheme.

To allow the poor to continue to have access to the housing market, various types of loans are available. Government employees enjoy a special government housing loan. Non-government employees have access to their Employees Provident Fund (EPF) savings as well as bank loans. By regulating the selling price at RM25,000, despite increased cost of living, the government has further helped the poor to acquire houses.

Responsibility for housing construction

Responsibility for low-cost housing construction has shifted from the public to the private sector. During the Third Malaysia Plan and up to the Fifth Plan, the responsibility for housing construction was borne by the public sector, namely the State Economic Development Corporations and the Ministry of Housing and Local Government. In the case of land development schemes, the responsibility lay with the Federal Land and Development Authority (Felda) and the Federal Land Consolidation and Rehabilitation Authority (Felcra). However, during the Sixth Malaysia Plan, the responsibility shifted to the private sector. During this period, out of a total of 227,379 units of low-cost houses built, 212,003 units (including 131,325 under the Special Low-Cost Housing Programme) were constructed by the private sector. This represents an increase from the 88,877 units constructed under the Fifth Malaysia Plan. The number constructed by the public sector declined from 26,172 units during the Fifth Malaysia Plan to only 15,376 units during the Sixth Malaysia Plan.

Number of low-cost houses built

The number of low-cost housing units constructed during each successive Malaysia Plan has increased, except during the Fourth Malaysia Plan when there was a recession. The number of units built is as follows:

- Second Malaysia Plan: 78,106 units
- Third Malaysia Plan: 225,740 units
- Fourth Malaysia Plan: 90,500 units
- Fifth Malaysia Plan: 115,049 units
- Sixth Malaysia Plan: 227,379 units

The number of low-cost houses built so far is not enough to meet the needs of urbanisation. At the current rate of urbanisation of 4.5 per cent, the increase in urban population between 1991 to 1995 is approximately 1.8 million or about 360,000 person per year. Assuming an average household size of five persons, about 72,000 units of houses will be required annually in the urban areas. This does not take into account any backlog or replacement of dilapidated units.

Since the Second Malaysia Plan, 736,774 units of low-cost houses have been built. This does not include houses constructed under the land development schemes, medium-cost houses and co-operative societies. The average annual rate of construction is 29,470 units. Even during the Sixth Malaysia Plan when the number of units built by the private sector almost met the housing target, the total number constructed by both the

public and private sector is only 227,379 units, or an annual rate of 45,475 units. This is only 63 per cent of the need of the rural-urban migration.

During the Malaysia Plan periods various low-cost housing construction targets were set. Often the targets were never met, giving rise to various criticisms of the housing industry. The importance of these targets depends on the basis of their computation, which may be based on population projection, income, room occupancy, density or housing need. For the target to be useful it has to relate to income and affordability. The performance of the private sector during the Sixth Malaysia Plan reflects the attitude of the industry. For low-cost housing, the private sector was able to achieve 99 per cent of the overall construction targets, consisting of 80,678 units of ordinary low-cost housing (about 36,500 more than the target) and 131,325 units of the special low-cost housing (about 40,000 units short of the target). For the medium and high-cost houses, where the private sector is free to build and where profit is higher, the number of units constructed was 158.6 per cent and 386.2 per cent respectively above the target.

Issues in low-cost housing

Some of the issues of low-cost housing relate to the way the problem of low-cost housing is regarded, the distribution of the units, cost and quality. Isolating the problems of low-cost housing by taking the discussion out of the context of the overall housing situation and segregating them from the rest of the housing area, can have a negative effect on housing in general. Currently in many housing developments, low-cost housing is pushed to the least preferred corner, probably where the land value is lowest. This is done primarily to reduce the negative effect of lowering the value of the adjacent properties. From this came the idea of siting the various low-cost housing projects in one location – a kind of mega low-income settlement. This approach of viewing low-cost housing as a segment isolated from the overall problem of human settlement raises many questions, such as employment, distance to work and segregation. The idea of one settlement for the rich and one for the poor is not in the interest of national development nor is it consistent with the aspirations of Vision 2020.

Housing distribution

There is currently concern that many of the low-cost houses were bought by those whose incomes were over the RM 1,000 limit. Distribution relates to supply. Either the present supply is so short as to cause tremendous speculation or maybe the market is not as we understand it. In an open market economy,

it is difficult to restrict distribution. Further, the economic circumstances of the buyers are also in a situation of continuous change. It is possible that while waiting for their houses to be completed, their economic circumstances have improved considerably. If car ownership is an indicator, it is interesting to note that in some low-income housing areas, the number of cars has increased considerably over the years, perhaps indicating that the settlers are now economically better off. Further, there is a group of house hunters such as students, newly weds, young graduates and workers who have moved jobs, but whose level of affordability competes with the poor. Although their circumstances are short term, they do impact the local demand for low-cost housing. In a university town with a 15,000 student population, and assuming that the university provides 60 per cent accommodation, there would be 6,000 students competing in the housing market for places to stay.

Cost

Reaction to the ceiling price of RM 25,000 per unit varies. Developers feel that the price is inadequate compensation for the risk, time and effort put in. The profit, if any, is low compared to what could be earned, say, by developing high-cost bungalows. Worse, it consumes their most valued asset, land. The buyers are equally unhappy because they believe that the developer is making too much profit. Among the basic elements of cost, material and labour costs vary only slightly and are usually within a range that can be anticipated. The experience of building two prototype, modular houses of similar construction and standard of finish, one in the Universiti Teknologi Malaysia (UTM) campus, Kuala Lumpur (1979) and the other at Bukit Besi, Dungun for the Central Terengganu Development Board (Ketengah) (1981), shows that the difference in both the labour and material cost is minimal, despite the difference in time and location. The UTM house is in an urban area and the Ketengah house in a rural area. The variation in labour cost is greater within trades where a temporary shortage would make the cost higher than in other trades.

In a sellers market, as it is today, controls help to stabilise the price – at least during the first transaction. It facilitates end financing. However the buyer is very much disadvantaged as there is no product choice and no room for negotiation. Further, it is difficult to motivate the sellers or developers to improve the quality. The lack of competition from other developers encourages sloppy workmanship and poor quality. It is a situation that cannot produce quality nor can it guarantee consistency of standard, for the given price. Regulations such as the Building By-Laws ensure that minimum standards are met with regard to health and safety, but this cannot guarantee the quality of workmanship such as the smoothness of the plastering.

Quality

Good housing need not be of high quality construction and vice versa. They refer to different aspects. Good housing refers to what housing does to the people. Quality construction refers to aesthetics, standards of construction and finishes. In the Pruitt-Igoe project in St Louis, 2,764 units of quality housing were built in 1955. The project won design awards and was meant to be an architectural showpiece for housing. However the project turned out to be a failure and had to be demolished only after five years of occupancy (Roske, 1983). Turner (1976), from his studies of the housing situation in Peru associates good housing not in terms of 'what it is, but what it does in people's lives, in other words that dweller satisfaction is not necessarily related to the imposition of standards'.

The reasons for poor quality housing are many. In an unpublished thesis, Ahmad (1989) examined the quality of the low-cost houses under the administration of Kuala Lumpur City Hall. The objective of the study was to determine the root cause of building damages such as leaks, cracks, etc. Specifically it tried to establish whether the damage was caused by the user either through vandalism or misuse or whether the damage resulted because the building was poorly built to begin with. From the eight aspects examined, the study showed that most of the damage occurred in the building spaces. The hierarchy of the severity of damage was tabulated as follows, from the worst damage to the least.

Worst damage

- Space
- Refuse collection
- Mechanical and electrical installations
- Main construction elements
- Decorations
- Water supply, sanitary, and sewerage
- Fixtures
- Internal construction

Least damage

In terms of the root cause of the damage, the most severe criticism was poor design decisions. The second cause was poor selection of building materials, followed by poor construction. Abuse by tenants ranked as the fourth cause of building damage. The implication of the first three causes was that even if the building were unoccupied, the damage would still have taken place.

The problem is not unique to Malaysia. According to Cornick (1991) studies show that the main causes of building defect in Britain are primarily in the design and construction process.

	Original BRE survey (%)	Later ABCM survey (%)
Design faults	50	33
Construction faults	40	41
Product faults	10	26

The consequence of poor quality is high maintenance cost. It is difficult and expensive to keep the various systems such as water and electricity supply, and lift systems in good working order. Further there is a greater chance that the problem will recur. In some serious instances this can be dangerous, as was the case of the broken water tank at Bukit Chagar high-rise flats in Johor Bahru. Studies of the housing situation in Britain by Power (1995) revealed that another factor contributing to the problems and difficulties of providing good maintenance lies in the way housing is organised. Where housing is the responsibility of the local authority, it becomes a monopoly in which the service is seen as welfare to be provided at minimal standards. There is no pressure or incentive to perform. Understandably, there is a move to change towards the European model of single-purpose housing associations, where residents have more responsibility in managing their homes.

Alternative views of housing

In contrast to the idea of housing as an end, housing as a means focuses on the process. It emphasises what housing does to the people. Is it supportive of the aspirations and lifestyle of the owner? It recognises that sometimes impressive-looking houses can be economically oppressive, or the location far from the place of employment, the mortgage repayment too high or the family would be economically worse off than where they were originally. This phenomenon has been well studied by Turner (1971). Related to this are two ideas. First is the idea that acquiring a house is an arrangement; second it is an incremental process which never ends.

Housing as an arrangement

Doxiadis (1976) describes human settlements as the territorial arrangements made by anthropos. The notion of housing as an arrangement is a very apt description of the process of getting a house. It is a process of working out a satisfactory arrangement for six factors – location, legal, financial, social (including cultural), political (including administrative) and technological. In today's mass housing, it is rare that the arrangement for all the factors can be satisfactorily achieved. Often it is a matter of priority and risk taking. When these factors are not balanced, there is a mismatch and issues emerge.

Finding a good location is critical. It could make a difference in the rent, the travel time, affordability, legal status, social and political acceptability. Ideally the house is located close to the place of work. Often however it is a choice between living close to the place of work, while paying a high rent, or paying a low rent for a house far away from the place work and with an increase in travelling time and cost. Income, hence affordability, is also important in determining housing location and their legality. While various sources of housing loans exist, not many have access to them. Often the intended house buyers have to find a second employment as taxi drivers, night market operators or part time domestic help to save enough money for the house. Without adequate income or sources of funding, or where the market is exploitative, the prospective house owner may opt for an illegal arrangement as a squatter, despite the risk and lack of security of tenure. Social, political and technological arrangements are secondary. Socially, the tendency is to settle in areas which have people who are known to the would-be settlers. Perhaps they were originally from the same kampong (village) or are relatives. Usually these are the people who would help to arrange for an initial house and provide a sense of security in times of need. Politically, the family would prefer to settle among people with a similar thinking and outlook. It is often difficult to isolate political views from daily life. Technologically, what is preferred is a strong house; certainly of masonry construction and with tile roofs. Timber is not the preferred material. It is seen as a non-permanent material demanding high maintenance.

Stages of housing

In the micro world of the poor, where getting a house is in a real sense building a house, the process is never a one-off operation. Rather it is a progression of improvements. The house is acquired by increments. Among the upper income group, the stages are not obvious. Improvement can be in the form of elaborate renovations or buying a bigger house. Among the low-income group,

where the first house can be very basic shelter, the process of improvement is more clearly seen. From a very basic, perhaps 12 sq m of timber house, the rooms are progressively added to include a proper kitchen, bathroom and bedroom. At the same time the construction materials progressively change from timber to sand-cement block and perhaps later walls of clay bricks. As money becomes available, the owner improves the house, taking him away from the basic need stage to a comfort stage, where the house is more spacious and adequate ceiling has been added to reduce the noon heat. This is what the quality of most squatter houses is.

For most house owners, security of tenure is a major issue. Given the opportunity, they would want to move to a better-planned community. Some of course would prefer to stay in the squatter area, either for reasons of economy or family. Moving from a squatter settlement to a legal low-cost housing unit or to other forms of better housing is both an attempt to improve the house and a way of making an investment. This is the third stage. In Malaysia where property values increase very rapidly, putting money on a house is seen as a good way to invest. Renovations and improvements to the house help to make the house more comfortable to live in, as well as improve its resale value. This has given rise to some critical comments. *The Star* reported on February 28, 1996 that the government wants to control the renovation of low-cost houses in order to stop undeserving buyers from turning such units into luxurious homes. Provided the renovations conform to the requirements of the Building By-Laws, it is difficult to stop such renovations. As the personal circumstances improve, it is natural for the family to improve their housing. Sometimes the renovation is to achieve a sense of identity in an otherwise anonymous frontage of monotonous houses.

In the fourth stage, housing becomes a status symbol. This is not a game reserved for the poor, rather for the house-proud. For the poor, the status symbol may not come from the house. Instead it is reflected through the artefacts in the house – it may be the TV set, the stereo sound system, the car, new curtains or furniture, etc. For the rich it may be a competition to show off the latest gadget, style or whatever is in fashion.

These stages in the development of housing are not only found in the effort of individual families but they can also be observed in the development of low-cost housing in the nation as a whole. In a study of housing in five European countries, Power (1995) notes that all the countries went through four distinct stages of development. The first was a period of strong government participation to provide very basic housing in response to serious housing conditions and overcrowding in the urban centres. This was at a time when the cities grew very rapidly

and the emphasis was for rented housing and social housing. The second stage was to provide more housing in order to overcome the crisis. As urbanisation slows down, there is a shift in emphasis to provide quality housing. Finally, governments try to change their role from providing houses to that of a regulator and focus their efforts towards providing houses only for the low-income groups. During this stage, there is a strong shift from rental housing to owner-occupied units. The units are more in the form of detached houses.

Squatter housing

The two ideas, housing as an arrangement and the stages in housing, are concepts that attempt to understand the 'how' of housing. How does the person, who with very little money and disadvantaged by many things such as lack of education, go about getting a house in a very competitive urban environment? The squatter epitomises this. From a simple timber hut, various additions are progressively added and materials improved. In many squatter houses the stages of improvements can be clearly seen. Squatting, as a possible way of getting into and moving up the economic ladder, will invariably be used by the poor as a strategy for personal improvement. It is recognised that squatting is not legal and not acceptable. The manner of the arrangements has made these places difficult to manage and very susceptible to the spread of diseases, crimes and drugs.

However, several issues have to be recognised. First, among the squatters, the range of economic well being is quite great. The issue is not about the opportunistic and economically well off squatter, rather the very poor. Second, without making any moral judgement of the rights and wrongs of squatting, their existence and their number is a reality. In cities such as Kuala Lumpur, as the city develops and expands, and the land that the squatter occupies is repossessed, the squatter merely moves to a new location. Given the existing rate of urbanisation and the continuing pull that urban centres have, it is difficult to see how the number of squatters can be reduced.

Building assets

The third issue to be considered is that when people build houses for themselves it is an asset. It represents a potential ability to organise and manage human resources for self-improvement. The problem is to find a way of harnessing this energy; a way to legitimately mobilise the resources. Both Turner (1976) and Etherington (1984) recognise this potential in

slightly different forms. They both believe that the poor have the ability to provide their own housing and that the role of government is to manage the broader administrative and physical infrastructure. From a study of various squatter settlements in Malaysia, the Philippines and Thailand and through projects in Thailand and the Philippines, Etherington developed a methodology to harness the resourcefulness, the intellectual capabilities and skill of the people and physical resources which exist on a site in order to build their own settlements. The 'Build Together Project' in Bangkok and the Antipolo project in the Philippines were built on this methodology.

The idea of squatters building their own houses, a kind of people power, is frightening. It creates a vision of chaos. Perhaps it will result in this. However, a more considered view of this will show that more houses were built by the people themselves than by any architects or developers. Ironically, some of these houses are the ones most admired, compared to the modern low-cost houses. Duly (1979) and Rudofsky (1964) have illustrated this. In Yemen where traditional housing construction and way of life are still widely practised, the difference in the beauty, quality and appropriateness to the environment between the traditional and modern house is staggering.

The housing problem

The idea of arrangement and stages in housing argues that the problem of housing, if it is seen as a problem, will never go away. The process of building and acquiring houses is a never-ending activity, either to improve the existing situation or to meet new demands such as increase in population or new growth areas. In Europe, after all the slums and squatters have been removed and the poor have acquired a decent quality of housing, the housing construction activity continues – in order to replace or repair the dilapidated houses or to upgrade and improve the existing houses in keeping with the newly acquired economic status. This is also true of Singapore where many of the Housing and Development Board (HDB) apartments are either being renovated or demolished to make way for new and better designed apartments.

The quality challenge

The challenge in low-cost housing is to develop quality housing. As the nation develops, the demand will be for better quality housing. There may not be a major change in the spatial allocation, a commodity which will in future be at a premium. However, changes in the technology of the material and method of assembly are expected to be significant. Changes in lifestyle, even for the

poor, will require different spatial arrangement and different facilities. Houses which today barely have adequate electrical supply will in future be connected to the multimedia network. Coupled with the problem of high labour costs and poor workmanship, the housing industry has to industrialise.

The future lies in setting up a framework that will enable a continuous provision and improvement of housing in the country. There is a need to realign the housing industry towards meeting the needs of better quality housing and in the numbers needed. Structurally it is necessary to review the role of government and the organisation of house buyers, and to develop alternative designs and methods of construction.

Role of government

The present trend of change in the role of the government from a housing provider to co-ordinator and facilitator is inevitable in that it is part of the change cycle taking place as the nation develops. In Europe, Power (1993) and Boelhouwer, and van der Heijden (1992), noted four stages in the cycle of housing development. Initially housing was provided as a private and philanthropic gesture. Then housing became state funded. The third stage is the growth of the post-war high-rise blocks. In the fourth stage, the demand is for low-rise owner occupied units. However, the very poor still requires social housing, something which only the government can provide. This brings the process full cycle.

This change is already taking place in Malaysia. In the early 1970s, the government assumed the role of building houses for the low-income groups. Various government agencies were set up to do this. Today this has changed. There is a clear shift towards making the private sector more responsible for low-cost housing construction. This is similar to the changes that have taken place in Europe, where the future role of government lies in the provision of infrastructure and co-ordination and the provision of houses only for the very poor. The provision of legal framework and infrastructure which can ensure quality housing construction is beyond any developer. This role is most needed, at the level of the local authority, where projects are implemented.

Organisation of house buyers

Currently the buyers are comparatively unorganised except for those who belong to consumer associations and housing co-operatives. As individuals they have no means of getting their views heard and no bargaining power in any negotiation. A better arrangement has to be provided to give house buyers

more recognition. In Denmark, Holland and Belgium, the major part of housing is provided through non-profit housing companies. In Malaysia this is yet undeveloped. Despite the existence of many housing co-operatives, their performance is weak. Rosdan (1990), in a study of why many housing co-operatives failed to complete their housing projects, found that the unsuccessful co-operatives were generally small and managed by part-time volunteers often lacking in technical and managerial skills. However, the same study also identified that about 20 per cent of the population of Peninsular Malaysia are members of co-operatives. Perhaps it might be possible to develop this into a strong housing movement in the same way as Turkey.

The idea of setting up of housing companies and housing co-operatives is to facilitate the delivery and house buying process, and to help manage and maintain the projects. Earlier, the question of housing needs for those on the move and those just starting out in life was raised. For them rental housing is a better option. The current housing shortage, particularly in areas of rapid growth such as Johor Bahru, has allowed exploitative landlords to raise rents to unreasonable levels. If these housing schemes were managed by the housing companies in which the tenants have a share, it is more likely that the rents can be kept at more reasonable levels. In the Danish model the tenants became managers cum socio-cultural facilitators and played an important role in community development. This is the factor that is missing in Malaysian housing development. Community development will not happen by itself. It needs a champion and a facilitator. Another feature of housing companies in Europe is that they are local in nature. Instead of trying to set up one super company to cater for everyone in the country, the companies are generally small and local in outlook. They were set up to serve the local area. This has allowed them to be responsive to local needs.

Development of new designs

Bad design, as discussed earlier has been the major cause of poor quality housing. Whatever the cause, the public is aware of poor quality and it is unlikely that they will allow it to continue. As the standard of living improves, the people expect better quality homes, that is, houses with better infrastructure and better finishing. With the development of the Multimedia Super Corridor, talk of intelligent cities, and telecommuting, houses of tomorrow have to be better provided with the necessary power, audio and video connections. The quality of design and standard of workmanship too have to improve. Today the workers are more mobile in their work locations. They change jobs as well as change professions. The pace of living is faster. It is anticipated that as the cost of maintaining urban

spaces gets to be too expensive, people will opt for more compact but flexible or adaptable designs. Today where the poor have no say in what goes into the design, house renovation can be a kind of post-occupancy participatory design process. In mass housing, the client is a faceless number; the house, a monotonous array of anonymous gate and porch. As their personal circumstances change, by being economically better off, increasing in family size, improving in status or out of the sheer necessity to change their environment, the owners will want to renovate the houses. This happens at every level of housing. The question is how can this phenomenon be addressed. Is there a way to develop a flexible or adaptable design and system of construction? In Holland the open system tries to provide this facility through a process of buyer consultation during the design stage. This allows designs that are very simple and quite standardised to be given a variety of layouts by the house buyers after they have moved in. The system allows a variety of internal layouts to be achieved during the life of the building. This level of flexibility would be necessary in future to allow tenants to express their identity and address changing family situations.

As societies become more sophisticated, condescending design attitudes will be challenged by the public in the same way that they have been challenged in Europe. A case in point is the use of high rise apartments. In Europe in the 1960s, this was the preferred solution, based on the argument that they enable higher densities. This is critical in urban areas where land is at a premium. However, this approach has been challenged by the public as unacceptable. The flats were designed for families living on the ground floor. They did not solve the problem of living high above the ground. Consequently in Denmark they have stopped building high rise apartments since the 1970s. In Britain they are demolishing more and more of the high rise flats. In Holland and Belgium the number of high rise units built is few. In fact there is a nostalgia to renovate and revitalise the degraded urban areas and old warehouses into either social housing or upmarket apartments. In Malaysia, new ways of designing low-rise high-density housing have to be developed.

Work by Martin and March (1972) showed that it is possible to achieve very high densities with three to four storey structures. In a study of Manhattan, New York and in another study of part of London, Martin showed that by rearranging the relationship between the land, the built form and road system, it is possible to redistribute a few square blocks of Manhattan skyscrapers into a series of six to eight storey structures, with ample open space. In Malaysia, a housing developer explored this idea in the designs of the Cheras low-cost cluster housing

and the Setapak Jaya medium-cost housing. In both developments, the densities achieved were very high. In the Cheras scheme the buildings were only two-storeys but the project was able to achieve a density higher than the adjacent four-storey walk up flats.

Development of industrialised building system

It is proposed that an industrialised building system through the use of modular co-ordination be developed. The concept allows standardisation of building components and the development of an open system, thus enabling a flexible system of construction. While accepting the ideas of prefabricated construction system, this approach avoids the burden of large capital investment by individual companies and the constraints of non-interchangeable component. By reducing site work, through the use of prefabricated methods of construction, it is possible to achieve better quality construction. Currently the volume of low-cost houses required is sufficiently large to allow mass production. This change has to be accompanied by research.

Challenge facing the construction industry

To achieve better housing delivery and better quality, it is necessary to change the construction process, hence the construction industry. If, as *Technology and Foresight* (1995) argues, housing is fundamental to the construction industry, it should be possible to change the construction industry by changing the housing needs, design and construction process. As stated in *Technology and Foresight*:

One of the six challenges facing the construction industry for the future is to strengthen the technological capability of the construction industry. The construction industry is becoming more technologically intensive through the increasing automation of construction process and the use of information technology. In future there will be a convergence of construction and manufacturing to produce modular and prefabricated components and subassemblies. These will be used for both customised and general purpose.

During the various national development plans there have been changes in emphasis. The thrust of the Sixth Malaysia Plan was to give the low-income group accessibility to adequate and affordable shelter. In the Seventh Malaysia Plan the objective is to give all groups accessibility to affordable, quality housing. Greater emphasis is given to the development of low medium-cost housing and quality in housing in general.

Constraints of the conventional system

Construction, as an activity, is a complex process even if the changes made to the technology are small. The problem lies in the way things have to be put together – the integration process. It consists of systems and sub-systems, each requiring different specialities and expertise. Hence knowledge of the product and the manner in which it can be integrated with other products is important

The conventional system suffers from a lack of coherence. The industry is highly fragmented and until the recent formation of the Construction Industry Development Board (CIDB), there was no central organisation to co-ordinate the material and component development.

The industry consists of several sectors – the material and component manufacture, and building construction and design. Each sector is independent on the other and operates through different companies. They belong to their respective trade or professional associations.

The consequence of the separation of the design consultants from the material manufacturing and the component and construction sector makes the contractor's work very difficult. The problem of co-ordinating the various materials and the various trades is a major management exercise.

Today, there is a lack of standardised component system and standardised building material system. In Malaysia, a nation at the beginning of its industrialisation phase, the numbers and range of locally produced building components are small. For example, while the range of roof and wall tile is good, the choices for quality door, floor system and structural system are limited. This encourages import.

The rich variety of imported products brings a different kind of problem, that of co-ordination. Countries that export their building components to Malaysia have their own standards and systems. Sizes differ depending on whether they use the metric or imperial system of measurement. Until Malaysia can fully develop and enforce its own standard, we will continue to be flooded with a variety of standards. The variety of jointing methods that exists, for example, makes it difficult to mix and match the components. Sometimes, this variation in sizes encourages wastage and cutting corners.

Doors are simple components that are required in large numbers and they also require frequent replacement. In a typical low-cost house it is possible to find a variety of door sizes. The small differences in width are insignificant to the performance of the door. Yet to replace the door is a complicated process. Logic suggests that in the case of low-cost housing, where cost is crucial, it would be advantageous to standardise the door sizes to save the cost of fabrication and assembly.

However, buyers want their houses to be unique since they are a status symbol. This has encouraged the development of bold, one-off designs where components such as doors, windows and ceilings are unique and often made to order. This encourages more importation of special parts. Even for low-cost houses where the options for variations are limited by cost and floor area, there are a variety of layout solutions and decorative components. In low-cost housing where the rooms are few in number and the sizes small, the problem is how to squeeze in as much as possible into a limited space. Practically, it makes sense to standardise and develop the most effective layout and component design. It should be possible to standardise the kitchen and bathroom design. The quality of the fittings can vary but the basic layout and plumbing is the same. This is common practice in hotel design.

Open vs closed system

Industrialised system generates a vision of lack of imagination and utter boredom. However projects such as Eames House in Santa Monica California (Russel, 1981) demonstrate that the opposite is possible. The house that was built in 1947 from off-the-peg components showed two things. First, it shows what good designers can do. Second, in terms of industrialised housing, it showed the meaning of an open system as opposed to a closed system. However, the work of Eames remained unappreciated until very much later when designers such as Norman Foster used the industry in the way Eames did.

Industrialised housing refers to systems which use industrial production techniques either in the production of components or assembly of the building, or both. Examples of this are the prefabricated system, factory assembled houses or the use of standardised industrial components. The system can be either an open system or a closed system. In an open system, like parts are freely interchangeable; doors with doors and windows with windows. It is independent of the material or manufacturer. Under the system it should be possible for any designer or builder to select and put together a system from a variety of components on the market. In a closed system, the components are exclusive and can be interchanged only from among like systems. The doors or windows or structures in on one system could not be used in another system. To use the analogy of a car; if the front door is broken it can only be replaced with a component from the same brand and model of car. No other door can fit. It is a closed system. However if there is a puncture, tyres from a variety of brands can be used, provided they are the same size. Similarly it is possible to choose tyres from a variety of brands to suit the climatic and driving conditions. This is an open system, as is the system being developed in Denmark.

In a prefabricated system, the components and techniques of assembly, etc, were developed by a company for its exclusive use. The system developed may be of the large panel system or frame system and it may use some off-the-peg components. The major components are usually special designs. Thus, among the various prefabricated systems it is not possible to use components from one system in another system. This makes the developmental cost very high and enough units must be built before it becomes economical.

To develop an open system requires national effort. Denmark is a good example of this. Initially, scarce resources and the urgent need for housing after the war demanded that they standardise. According to Svensson (1988), the 1958 building regulations required all buildings to be designed according to modular co-ordination principles laid down in the Danish Building Standards. This was followed by the 1960 National Building Act which is a uniform building regulation for the whole country. The standardisation of the building regulations allowed companies to supply components to any site. The third stage was the Assembly Circular which standardise the method of mounting and assembling the components. This allowed like components to be interchanged and encouraged the manufacturers to invest in long-term research and development. The last stage was the development of performance concept, thus giving the designers the freedom to choose systems, materials and process.

These efforts were accompanied by strong research support from the Danish Building Research Institute. According to Svensson (1988), the institute, which was set up in 1947, proved to be an important force in the development and introduction of industrial building techniques. By the 1970s around 80-90 per cent of all high-rise buildings in Copenhagen and 60-70 per cent in the rest of the country were built using these industrial techniques. While some research can be done by the private sector, basic research such as in the area of social and cultural studies, user profile, housing needs studies and technical co-ordination studies has to be sponsored by the government. Private sector research is more oriented towards development products, technology and delivery system.

Implementation in low-cost housing

Two factors encourage starting modular co-ordination with low-cost housing. First, the comparatively simple technological need of the housing unit itself. Second, the number of units required to be built is large.

The number and variety of components required is small. The constraint on the size of the unit and the number of rooms required means that it is logical to standardise.

The spaces available for kitchens and bathrooms are small so that it becomes necessary to standardise the components and their design as a way of generating the most effective space. This has already started to happen in hotel design where the basic room configuration and bathroom layout is quite standard. Eventually it would be possible to prefabricate an entire kitchen and bathroom and toilet.

The number of low-cost housing units being planned for construction is large enough to provide a critical mass. Several large projects with substantial low-cost housing components can be used to start the process. In Johor, the state government has commissioned the construction of 122,646 low-cost housing units, through 32 projects in different parts of the state. Given this volume of construction, it would be viable to standardise the components. For example, just allowing for six doors per house, the Johor project alone would require about 730,000 doors.

As the system develops, all the like components, such as doors, windows, flooring system, roof truss, wall system, structural system, ceiling system would be manufactured to standardised sizes and methods of jointing. This means that for any given design, it should be able to select, say, the structure from a number of manufacturers and from among a variety of materials. Similarly the other components can be selected from a variety of manufacturers without changing the design.

The implication of an open industrialised system is a more flexible housing construction system making replacement of parts less troublesome. It may be possible to develop kit houses that people can assemble themselves (weekend house). This would allow small contractors or developers in a small town to build a few houses to the same quality as the large developers. It would allow a consortium of developers to export or build for the overseas market. It also allows better stock management. In Denmark the benefits of modular co-ordination and standardisation extends to all building types.

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Selected Issues in Housing Development and Recommendations

ISIS Housing Study Team

Introduction

Housing tends to attract a great deal of attention in most societies particularly because shelter is a basic human need along with food and clothing. Investment in housing, due to the sizeable financial outlay, is probably one of the most important decisions made by individuals. Housing is a major industry which attracts considerable resources and generates employment opportunities. It can, therefore, have wide ramifications throughout the economy and for various level of society. The development of the housing sector can affect monetary policy. The growth of loans and advances to finance housing demand can have a bearing on the growth of money supply and monetary policy concerned with asset inflation and price stability. Policy making for housing thus tends to be complex because of the need to take into account the different interests within the economy and the society at large. The purpose of this chapter is to make suggestions for policies on housing. It will raise the relevant housing issues and recommend the policies to be considered. This chapter does not attempt to include every likely housing issue. The policy suggestions made will be somewhat selective and, inevitably, there will be gaps. The focus will be on the key policies that warrant attention.

Long-Term Projections on Housing Demand and Supply

ISIS Malaysia

Since houses are an extremely durable commodity, in the short term supply is determined largely by the existing stock. Changes in the quantity of the stock will take place only slowly as they represent a small proportion of the total stock. As the supply of housing and services is often slow to adjust to changes in demand conditions, an analysis of demand and supply in terms of a disequilibrium Capital Stock Adjustment Model (CSAM) is likely to provide a more realistic picture of the housing market than conventional single-period equilibrium model.

The study and approach that should be sought in identifying the quantitative relationship between housing demand and its various determinants depend on whether the focus is on the immediate concerns, short term or long term. For the very short term the study will tend to concentrate on the economic determinants of demand which include factors such as income, price and credit terms, assigning only a subsidiary role to socio-demographic factors as they tend to remain unchanged in the short term. However, for long-term forecasting, the socio-demographic factors become more important; perhaps more important than the economic variables. Accordingly, the forecasting emphasis will shift to projections of population, household formation rates, household size and distribution, etc, and the housing requirements related to them. In many cases, it has become a practice to use the concept of housing need, rather than demand, as the relevant measure for housing requirement. Housing need may be defined as the quantity of housing that is required to provide accommodation of an agreed minimum standard and above for a population given its size, household composition, age distribution etc, *without taking into account the individual household's ability to pay for the housing assigned to it.*

In understanding and analysing the housing market much attention has been given to the behaviour of housing demand. Cross-country evidence on studies conducted by the World Bank which have examined housing demand parameters suggest that:

...continued

Some of these issues have been covered in the individual chapters. Although there may be some degree of overlapping, this should add to the strength of the overall volume, rather than be perceived as a weakness. Inevitably, in discussing such an important topic as housing, there will be differences of viewpoint. This chapter should not be seen as merely sorting out the differences of views on policies covered in individual chapters. Rather, its objective is to summarise the views of ISIS Malaysia on selected issues and to highlight its policy recommendations for housing.

Economic aspects of housing

The housing industry has important linkages with different sectors of the economy and plays a major role in determining the economic activities of the nation. It is directly linked to various suppliers of inputs that are required for the construction of houses. Housing also requires the inputs and support of a variety of professional services including architects, surveyors, engineers and lawyers. Houses add to the capital stock of the economy and are categorised as durable goods, which means that they can be 'consumed' over a long period of time – much longer than many other durable goods. Houses can be owner-occupied or they can be rented out.

Another characteristic associated with housing is the heterogeneity of the commodity. Many factors distinguish one dwelling from another – total floor space; size of the plot; number, size and composition of rooms; structural design (for example, detached or terrace); number of levels; internal layout; age; lighting and plumbing arrangements; parking; and other facilities. The location of houses in relation to workplaces, schools, shopping complexes and recreational facilities will also determine the prices of houses.

Location is a very important factor in determining the price of a house and, therefore, needs special attention. Location will have implications on the costs of transportation for households. Usually, the level of pricing of a house will be directly related to the dwelling's accessibility. Because of changes and improvements in infrastructure, the relative access costs associated with location do not remain constant. They will change with time and, accordingly, change the demand for the particular dwellings. Consequently, the behaviour of the housing market may involve some speculation, that is, buying houses on the expectation that the prices will increase.

Despite the importance of housing to the economy, detailed data on housing that would enable more indepth analysis is lacking.

Long-Term Projections on Housing Demand and Supply *...continued*

- Income elasticities of demand among renters are small, ranging from 0.3 to 0.6 while income elasticities of demand for owners are larger.
- Permanent income elasticities of demand for housing are larger than income elasticities.
- In cities rent-to-income ratio rises as income increases and is associated with increases in the price of houses.
- Very long-run income elasticities of demand are estimated to be one or greater.

For the short-term approach, most of the study has concentrated on examining the relationship between housing demand and income, although the influences of price, credit terms and a range of household socio-economic characteristics have also been considered. Generally, multiple regression analysis has been used to estimate the precise quantitative relationship between housing demand and its explanatory variables.

Making precise projections on the demand for housing, like any projection, is a hazardous exercise. There will always be uncertainties. The major determinants or factors that can influence the long-term demand for housing will include demographic changes, population, income levels and the price of houses. An expanding population will raise the demand for houses. Demography influences demand for housing indirectly through its impact on population growth and the changing profile of the population. Fertility rates of Malaysians have been falling and Bumiputera fertility levels are expected to be higher than those for non-Bumiputeras. There seems to be a clear trend towards the formation of nuclear family households. As population grows, although the population growth is slowing down, socio-economic factors lead to the formation of new households and an important part of the demand for houses will come from the growth of new households. Over the period 1989-91, for example, households with extended families were fragmenting, giving rise to the growth of nuclear families. Long-term income growth will be largely determined by the growth of the Malaysian economy and it is assumed that the Vision 2020 projected growth rate of seven per annum over the period 1991-2020 is within reach. Growth is anticipated to be a little higher in the earlier phases and slower towards the latter part of the period. Increasing levels of income will have an effect not only on the overall demand for housing but also on the types of houses that will be demanded.

...continued

Housing and property are usually grouped under the construction sector and separate statistics for the housing sub-sector are not provided in the Department of Statistics Annual Survey of Construction Industries. The current practice is to distinguish between residential, non-residential and civil engineering construction. This statistical approach of not distinguishing the housing sub-sector from the non-housing sector in computing the construction sector's contribution to gross domestic product (GDP) should be reviewed and it is recommended that the Statistics Department publish separate data on housing.

The Statistics Department's National Accounts Statistics 1993-1995 showed that by 1995, construction accounted for about four to five per cent of the share of GDP (in 1978 prices). A separate item, 'owner-occupied dwellings', contributed another 1.9 per cent to GDP. If both items are grouped together, then the share of construction to GDP is raised to about 6.4 per cent in 1995. The Annual Survey of Construction Industries, also by the Statistics Department, showed that 'general construction' in 1993 generated about RM12.5 billion, covering three components of construction – residential, non-residential and civil engineering. In 1993, residential construction accounted for about a quarter of the value added and about 12 per cent of the value of fixed assets of the construction industry (see Table 1). If the share of residential construction is used as a proxy and a rough estimate for the overall share of housing in the national accounts, then it would appear that the housing share of GDP would be about one per cent to 1.5 per cent. A Bank Negara Malaysia survey of private investment showed that the construction sector accounted for about 14 per cent of the total private investment in the economy. Using the share of fixed assets as a proxy for the housing sector investment, the share of housing investment to total private investment would amount to about 1.2 per cent.

There is insufficient data to enable international comparisons of the contribution of housing to GDP between countries. Taking the construction sector as a proxy for housing for Malaysia, Table 2 shows that construction accounted for about three to five per cent of GDP. The share of housing to GDP would be a smaller contribution. It is interesting to note that Malaysia's construction share of GDP by the early 1990s was the lowest among the leading Asian economies with Singapore, China and Thailand taking the lead.

Long-Term Projections on Housing Demand and Supply *...continued*

The population projections of ISIS Malaysia will be the basis for making the projections on the demand for housing up to 2020. As data on long-term income is not available it will not be considered separately and jointly with the projection made for housing. Separate projections have been made for the total population of Malaysian citizens and for non-Malaysian citizens. However, in arriving at the long-term projections for houses, only the consolidated total population has been used. The total population of Malaysia (Malaysians and non-citizens) is expected to grow from about 20.5 million in 1995 to some 33.8 million by 2020.

Over the 1991-96 period, population grew at a rate of about 2.8 per cent per annum, slowing down to 2.5 per cent over the 1997-2000 period, about 1.9 per cent over the 2001 - 2010 period and further slowing down to about 1.4 per cent over the 2011 - 2020 period. The population projections up to 2020 are shown in Table 1. Out of the total population, non-Malaysian citizens are projected to increase from about seven per cent in 1996 to about nine per cent by 2020.

Table 1: Population, households and housing units 1991-2020

	1991	1995	2000	2005	2010	2015	2020
Total population (million)	18.5	20.5	23.6	26.3	29.0	31.5	33.8
Average no of persons per household	4.8	4.7	4.5	4.3	4.2	4.0	3.8
Total no of households ('000) ¹	3,537.6	4,004.0	4,814.4	5,614.7	6,338.6	7,229.3	8,165.4
	1991-95	1996-2000	2001-2005	2006-2010	2011-2015	2016-2020	
Increase in no of private households (('000)	458.2	810.4	800.3	723.8	890.7	936.1	
New houses needed ('000) ¹	444.9	786.8	777.0	702.7	864.7	908.9	

Source: Institute of Strategic and International Studies (ISIS) Malaysia

Note: 1. Assuming 1.03 private households per occupied housing

...continued

Table 1: Principal statistics of construction industries 1993

Industry	No of establishments	Value added (RM'000)	No of employees at last pay period	Salaries & wages paid (RM'000)	Value of fixed assets at Dec 31, 1993 (RM'000)
Total	7,141	9,319,216	447,177	5,191,357	4,827,026
General construction	5,090	8,006,612	372,475	4,357,351	4,354,364
Residential construction	1,533	2,021,421	120,788	1,363,697	527,473
Non-residential construction	1,384	2,045,843	104,710	1,221,769	642,032
Civil engineering construction	2,173	3,939,349	146,977	1,771,885	3,184,859
Special trade works	2,051	1,312,604	74,702	834,006	472,662

Source: Department of Statistics, Malaysia, Annual Survey of Construction Industries 1993

Table 2: Construction sector as percentage to GDP: Selected Asian countries

Countries	1976	1980	1984	1987	1990	1991	1992
China	4.94	5.02	5.36	6.84	5.83	6.09	7.43
Hong Kong	4.85	6.67	5.31	4.71	5.56	5.64	5.18
India	5.11	4.99	5.32	5.97	5.74	5.78	NA
Indonesia	5.26	5.55	5.29	4.88	5.49	5.86	6.16
Korea	4.57	8.38	7.90	7.27	11.55	13.92	13.67
Malaysia	3.68	4.64	5.17	3.41	3.57	3.76	3.88
Philippines	8.18	9.27	9.29	5.43	6.05	4.98	5.03
Singapore	8.20	6.43	12.34	6.77	5.46	6.43	7.66
Thailand	4.36	4.44	5.25	4.82	6.22	6.60	6.65

Source: Asian Development Bank, Key Indicators of Developing Asian and Pacific Countries, 1994.

Long-Term Projections on Housing Demand and Supply *...continued*

A number of assumptions have been incorporated for the long-term projections for housing demand. The average household size has been decreasing from 5.2 in 1980 to 4.8 in 1991. It is assumed that growth and demographic changes will lead to a further reduction in the average size of Malaysian households from more than four prior to 2015 to less than four after that date. Table 1 shows the estimates for the average number of persons per households over the 1991-2020 period. The number of households is arrived at by dividing the total projected population by the number of persons per household and multiplied by a component factor.¹ The assumption is made that there are 1.03 private households per occupied housing unit, which was the average for 1991, compared to 1.10 in 1980. An additional assumption was also made of a fall in the number of households per occupied housing unit to one, or unity, throughout the period up to 2020 and separate projections were made on the basis of this assumption.

On the basis of these assumptions, Table 2 shows that over the period of the Seventh Malaysia Plan it is expected that the total number of houses that would be needed (cumulatively) would be about 787,000 over the period 1996-2000 period falling to 703,000 during the 2006-2010 period, 865,000 during the 2011-2015 period and 969,000 during the 2016-2020 period. The anticipated fall in housing demand for the period 2006-2010 is largely due to the combination of a slowing down in population growth and a reduction in the size of the average household. There are no long-term housing projections other than the projections made in the Seventh Malaysia Plan, 1996-2000, that could be used as a basis for comparison. The Seventh Malaysia Plan has projected that a total of 800,000 unit of houses will be required over the 1996-2000 period compared to the ISIS projection of about 787,000. No details have been provided in the plan as to the basis, or assumptions, for the projections.

Part of the reason for the difference in housing projections by ISIS and the Seventh Malaysia Plan has to do with the fact that the plan has included projections on housing 'replacement'. The plan has estimated that about 7.5 per cent, or 60,000 units, of the total housing demand will come from the replacement of houses. The basis for the estimates for replacement is unclear. Earlier development plans had much higher projections for replacement which also included 'upgrading' — 43 per cent (274,000 housing units) for 1981-90, 42 per cent (349,000 housing units) for 1986-90, 26 per cent (158,000 housing units) for 1991-95 and 7.5 per cent (60,000 housing units) for the 1996

1. The estimated component factor amounted to 0.918.

...continued

Housing, property sector and asset inflation

Although the GDP share of housing is not large, the activities and behaviour of the housing industry are given close attention and scrutiny in formulating macro-economic policy. Its importance in monetary policy is highlighted by the fact that the share of the broad property sector in bank lending is quite sizeable. The key issue is the linkage between the rapid growth of the property sector and its financing, and asset inflation.

An important issue of housing relates to the pricing of houses and the rapid increase in these prices. Policy makers are invariably concerned when the property sector grows too rapidly and when bank loans and advances rise to finance property sector growth. Signs of speculation in the property market are closely monitored. Asset inflation, that is, the rapid increase in the price of houses, has led Bank Negara Malaysia to impose recent measures to curb the growth of loans to the housing sector. The House Price Index introduced by the Valuation and Property Services Department is a useful indicator to assess the trends and level of asset inflation. Although house prices tend to fluctuate from year to year, there is a clear upward trend in the price of houses (see Table 3). The different types of houses – terrace, semi-detached, detached and high rise units – registered different rates of increase, with the detached house showing a much sharper increase in prices. The price increases varied for five markets in the transactions for 1996 – Selangor (27 per cent), Johor (16 per cent), Perak (11 per cent), Kuala Lumpur (9 per cent) and Penang (7 per cent). The price trends within each of these markets also show some marked differences.

Table 3: House Price Index, Consumer Price Index and Per Capita Nominal Income Index

	1988	1989	1990	1991	1992	1993	1994	1995	1996
House Price Index	92.2	96.1	100	125.5	140.7	147.5	159.3	188.5	212.8
Change (%)	-	4.3	4.1	25.5	12.1	4.8	8.0	18.3	12.9
Per Capita Income Index	90.7	91.1	100	122.3	135.7	146.2	161.5	181.2	200
Change (%)	-	0.5	9.7	22.3	11.0	7.8	10.4	12.2	10.4
Consumer Price Index	94.1	97.0	100	104.4	108.5	112.4	116.5	120.5	124.8
Change (%)	2.5	3.0	3.0	4.4	3.9	3.6	3.7	3.4	3.6

Source: Valuation and Property Services Department, House Price Index, January 1997

Long-Term Projections on Housing Demand and Supply ...continued

Table 2: Projected new housing needs by category of houses¹, 1996-2020

	Low-cost	Medium-cost	High-cost	Total
1996 - 2000	22,8172	47,2080	86,548	786,800
Seventh Malaysia Plan	29.0%	60.0%	11.0%	100.0%
2001 - 2005	101,533	590,628	84,839	777,000
Eighth Malaysia Plan	13.1%	76.0%	10.9%	100.0%
2006 - 2010	36,607	598,712	67,382	702,700
Ninth Malaysia Plan	5.2%	85.2%	9.6%	100.0%
2011 - 2015	16,942	779,061	68,697	864,700
Tenth Malaysia Plan	2.0%	90.1%	7.9%	100.0%
2016 - 2020	6,528	844,057	58,315	908,900
Eleventh Malaysia Plan	0.7%	92.9%	6.4%	100.0%

Source: Institute of Strategic and International Studies (ISIS) Malaysia

Notes: 1. Assuming 1.03 households per occupied housing unit. Low-cost houses are defined as houses costing less than RM25,000. The average annual rate of change in new housing was calculated as

$$r = \frac{1}{n} \left(\frac{H}{h} - 1 \right) \times 100$$

where

r is the average annual rate of change (per cent)

n is the number of years between H and h

h is the number of housing units in year t

H is the number of housing units in year t + n

-2000 period. The reasons for the sharp fall in the share of replacement for the 1996-2000 period have not been made clear. ISIS housing projections have not included the replacement demand for housing as there is no clear basis for making assumptions for replacement demand. Also the likely cumulative shortfalls of meeting the demand for housing from one period to another has also not been built into the projections.

It is additionally difficult to make reliable long-term projections on housing demand by types of houses. While the housing market and level of income will influence the types of houses, policy can also exert an influence, for example, housing quotas for low-cost houses, restrictions

...continued

Growth in loans and advances to the property sector has contributed to the growth in money supply. In 1996 the growth of credit to the private sector moderated to 27.9 per cent at the end of the year from a high of 31.6 per cent at the end of April. Credit growth to the property sector was strong. By December 1996, about 30 per cent (RM69.2 billion) of the total lending by the commercial banks were channelled towards the property sector. About a quarter of the lending of finance companies (RM21.6 billion) and about 24 per cent (RM4.6 billion) of the merchant banks' lending were also channelled to the property sector.

Bank credit for the property sector grew substantially in the early 1980s and peaked around 1987, as a share of total loans and advances. The slow growth years from 1981-85 saw a very high growth in credit to the property sector. In 1985, a recession year, the share of the property sector loans by commercial banks and finance companies stood at 34.7 per cent and 41.1 per cent respectively. By March 1997, the share had declined to 27 per cent and 22 per cent respectively. With the exception of 1994, the annual growth of loans and advances to the property sector exceeded the growth rate of the economy. The share of total housing credit to GDP has, therefore, been increasing from the late 1980s onwards.

Macro economic policy has always been sensitive to the growth of credit to the property sector and the exposure of the banks' lending portfolio to the property sector. The premise is that a too rapid growth in bank lending to the property sector would be a strong contributory factor in fuelling asset inflation and raising expectations of asset inflation. Speculative activities and imperfection in the housing market can worsen the situation. The experiences of Japan and, more recently, that of Thailand have demonstrated the dangers of excessive exposure to the property sector and a weakening of economic fundamentals. A recovery from the after-effects of asset inflation would take time and incur substantial financial costs.

In 1996 Bank Negara Malaysia estimated that the average rate of increase in property prices was about 14 per cent. Different locations and types of houses registered different rates of increase in prices (see Table 4). Financial distress would exert strong pressure on vulnerable financial institutions. As seen in the recent experience of Thailand, speculative attacks on an over-exposed property sector contributed to a deterioration in loan quality and the downfall of a sizeable number of financial institutions. There is evidence to suggest that after 1989, while inflation on the goods and services markets remained subdued despite rising monetary growth, inflationary pressures were manifested in the price of assets. After 1989, the excess monetary growth was associated with the appreciation in stock and property prices.

Long-Term Projections on Housing Demand and Supply ...continued

on housing densities, etc. ISIS estimates of houses by types are shown in Table 2. Data from the development plans shows that between the Fifth and Seventh Malaysia Plans low-cost housing declined by 3.1 per cent per annum while medium-cost houses grew by 9.4 per cent per annum and high-cost houses grew by 5.2 per cent per annum. The projections show progressively a fall in the share of low-cost housing to the total housing demand — from about 29 per cent of total houses during the 1996-2000 period to about 0.7 per cent during the 2016-2020 period. The demand for medium-cost houses is expected to be strong in the long term, rising from 60 per cent to about 92 per cent over the same periods, while the share of the high-cost houses is expected to register a fall in its share to total housing. Even assuming that there will be one household per occupied housing unit it would not make too much difference to the share of houses by types.

Such data on the likely changes in the types of houses that will be in demand suggests that more careful consideration should be given to calculations on housing affordability, that is, the proportion of income that households should be spending on housing. A better approach would be to conduct a careful household survey which will include the target population, such as low-income households, and econometric and statistical tests to arrive at some estimates for level of affordability. Data from the *Household Income Surveys* and the *Household Expenditure Surveys* of the Statistics Department should be utilised for analyses on housing demand.

These projections should be seen as broad orders of magnitude of long-term housing demand and should be revised with the availability of new data and other relevant information. What also needs to be considered is the demand for land for the construction of houses. The government agencies with the relevant information on land should initiate work, on the basis of these indicative projections and those contained in the national development plans, to make estimates of the land that would be required from the rising demand for houses.

As for demand, making projections for the long-term supply for housing is equally hazardous because of the uncertainties. Like demand, supply would also be determined by the house prices, and also by the capacity of the housing industry to respond to the perceived, or anticipated, demand for housing. But unlike housing needs which respond to

...continued

Table 4: House Price Index by types of house (1990 = 100)

	1988	1989	1990	1991	1992	1993	1994	1995	1996
Terrace house									
Index (%)	93.4	95.0	100	113.5	123.5	128.9	140.1	158.4	174.5
Change (%)	-	1.7	5.2	13.5	8.8	4.4	8.7	13.0	10.2
Semi-detached									
Index (%)	95.6	96.2	100	110.0	118.2	122.1	130.0	142.7	154.2
Change (%)	-	0.7	4.0	10.0	7.5	3.3	6.5	9.7	8.0
Detached house									
Index (%)	97.1	98.7	100	114.3	125.8	135.2	148.7	172.0	196.2
Change (%)	-	1.6	1.4	14.3	10.0	7.5	9.9	15.7	14.1
High-rise									
Index (%)	78.1	92.6	100	107.2	107.3	105.8	112.2	116.9	115.7
Change (%)	-	18.5	8.0	7.2	0.2	-1.5	6.1	4.2	-1.0

Source: Valuation and Property Services Department, House Price Index, January 1997

A vigilant policy in curbing excessive lending to the property sector is strongly recommended, coupled with strong supervision over the banking institutions to ensure the quality of banking loans. A tightening of monetary policy to curb the growth of aggregate demand will have a general effect throughout the economy. Moral suasion as a policy usually will not have the desired effect. Monetary policy tightening will need to be supplemented with administrative guidelines on credit for housing. As a broad policy thrust Bank Negara Malaysia should continue with the policy of curbing loan growth to the high-cost property sub-sector. Low-cost and medium-cost houses could be exempted from the monetary curbs. The main measures imposed in recent years to curb bank lending to the property sector include the following:

- Banking institutions were required to revise the margin of financing in the provision of loans for the purchase of houses and apartments costing above RM150,000 and shophouses (including shop lots in shopping complexes) costing above RM300,000 since October 1995. The margin of financing was lowered to 60 per cent of the purchase price of the house, apartment, shophouse or shop lot. However, this new margin is not applicable to the purchase of houses and apartments

Long-Term Projections on Housing Demand and Supply *...continued*

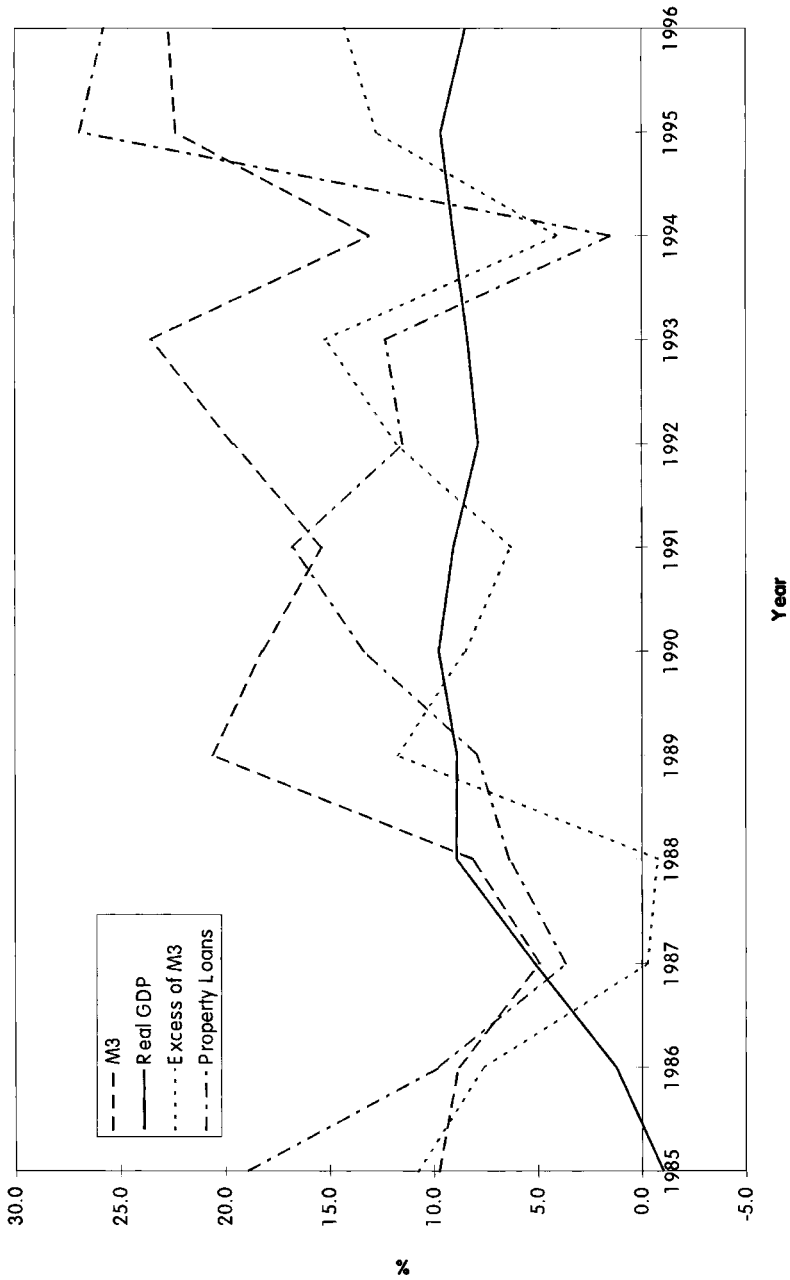
population growth and size of household, housing supply is strongly shaped by the prevailing economic conditions. The long-term roles of the public and private sector as suppliers for housing can be expected to change but the directions of this change remain uncertain.

In view of all these factors a rough approach has been adopted to provide some estimates of the likely long-term supply of houses. The estimates of houses which could be supplied to the housing market are shown in Table 3. A 'shortfall' approach, that is, the gap between the expected housing target on demand and the actual houses supplied or constructed was utilised to derive the estimated supply for housing up to 2020. The sources for the assumptions on housing supply shortfall came from the Fourth, Fifth and Sixth Malaysia Plans covering the 15-year period, 1981-95. The supply shortfalls during the Fourth (1981-1985) and the Fifth Malaysia Plans (1986-1990) were quite sizeable — only 44 per cent and 36 per cent of houses which were projected were actually constructed, respectively. But for the Sixth Malaysia Plan (1991-95) there was no shortfall in supply. Instead supply exceeded demand — 107.4 per cent of the houses targeted were actually constructed. The 'overshooting' of supply for the Sixth Malaysia Plan should be viewed against the published housing demand projection (602,700 housing units) which was lower than the projections set for the Fourth Malaysia Plan (923,300 housing unit) and the Fifth Malaysia Plan (835,500 housing units). At the same time the concept of housing demand or 'new houses needed' over the 1981-91 period was not uniformly consistent as it sometimes included new households, replacements and backlog, and at other times excluded backlog.

The estimates for housing supply over the 1996-2020 period in Table 3 were based on two assumptions. The first, a pessimistic assumption, was to estimate on the basis of a shortfall of 60 per cent, that is, assuming that only 40 per cent of the demand for houses would be met. The second, an optimistic assumption, was to estimate on the basis of a shortfall of 30 per cent, that is, 70 per cent of the demand for houses would be met. The pessimistic shortfall estimates make use of the actual supply shortfalls during the Fourth and Fifth Malaysia Plan periods while the optimistic shortfall estimates include the much better performance of supply during the Sixth Malaysia Plan period. These two broad and rough estimates of housing supply only provide the broad orders of magnitude of the likely gaps between the long-term demand and supply for houses.

...continued

Chart 1: Growth of selected indicators, 1985-96



Long-Term Projections on Housing Demand and Supply ...continued

Table 3: Demand and supply of houses

	Demand - New houses needed	Supply - Houses built	
Fourth Malaysia Plan 1981-1985	923,3001	406,070 (44.0%)	
Fifth Malaysia Plan 1986-1990	835,5002	300,928 (36.0%)	
Sixth Malaysia Plan 1991-1995	602,7003	647,460 (107.4%)	
	Demand - New houses needed ⁴	Supply - Assuming 40% completion rate	Supply - Assuming 70% completion rate
Seventh Malaysia Plan 1996-2000	786,800	314,720	550,760
Eighth Malaysia Plan 2001-2005	777,000	310,800	543,900
Ninth Malaysia Plan 2001-2010	702,700	281,080	491,890
Tenth Malaysia Plan 2011-2015	864,700	345,880	605,290
Eleventh Malaysia Plan 2016-2020	908,900	363,560	636,230

Notes:

1. Includes new households (365,300), replacements (273,600) and backlog (284,400).
2. Includes new households (486,200) and replacements (349,300).
3. Includes new households (444,900) and replacements (157,800).
4. New households only.

for the individual's own dwelling, and shophouses and shop lots for the conduct of the individual's own business.

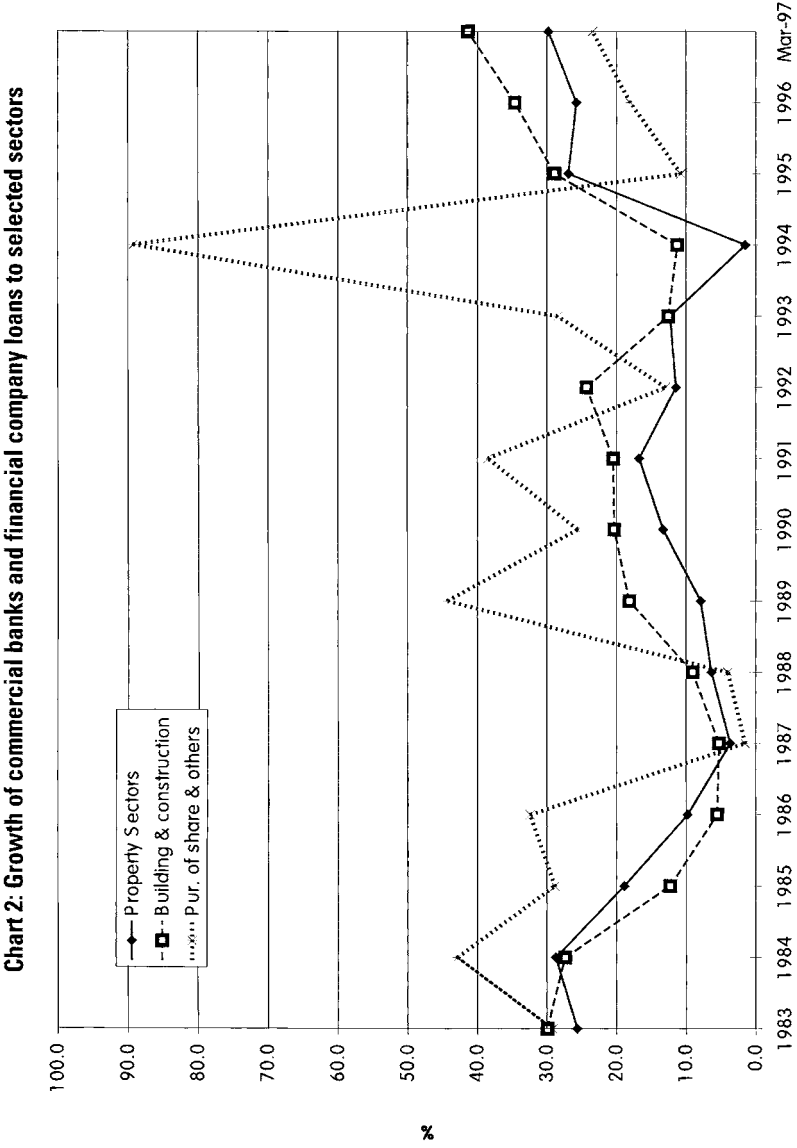
- A levy of RM100,000 was imposed on the purchase of houses costing more than RM250,000 by foreign interests.
- Loans and advances of commercial banks to the housing sector should not exceed 20 per cent of total outstanding loans and advances.

As long as there is strong demand from foreign interests to purchase property, the levy on foreign buyers should be maintained. The levy could be reviewed and increased if there is a need for further tightening. (The levy was removed in August 1997). The 20 per cent ceiling of total loans to control the exposure of banks in lending to the property sector can be reviewed and reduced if there is a need to further limit such exposure. The margin of financing could be reduced if there is a need to curb the demand for housing loans. These lending guidelines can be further fine tuned if the intention is to curb only a sub-sector of the housing market.

The broad strategic thrust for the housing sector should be geared towards raising the supply of housing to exceed, by a reasonable amount, the demand for housing. The public sector housing policy should be to complement the supply in the housing market. A clearer policy on first-time house buyers should be clearly formulated. The thrust of the house ownership policy should be on facilitating a widespread ownership of houses. Concentration of ownership should be discouraged. The housing loan policy should, therefore, provide support for first-time house buyers and make it costly for multiple house buyers to have access to housing loans. First-time house buyers could be exempted from all monetary curbs on housing loans.

Housing and equity

There has to be a refocus of the housing policy to take into account equity concerns. While a house provides shelter it is also an asset which can generate a stream of income. In assessing income what is considered is the value of imputed income for houses which are owner-occupied. Income distribution has widened from early to mid-1990s. Racial income disparities have also increased – the average household income of non-Bumiputera households grew at about 10 per cent per annum compared with 9 per cent for Bumiputeras in the early 1990s. Racial income imbalances, therefore, have widened during the period of rapid growth. Household income can be sourced from wages and salaries and from the ownership of assets. Assets income is, in turn, derived from the ownership of financial and non-financial assets. Housing is an asset that generates income, especially for middle and upper income households. Upper and middle-income groups who are owner-occupiers of houses will have a higher imputed value of



incomes. Households who have to pay rent for their houses, therefore, will have much lower disposable income. Ownership of property in turn enhances the opportunities for individuals to gain access to financial capital for the acquisition of additional properties and financial assets, such as equity capital of corporations, because houses can also act as collateral. The higher income groups tend to derive a higher proportion of their income from ownership of assets than lower income groups.

Policies on subsidies for housing should be limited to the lower income groups, especially those below the poverty line. The monitoring of such housing subsidies should be tightened to prevent the spillover of benefits to higher income groups. Upper income groups should not enjoy housing subsidies. Lower middle income groups should be provided minimum housing subsidies. If the broad thrust of the subsidy policy is acceptable, then the government should review its housing subsidy schemes. Public housing schemes, especially, need to be considered from the equity angle. The price of houses in public housing schemes for higher income groups will need to reflect market prices. Recipients of subsidised housing, including hidden subsidies, will inevitably enjoy capital gains when the value of their subsidised houses appreciate. The subsidies saved from the upper income groups can, if desired, be channelled towards the low and lower middle income groups. The discounts in the prices of houses to be sold to Bumiputeras need to be reviewed to enable only the low income groups to enjoy such discounts. The value of public housing will need to be reassessed in imputing the market value of houses because of the substantial under valuation of land for public housing.

As part of the benefits of working with the public sector some government employees are provided with accommodation at subsidised rental rates. Many of these houses are located on prime land within the cities or on the outskirts of cities and urban areas. The values of these properties have appreciated over the years but rental rates are probably not reflective of market rates. The government should consider deriving the full potential out of these properties. As a first step a comprehensive evaluation of all government properties should be undertaken to assess the market value of these houses. Public housing in prime sites in urban areas could then be considered for privatisation. Proceeds from the sale of these houses could then be put into a government fund and used to support low and medium-cost housing schemes. Part of the proceeds could be utilised for the construction of condominiums or flats in other urban centres which could be put up for rental to public employees at market rates.

Policies, specific issues and recommendations

In the previous sections some broader issues on housing were raised and some policy recommendations put forward for consideration. In this section specific issues on housing will be highlighted. Policy recommendations will also be presented.

Housing policy: Broad thrust

The public sector has played a key role in the development of housing. The continuing high demand for housing implies that there is still a role for the government in meeting their demand. It is suggested that the general thrust of government policy and its role in the housing sector be continued, essentially unchanged, for the foreseeable future. This means that the government must continue to perform its all-important regulatory role; macro planning; overseeing of the status, health and performance of the housing sector; direct provision of housing besides provision by the private sector; and financing of various forms, etc.

While the general thrust of government policy should remain unchanged, it is felt that many steps can and need to be taken to make the public sector role in housing more efficient and productive. Among these are the following:

Undertake a review of the legislation

A high-level and comprehensively represented study group should be set up to review all legislation directly or indirectly pertaining to housing. The objective is to rationalise provisions affecting housing in some 30 laws and regulations, simplify procedures and introduce greater transparency into processes. This measure is urgently required to infuse greater efficiency into the operation of the housing sector, and reduce time and costs involved in the housing process. This exercise will also have a salutary effect on the construction sector as a whole as well. The study group should comprise various state representatives, along with developers, financial institutions, consumers, etc.

Radically improve public sector performance

During the Sixth Malaysia Plan period (1991-95), the public sector performed extremely poorly in meeting housing targets. Only a little more than a third (36.7 per cent) of the critical low-cost housing target was met and only 78.9 per cent of the important medium-cost housing target was fulfilled. Only in the high-cost category did the government sector do well – in fact it over-achieved (109.6 per cent). Overall, the public sector

accomplished less than half its housing target (48.6 per cent). This is an extremely serious state of affairs which needs to be urgently rectified.

The government is well aware of the shortcomings and has taken several measures to improve the situation. Among the measures are the introduction of designs to enable higher-density land plots for low-cost housing and increasing the allocation for rural housing. However, these measures are not expected to greatly improve matters, especially since the targets set for the public sector in the Seventh Malaysia Plan are considerably more demanding – 230,000 units compared to 170,000 in the previous plan. Since the public sector only managed to deliver 84,542 units during the last plan, it is now expected to produce about 63 per cent more units, a virtually impossible task unless very radical measures are taken especially at state level.

Again, a task force or group needs to be set up to thoroughly establish the causes for the public sector's serious shortfall and to recommend the extensive measures to be taken to enable the public agencies to perform significantly better, especially in low-cost housing and in the new categories of housing for the poor and low medium-cost housing.

Cut project approval period

Serious measures need to be taken to reduce the time involved in processing and approving project applications. The land conversion and subdivision process takes two to five years, building plan approvals take three to six months, and certificate of fitness approvals take three to six months. The target should be to reduce the land conversion and subdivision process to 24-36 months and to set a maximum limit of three months for building plan and certificate of fitness approvals.

Among the time-saving measures that could be considered are the following:

- State executive councils and Kuala Lumpur City Hall should produce and gazette not only the macro structure plans but also the local plans laying down land-use, permissible house-types, density, etc. If this were done, approvals by the state executive council and the Director of Lands and Mines, would be speeded up considerably.
- Third-party certification and approval of building plans, as is done in Australia, could be implemented instead of relying on the authorities to be solely responsible for this. Any potential for abuse can be checked and deterred with the introduction of stiff legal sanctions.
- Certificates of fitness should be issued by the Building Department after certification of the various items like drainage by qualified and certified private professionals instead of by the relevant government departments

which takes some time due to staff shortage, etc. Alternatively staffing of these departments should be approved to cope with the process.

Revive social role of state economic development corporations

One way to reduce the burden on the public sector in providing low-cost housing is to consider the merits of reviving the social role of state economic development corporations (SEDCs), which were active in the building of low and medium-cost housing before it was privatised.

Provide land for low-cost housing

Alternatively, or as a concurrent measure, the government could consider providing land for low-cost housing to private developers for them to build low-cost housing within the ceiling price. This measure can be eminently feasible because a sizeable portion of the private developers' costs are tied up in holding costs for land.

Consider granting more developer's licences

There are at present about 3,000 licensed housing developers nation-wide. Whether this number is adequate or whether the housing industry should be opened up to allow more developers is a question that needs to be considered carefully.

Hold consultations with residents

Due and satisfactory consultation of residents about impending changes should be held. The present practice of taking out tiny advertisements in the newspapers to notify the public of proposed changes in housing densities, land use, etc, should cease. More prominent notices and due consultation should be carried out to enable the residents to be better informed and to play a more participatory role.

Low-cost housing

It is proposed that the generally-used term 'low-cost housing', which can sound demeaning, be changed to 'social housing' which strongly suggests the important values of social responsibility and social caring.

As there are many disputes over the low-cost quantum of RM25,000, the definition of low-cost houses has to be drastically revised. Many recommendations have been suggested. Additionally, the following recommendations should be considered.

The current ceiling price of RM25,000 for low-cost housing should be made more flexible. A revised scenario, taking into account different locations and setting prices accordingly, should be implemented. For example:

- *For rural areas:* The RM25,000 limit should remain.
- *For depressed urban centres:* The RM25,000 price could be raised to RM40,000.
- *For developed urban centres:* A new level of low medium-cost housing units priced at RM60,000 each could be considered. The low-cost housing provision should be exempted here and replaced by low medium-cost housing, for which a minimum quota of 30 per cent of total built-up units should also be imposed. This is to avoid the creation of urban slums.
- *For luxurious and expensive areas:* The exemption for low and medium-cost housing should remain.

It is recommended that, because the government derives its main revenue income from taxation and duties, there is a stronger case for the federal government, state governments and local authorities to build social housing units (low-cost houses) for rental at nominal rates to low-income Malaysians who really cannot afford to buy such housing units.

It is proposed that the Housing Developers Association Malaysia (HDA) develop alternative designs and open systems for modular and prefabricated social housing units for the very low-income groups.

Squatter eradication and housing programme

The existence of squatters is a manifestation of the persistence of poverty. Lack of housing is one aspect of poverty. It is proposed that the government should formulate a proper squatter eradication and housing programme. Squatter communities in or near urban areas are creating urban slums and social problems.

Such a policy should focus on eradicating the squatter problem and providing alternative housing for those affected. The government should allocate cheap land for this purpose. Such land may be used for housing and site development, which accommodates healthier environments and living conditions for them. Flats meant for affected squatters could first be allocated on a rental basis allowing for eventual sale, or other procedures enforced to enable them to bear as little cost as possible and yet live in more decent conditions.

Bumiputera ownership and participation in housing

The need to provide subsidies to Bumiputeras to enable them to acquire houses at lower prices and to set aside an allocation for Bumiputeras to increase their opportunities to acquire houses is understandable. This allocation is part of the second prong of the New Economic Policy (NEP) which aims to restructure society and to eliminate the identification of race with economic sector. However, the situation has changed significantly

over the years. There are now Bumiputeras (especially Malays) who have attained a certain level of wealth enabling them to enjoy the opportunities to own houses even without subsidies. These well-off Bumiputeras should not be allowed to enjoy the same privileges as the poorer Bumiputeras as it is unfair to the other ethnic groups. To curb this, it is recommended that the privileges for Bumiputeras should not be extended to those who have attained a certain level of wealth. One of the ways to do this is by abolishing any price discrimination policy for Bumiputeras who are buying luxury apartments and high-cost houses.

In addition, this privilege may be extended to poorer non-Bumiputeras who should be given assistance in enabling them to own houses. Such a policy could be applied in areas which have a high proportion of Bumiputeras to encourage inter-ethnic integration. In return, for those areas which are dominated by non-Bumiputeras, the housing quota for Bumiputeras should be raised to more than 30 per cent.

Legal and administrative framework for housing development and finance

One of the main issues in housing is the delay in housing construction. There is a serious need to reduce the delays in the housing development process and to curb any wrong-doings and corruption. A reduction in the delays could cut costs significantly and increase the supply of houses. The housing industry is complicated, consists of many stages and requires the involvement of various departments, planners, engineers, architects, lawyers, contractors, developers and, of course, house buyers. Therefore, it has to go through a lengthy administrative process where any default or delays in any stage of the process will cause 'multiple effects' which can add costs and contribute to overall delays in the housing delivery process.

This complicated process also causes hassles to house buyers who may face confusion over the housing delivery process. There have been many cases where house buyers have to spend much time and effort before legally meeting all the conditions when converting houses under their names. They easily become victims to any defective steps in the administrative process. Any additional cost that occurs and any delays by any of the actors involved may be transferred to the house buyers. Sometimes buyers may be 'forced' into making under-counter payments to overcome the delays.

It is, therefore, timely to recommend a 'one-stop' agency that can liaise with these ministries and all actors involved in the housing industry. The expectation is that this agency will reduce the delays and

offer assistance to housing developers and house buyers by acting on their behalf. Among the services to be covered by this agency are:

- Acting as an intermediary for developers and house buyers to liaise with respective ministries and departments;
- Providing information and clear guidelines of all procedures related to the housing industry;
- Accommodating services and providing assistance on any aspects related to the housing industry.

To achieve this, the proposed agency requires support from all those ministries and agents involved in the housing industry. The staff of this agency should have knowledge and understanding of the housing industry as a whole. This agency may comprise representatives of various departments, ministries and other agencies related to housing to help in clarifying procedures and reducing complications.

The agency should also act as a centre providing information on all requirements, registration processes, construction status and procedures related to the housing industry. The agency should provide at least basic information about the status of the housing industry in Malaysia including prices and financial assistance, etc. It is suggested that this agency set up an on-line information system which would be easily accessible, to provide all information required about laws, procedures, etc. If the agency is unable to cover all of these areas, there should be a linkage connecting the agency with related government departments, ministries and associations. It will also be helpful, especially for the house buyers, for the agency to provide records on registered housing developers, architects, engineers and others who are involved in the housing industry.

Technology for housing: Present limitations and future trends

Technology can make an important contribution in the development of a more efficient housing industry, raising productivity and lowering costs. Currently, there is a need to introduce new technologies to construct houses cost-effectively to meet the needs of rapid urbanisation and labour shortage. There is also a need to constantly improve the technologies and materials used in construction and to adopt more cutting-edge technologies. It is just as important to find ways to adapt contemporary construction methods to better suit the climate in Malaysia so as to conserve energy required for air-conditioning and to make houses more pleasant to live in. A government research institute, or a consortium formed by major construction companies, can develop and test various cost-effective methods of constructing different types of houses with tropical features. The results of their tests can be publicised for

consumers and construction companies to enable them to choose from the appropriate technologies recommended by the authority.

The issue of cost-effectiveness is more pressing in the case of low-cost housing than housing for the higher income groups. Low-cost housing needs to be constructed in a highly time-saving and cost effective manner. Modularisation of a house into standard parts enables houses to be produced in large numbers with savings in design costs. Pre-fabricated production would also lower costs. A thorough modularisation of low cost houses should be promoted. Since low-cost housing is mainly for the lower income group, the saving of energy costs is a main concern for the group. Designing low-cost houses that are pleasant to live in and have energy-saving features is important in the improvement of the welfare of low-income groups. Houses incorporating tropical features should be designed and features such as better utilisation of the house compound can be included. Results of research on and implementation of low-cost housing throughout the world are available and the authorities can systematically introduce such findings in the country.

There are some hindrances in the introduction of new technologies. Introduction of new technologies may levy some costs on a pioneer in such a way that he has to bear the costs of developing the right technologies, taking on the risk of failure, and bearing the cost of educating the customers. A pioneer has to bear the costs of introducing the technology. However, anybody else who subsequently implements the successful technologies do not have to bear development costs. This is discouraging for anyone who is thinking of introducing new technologies unless the returns accruing to the pioneer are large enough to cover the costs. Otherwise, some policy support to lower initial costs is necessary. Policy measures to provide such support could include direct subsidies or subsidies in the form of lower land prices for projects involving new technologies which have been certified by the authorities.

An alternative measure is to implement policies to guarantee gains for the pioneer. As an example, the pioneer can be guaranteed the rights to be the sole licensee for the new technologies. Another way is to form a consortium among the construction companies to share the initial developmental costs. However, this can be a difficult task as many companies are rivals. For a consortium to be successful, there has to be a well-regarded, unbiased mediator and a commitment to cost-sharing rules. With the presence of a well-regarded mediator and where the technologies are of a public nature, the possibility for a consortium to be successful would be higher.

The more common usage of steel in construction can be considered as steel is more rigorous and construction can be done in an efficient manner. The cost competitiveness of using steel versus other traditional materials should be

assessed. If the cost is found to be higher, remedies such as incentives for local production can be given. Construction with steel also requires a labour force which possesses a different set of skills from the traditional skills. Training institutions would be needed. The authority should give consideration to the cost and benefits of steel construction and test out its feasibility in the country.

There is a need to encourage better quality construction. To provide opportunities for learning and practising cutting-edge technologies, besides lowering the costs of introduction there is a need to educate customers so that they are willing to pay higher prices for better quality works. Instead of emphasising appearance, the customers should understand that investment for improving the quality of living is crucial. Electronic devices, for example, can be incorporated to have a smart house with, say, automatic lighting and temperature control. Model houses can be constructed by government research institutes or a consortium to illustrate the effects of electronics and the effective ways of constructing appealing houses.

Labour and housing

The housing industry provides employment opportunities to a growing labour force. In recent years, however, the sector has been plagued by labour shortages. A key issue in the housing sector is the strong demand for workers at all levels – professionals such as engineers, architects and surveyors, skilled workers in the structural and finishing trades, and unskilled workers. The shortage is related to the declining preference of local workers for jobs in this sector, the dwindling output of trained workers from local institutions, and insufficient local mechanisms for skill formation.

Most workers in the housing sector are contract workers, who are employed indirectly via a *kepala* (labour intermediary) who recruits, pays and provides for them. In 1992, about 76 per cent of the total workforce comprised contract labour, which is preferred because it allows for flexibility in labour use in individual projects within what is essentially a volatile industry. Most contract workers are foreigners, many of whom are illegals who avoid detection via the mobile and flexible nature of construction employment. Malaysian worker participation in the housing industry has been declining rapidly; in 1997 Malaysians accounted for only 52 per cent of the construction workforce.

In terms of occupational and skill composition of all workers in the construction industry, building workers accounted for the majority (93 per cent), while managerial and technical staff were a mere four per cent of the total. Immigrant workers were mostly in the unskilled and semi-skilled jobs. However the proportion of skilled and semi-skilled workers among immigrants has risen between 1988–92, while there has been a decline in the proportion of unskilled workers.

The shortage of workers is exacerbated by the fact that the 17,000 skilled and semi-skilled workers produced by the public and private institutions in the Seventh Malaysia Plan constitute barely half the number required by the housing sector, and 16 per cent of what is required by the construction sector. Most of the immigrant workers lack experience and exposure to the construction industry and skill formation is of uneven quality. Most of the foreign workers, therefore, require on-the-job training.

However, there are several barriers to skill formation. One is the low returns to private investment in training due to the short-term nature of employment and the presence of many foreign workers. Another is that public training institutions provide training as part of a larger curriculum that covers other trades as well, and teaching resources are therefore thinly spread. Other factors include dwindling interest among new students and graduates due to the 'dirty, dangerous and demanding' image of occupations in the industry, the wide choice of alternative employment, the decline of the apprenticeship system, the reliance on unskilled and mobile foreign labour, the lack of a skills inventory mechanism and skills accreditation, limits to mechanisation, and the lack of labour substitution in the industry.

The human resource challenges facing the industry have been partly addressed by the establishment of the Construction Industry Development Board – which, among other tasks, will work with existing establishments to enhance training. It has also been addressed by the establishment of the Building Academy of Malaysia (Akademi Binaan Malaysia) which will provide short modular courses for workers already in the industry and establish a skill accreditation system for public and private training centres.

In addition, there are proposals that immigration rules and procedures be simplified, more trained and skilled workers be screened and selected from source-countries, and the levy for skilled workers be reduced. There should be quotas and deadlines on the use of foreign labour, with a sufficient time-frame to allow employers to make adjustments, improved wage and work conditions to attract new entrants, and the use of more pre-fabricated and modular designs to reduce the need for workers. Other additional recommendations include reviewing the education of industry professionals, establishing new institutional mechanisms to improve work-site safety, re-focusing enforcement efforts on building owners and sub-contractors, and implementing a programme to ensure decent housing for construction workers.

In addition to upgrading worker skills it is important that the education and training of professionals in the construction and housing industry be reviewed. Ultimately, it is the professionalism, honesty, and integrity of high level manpower such as project managers, engineers, technical assistants, and supervisors which determines worker

motivation, productivity, work-site safety standards, planning, building quality, and cost-control.

Moreover, the size and role of this professional group will grow in tandem with the restructuring of the industry towards higher technology and new skills. An assessment should therefore be made of the current quantity and quality of such manpower produced by local and foreign institutions, and the adequacy of existing rules, regulations and procedures governing professional ethics in these occupations. The aim should be to improve professional and ethical standards, and, where necessary, increase the supply of specialised manpower to cope with new technology.

Another issue which requires attention is the high rate of deaths and accidents in the rapidly growing number of work-sites in the country. At present the monitoring of safety standards is the task of the Factories and Machinery Department of the Ministry of Human Resources, which is over-stretched in terms of manpower for this purpose. Alternative institutional arrangements need to be considered over the medium and long-term time-frame of five to 10 years, especially since the construction industry is expanding rapidly and new work-sites are sprouting up all over the country. One possible approach is to decentralise the enforcement of work safety regulations from central agencies to local councils, which enjoy closer proximity and greater local knowledge. Local councils should be provided additional resources for this task.

Another problem faced by the construction and housing industry is the challenge of educating and enforcing rules and regulations on a large number of sub-contractors. Education and enforcement efforts relating to safety, environmental, and foreign labour rules and regulations, for example, could be made more efficient and effective by targeting building owners and main contractors rather than sub-contractors under their employ.

The need for housing of workers in the industry is another urgent problem. Currently, most of them are housed in unsightly temporary on-site quarters with poor basic utilities, primitive hygiene and lack of recreational facilities – factors which breed disease and social ills. A systematic effort should be made to phase out the current type of on-site housing and ensure mandatory provision of low-cost housing for all workers by the year 2000. Such housing could comprise either modern container-type quarters put up by contractors or low-cost apartments rented from the government.

Immigrant housing policy

In spite of the large number of immigrants in the country (estimated at about two million), there is unfortunately no housing policy for immigrant workers. It is recommended that the government should formulate a proper immigrant

housing policy. Many immigrants are now causing slums in the country. There are, for example, complaints by residents of certain housing areas who claimed that their neighbourhoods were affected by the groups of immigrants staying nearby and causing bad externalities, especially for houses which were primarily meant to be occupied by a normal family, but were later occupied by immigrants. These externalities damaged certain neighbourhoods quite badly.

A certain housing levy should be imposed on employers for each immigrant employed. With these housing levies, the government could then provide low-cost housing for rental to the immigrants. In addition, it is recommended that the employers themselves provide houses or hostels for their workers.

Housing delivery system

There are three issues that urgently need to be looked into with regards to current housing delivery systems.

First, there is a lack of consistency in terms of responsibilities for both the developer and the local authorities. When problems arise, house owners often find themselves in a state of confusion. For instance, who does the purchaser refer to when the certificate of fitness is not issued on time? Or, who does the house owner turn to when he learns that his neighbour is planning massive renovation that may have an impact on his unit and its surroundings? These are examples of confusing situations where purchasers or house owners are not clear as to whom they should refer. It is recommended that purchasers should readily be provided with information on the exact responsibilities of the developer and the local authority at different stages of the housing delivery process. The setting up of a 'housing service agency' (that is, the proposed one-stop centre) may take care of these problems.

Second, there is also no uniformity in building requirements. This is attributed to the inconsistencies of policies among local authorities. For example, the requirement to reapply for approval of a housing project to another local authority due to the redelineation of boundaries, which are still under the same state authority, is redundant, tedious and causes additional delays. Inconsistent standards and policies of different local authorities require new applications for approval by developers. It is recommended that there should be standard and consistent requirements, at least among local authorities within the same state. Any inefficiency and unnecessary requirements may cause delays and add up to the cost of housing. Therefore they should be reduced as much as possible.

Third, the private housing developers claim that delay is often caused by the two-tier checking required by the local authority. Although the developers have their own professional consultants to inspect the projects,

the local authority insists on another inspection by their own personnel, who often are technicians, as local authorities often do not have enough professionals. Furthermore, there are often shortages of equipment such as water and electricity meters, to be installed on time. It usually takes two weeks, or longer, for inspection to be carried out and completed by the local authority. This, in turn, delays the issuance of the certificate of fitness. The private housing developers feel that a day or two is sufficient to carry out the inspection and approve the water and electricity supply. This can be achieved if redundancy in site inspection is eliminated.

It is recommended that since private developers have better resources than the public developers in terms of hiring professionals and acquiring equipment, there should be only a one-tier checking system to expedite the delivery of housing units to purchasers. It should be determined, however, that developers engage only professionals to carry out the inspection and assessment. To curb abuses, these professionals should be clearly held responsible for their work, not only to the developers who hire them but to the purchasers and the local people as well. A stiffer penalty should be introduced to deter them from abusing their powers. An alternative approach is to improve the current second-tier checking system by contracting out the service to private institutions acting on behalf of the various authorities. This institution should then be held responsible on behalf of public authorities for any wrong-doings. The third choice is to adopt the zero defect procedure currently promoted by the Construction Industry Development Board. It is hoped this procedure will not only eliminate or at least reduce house defects but will also expedite the housing delivery process.

Housing and the consumer

The average Malaysian consumer seeks an affordable and liveable house. At present, the availability and accessibility of such houses are severely limited, leaving many consumers in the situation of not being able to possess their own homes. Exorbitant prices, poor and even defective houses and deteriorating environment are common complaints. Thus far, the piecemeal approach to solving housing woes has, at best, resulted in partial solutions. The future calls for a whole new perspective and approach in ensuring that all Malaysians who wish to own their own homes are given the opportunity to do so.

Many of the malpractices in the housing industry, such as defective houses, shoddy workmanship, long delays and even abandonment of housing projects stem from the fact that in Malaysia we do not generally practice the 'build-then-sell' concept of housing. This concept has been mooted much earlier but without much success. Developers are of the view that such a

concept is not currently feasible because of the critical shortage of houses. Since developers bear greater risks under the 'build-then-sell' approach, they will be less inclined to invest in the housing industry, thereby restricting supply and pushing prices up further. Consumers, on the other hand, argue that developers would not bear the risk of unsold units, provided they build houses that are in greater demand and within the affordable range.

Under the present system, although consumers continue to bear the risks, safeguards have been built into the payment process through a system of staggered payments. Consumers are required to pay only 10 per cent of the purchase price upon signing the Sale and Purchase Agreement. Another 70 per cent is collected in stages during the construction process. The remainder 20 per cent is paid upon handing over of vacant possession with water and electricity ready for connection, 5 per cent of which is held by the developers' solicitors. The latter is to ensure that developers rectify all defects of the newly completed house within a grace period of 18 months.

To some extent, the above safeguards do protect consumers' interests, but nonetheless it is only a partial solution to the many woes faced by consumers. It is, therefore, recommended that the housing industry gradually shift away from the present system of booking 'yet-to-build' houses to the 'build-then-sell' approach, as being practised by many developed economies. The latter approach allows a consumer to preview the house he wishes to purchase, and in this way he is assured of the type and quality of house he buys. This approach also helps to reduce the scope for speculative purchases that contribute to asset inflation. Developers would also be encouraged to produce houses that are in greater need rather than those that ensure higher profit margins.

The 'build-then-sell' approach can be gradually phased in by reducing the current 80 per cent pre-paid payment imposed on the house buyer. As consumers' potential risks are being shifted to the producers, the producers' overall potential risks must also be reduced. At present, producers have to bear high risks associated with regulatory measures that delay housing projects and hike up producers' initial costs estimates. The adoption of the 'build-then-sell' approach, therefore, must be implemented together with a package of reforms to cut red tape and reduce delays in approvals.

While the private sector requires a more efficient business environment to operate in, unencumbered by restrictive rules and regulations, proper governance is essential to ensure equitable and quality development of the housing industry. Striking a balance between efficiency and equity requires the active participation of all interested parties, that is, the consumers, private industry and the government – local, state and federal.

Consumer participation and rights are better exercised with greater consumer awareness. Their awareness can be raised through greater availability

and flow of information on their basic rights, as well as greater transparency of rules and regulations governing the housing industry. In this respect, the Ministry of Domestic Trade and Industry can take the initiative and work with the Ministry of Housing and Local Government, consumer associations and housing industry associations to generate and provide basic, lucid information on procedures, payments and overall basic rights of consumers. The government, on its part, must ensure appropriate and adequate legislation and effective enforcement to ensure an orderly development of the housing industry, as well as ensuring a sustainable environment.

The government on its part can facilitate home-ownership through fiscal measures. For instance, all first-time house-buyers should be granted tax exemption on interest payments on the housing loans. This would go a long way to ease the financial burden of house buyers, especially those in the middle-income category.

Housing and the environment

The concept of sustainable cities has been raised and discussed at a number of fora. What is sought in sustainable development is not 'cities that can sustain themselves' but cities (including rural areas) where the community's development needs are met without imposing unsustainable demands on local or global natural resources and systems. Any consideration of sustainable cities must have the improvement of housing, living and working environment as a central focus. The housing industry, therefore, has an important role to play. The question to be addressed is much more than just building wide tree-lined streets, pedestrian underpasses, parks and public spaces but also includes 'humanising the city'. It is more than providing shelter and equipping with supporting infrastructure. It involves the planning and design of a healthy and sustainable living environment that will allow people to live in harmony, enjoy peace, exercise creativity and meet with a sense of security. It facilitates the access of all to the goods and services produced by society, creating conditions that give priority to those who have less – usually the children, women and the most vulnerable groups such as the elderly and the disabled. It should also include the preservation of historical heritage and capitalisation of the natural assets which can help to provide the basis of a thriving economy.

This gives rise to the need for intervention. Currently, there are regulations that are intended to guarantee a minimum standard of quality, manage rapid development and prevent inadvertent destruction. The related regulations, among others, include National Land Code 1965; Town and Country Planning Act 1976; Town Planners Act 1995; Local Govern-

ment Act 1976; Land Acquisition Act 1960; Land Conservation Act 1960; Street, Drainage and Building Act 1974; Uniform Building By-Laws 1984; Housing Developers (Control and Licensing) Act 1966; Environmental Quality Act 1974 and various Environmental Impact Assessment guidelines. It is inevitable that conflicts may arise in the implementation of these laws and regulations. The attempt, for example, to achieve one objective, such as protection of the natural landscape, might clash with another objective, such as land reclamation for housing development which may also cause discrimination against minority groups. It is important to note that whatever the combination of statutes, they should be made to harmonise with one another. Harmonisation here is an attempt to adjust the measures and policies of the various parties to minimise and, where possible, to eliminate overlap and duplication. It is, therefore, important to understand the existing laws, the role and responsibilities of the various parties and the relationships that exist between the various parties. Only then will we be able to protect society and improve the environment.

It is recommended that related legislation should be reviewed to identify areas where the legislation need to be further developed in order to address the various concerns as well as to improve the development process. There is a need to ensure effectiveness in terms of degree of harmonisation between laws, regulations and implementation. Furthermore, transparency and accountability at all levels should be ensured. It is also recommended that public understanding of the administrative and legal framework, the planning procedures and zoning concepts should be clarified, publicised and improved.

The incorporation of an assessment of natural capital into the systems of national accounts should be given serious consideration. This is not a new proposal. It has long been recognised that the conventional economic indicators provide a distorted picture of progress. This is because the indicators, which are principally economic growth, income and profitability, do not adequately reflect the measures of environmental integrity or human welfare. This is not easy but a shift for the basis upon which performance at the national level is assessed is required. Attention should, therefore, be given to the costs and benefits of specific environmental and social issues to ensure proper project appraisal and policy analysis. It may be necessary, for example, to implement environmental criteria in contract and tender specifications, and to revise land use and development plans to take into account environmental and social policies.

It is recommended that the environmental cost of the development project should be incorporated to provide useful indications for economic and development planning. An Environmental Impact Assessment should also be carried out for housing development projects (including any other building projects) that are less than 50 hectares if they significantly affect the environment.

The current pace of urbanisation and development goes hand in hand with a rise in urban violence. It has been estimated that urban violence has risen by three to five per cent a year over the past two decades, although with certain cities showing significant variations. In Third World and Eastern Europe countries, both petty and violent crimes have increased. In Asia, where crime has decreased at the national level from 1975-90, in cities of more than 100,000 inhabitants there has been a considerable increase in crimes against property, organised crime, and drug trafficking. The growth in such activities is not limited to prosperous cities or neighbourhoods, since it is also prevalent in illegal or informal settlements. Long-term solutions must be set in motion while at the same time immediate needs must be addressed. Preventative measures include the bringing together of those responsible for housing, social services, schools, police and the law, in order to confront the circumstances that generate or facilitate crime. It is recommended that 'key players' devise safety mechanisms, adopt programmes and set up crime prevention councils or neighbourhood watch.

It is also proposed that a comprehensive zoning be looked into. Zoning can be designed to specify permitted land use, building height, floor area, density, carrying capacity and building placement. It can reduce the risk of future problems (such as traffic, pollution, noise, crime) and thereby increase the attractiveness of investing in real estate. It is commonly understood that property owners would like to see the highest possible return on their investments and hence their aim is maximum development where possible. However, it is important to point out that zoning is not intended to prevent them from maximising returns but to ensure orderly development and establish stable patterns for those areas. Comprehensive zoning could determine the future of every part of the area – residential, semi-commercial and commercial. It will also prevent bulky buildings from blocking the sun and from blocking air movements. Not only is the height limit important but the width separating one housing block or apartment from another is equally important as this serves as a safety measure in case of fire and other disasters. However, it must be emphasised that zoning must be appropriate to the existing conditions. No matter how carefully use-category is mapped, a substantial number of existing users will inevitably fail to conform to the approved zoning. Non-conforming users could be permitted to persist so long as the degree of nonconformity is not increased. It is recommended that the effectiveness of the zoning mechanism to support integrated development should be strengthened.

The growth of slums, and buildings that have been converted into slums because of the lack of maintenance and a scarcity of funds, need to be addressed. A lack of maintenance of these areas and the poor conditions

of extensions informally added to the original buildings have accelerated the deterioration of the neighbourhood or housing environment. These inhabitants and those that 'squat' on publicly owned land often hope for the government to intervene to improve the health and living conditions of the sites, or better still to legalise their tenure status. However, the government must take some firm actions. Continuing neighbourhood deterioration can be avoided with the neighbourhood revitalisation as a planning strategy. It is recommended that there should be a strategy for the revitalisation of the affected areas and public and private sector investment in redevelopment programmes should be initiated.

There has to be a better understanding of how effective planning is translated into a better quality of life. Planning can improve the living environment and consequently affect the safety, utility, attractiveness and character of city/rural life. However, planning cannot be accomplished by planners operating in a vacuum. Improving quality of the living environment requires the active participation of property owners, bankers, developers, architects, engineers, contractors, and others involved with real estate. It also requires the sanction of community groups, civic organisations, elected and appointed public officials, and municipal employees. Together they provide the financial and political means of bringing plans to fruition. Effective planning highlights the fact that planning is about change – preventing undesirable change and encouraging desirable change. The scope of planning must therefore be broadened and a process calling for greater transparency with mechanisms for feedback from the public introduced.

It has been highlighted that the increasing concern over the impairment of the earth's natural systems has elicited a variety of reactions from designers resulting in many views toward ecologically responsive design. Architects, designers, engineers, and all those whose work affects the environment, must make everyday design decisions and take action on the basis of the information that is presently available. Every act of building changes the environment. It is, therefore, important that a better understanding of the changes in and impacts on the ecosystems and the life cycle design concept be addressed. Ecologically responsive design will help to relate human activities to the ecosystem in a positive manner and to design a built environment with beneficial ecological impacts.

It is recommended that the existing structural and local plans should be reviewed and positive values in new developments, to ensure quality living environment, should be incorporated in these plans. Building design should also be ecologically responsive.

Private sector and the housing industry

The Malaysian housing industry has been shaped by the contributions made by the public and private sectors. While the public sector has slowly taken a more active role as a supplier of houses, the private sector continues to provide the bulk of the houses to the housing market. The performances of the public and private sectors have been uneven. For the Fifth Malaysia Plan (1986-90) the public sector achieved 65 per cent of the housing target set but the private sector achieved only 37 per cent of the target set for it. For the Sixth Plan both the public and private sectors performed much better but the public sector's performance for low-cost housing was less satisfactory.

The government has been criticised for all sorts of shortcomings regarding its role in the regulating and encouraging the growth of the housing industry. The private sector, needless to say, is not blameless and has equally been criticised for its own shortcomings and practices. The motivation to maximise profits has been the overriding objective of private housing developers. A recurring complaint against the private sector has to do with the quality of the houses. In their push to maximise profits there have been cases of delays in completing the houses, poor workmanship, prevalence of defects and the slow response by the developers to rectify the defects of the newly constructed houses. Housing developers have also been less than sensitive to the environmental degradation and has contributed to the lowering of the quality of the living environment of residents in proximity to the housing projects which are under construction phase.

A number of recommendations have been made in the earlier parts of this chapter for improving the performance of the housing developers as well as to make them more responsible. At the same time it is recommended that the housing industry should institute a system of self regulation to improve the quality of the houses that are constructed by private housing developers. Self regulation on the behaviour and performance of housing developers would supplement other regulations, legal and non-legal, that have to be observed by private housing developers.

The prevalence of poor housing quality and other serious complaints against private housing developers would require a more aggressive stance by the government. It is recommended that the blacklisting of companies which have flouted regulations or failed to meet their commitments should be continued and information on the identities of those blacklisted should be widely disseminated to the public. It is further recommended that the system of penalties and fines imposed on private housing developers should be reviewed so that they can be made adequately punitive.

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