5.1 Introduction

The aim of this chapter is to provide an introduction into the cadastral system mainly for Peninsular Malaysia. Prior understanding of the cadastral system will make the following study easy.

Every country is unique and has its own social, political, economic, legal and physical environment. This means, land registration system and cadastral survey and mapping registration should have to improve and to cope with the changing needs mentioned above. By reforming the existing system and making change in legislative, its can provide for a save, reliable and stable cadastral system. Meanwhile, this best fitted and suitable cadastral system can benefit the land resource management, government as well as the local community.

This chapter introduces the country of Malaysia then continues to elaborate its land administration system together with an overview of the history and development of land law systems before and after the introduction of National Land Code 1965 (Act 56) in 1st January 1966. This will then be followed with an explanation on the land legislation framework, land title registration and cadastral survey and mapping registration with how the current land administration is being undertaken by Department of Survey and Mapping Malaysia (DSMM), State Land and Mines Office (PTG), District Land Office (PTD) and other respective federal and state authority that make up the components of the whole cadastral system.

Due to the important stature of the National Land Code 1965 (Act 56) in the land administration, the discussion on the cadastral system in Peninsular Malaysia will base on its statement. Beside National Land Code 1965 (Act 56), Federal Constitution 1957, Survey Regulation 1976 (Peninsular Malaysia), Strata Titles Act 1985 (Act 318), Building and Common Property (Maintenance and Management) Act 2007 (Act 663), Document of Register and Cadastral Map or better known as Certified Plan are also important in making a complete cadastral system for strata and stratum objects in Malaysia. To conclude, it seems appropriate to make an
assessment onto issues relating to land administration as well as the strengths and weaknesses of existing cadastral systems that involve land legislation framework, land title registration and cadastral survey and mapping registration, especially those relating to three-dimensional situation and format for 3D property objects.

5.2 Malaysia

The information about Malaysia country background and cadastral system are based on the Country Report on Cadastral Template (2003) by the Permanent Committee on GIS Infrastructure for Asia and the Pacific (PCGIAP).

5.2.1 Country Information Background

Geographical Context
The federation of Malaya is formed in 31st August 1957 by 11 states, 6 years later with joining of Sabah, Sarawak and Singapore in 16th September 1963 Malaysia is formed as a federation of fourteen (14) states in Southeast Asia. However, in 9th August 1965, Singapore declared its independence from Malaysia. Now, the country covers an area of about 329,758km$^2$ in land and water spaces while the marine spaces within Malaysia’s jurisdiction are about 515,000km$^2$ and a coastline of approximately 4576km in length (Nordin, 2001).

The country consists of two geographical regions separated by the 1,074 kilometres wide South China Sea. West Malaysia also known as Peninsular Malaysia consists of eleven (11) states (Johore, Kedah, Kelantan, Malacca, Negeri Sembilan, Pahang, Penang, Perak, Perlis, Selangor and Terengganu) and two (2) federal territories (Kuala Lumpur as the capital, and Putrajaya as the administrative centre) while East Malaysia consists of two (2) states (Sabah and Sarawak) and federal territory of Labuan. Peninsular Malaysia covering 131,598km$^2$, bordering Thailand at the north and is connected by the Strait of Johore on the south with Singapore and it separated by the Strait of Malacca on the west with Indonesia (Sumatera) while East Malaysia covering 198,160km$^2$ borders the territory of Indonesia’s Kalimantan to the south and Brunei to the north of Sarawak.
Malaysia lies close to the equator with tropical climate between Latitudes 1° and 7° North and Longitudes 100° and 119° East. The population is approximately 27.73 million as at 5 September 2008 with a growth rate of about 1.742% (Statistic, 2008). Malaysia is a multi racial country with Malay, Chinese, Indian, Indigenous and others such as Indonesians, Thai, Europeans and Australians. Bahasa Malaysia based on Malay is Malaysia’s official language, other principle language are English, Mandarin, Tamil and several indigenous languages; most widely spoken are Iban and Kadazan. Islam is the religion of more than half the people in Malaysia, including all of the ethnic Malays. The Chinese and Indian are largely Buddhist and Hindu respectively while some are Christian and Sikh. Meanwhile, many of the indigenous people in Peninsular Malaysia, Sabah and Sarawak follow traditional beliefs.

Historical Context
The government of Malaysia is modelled after the British system and now with 13 states and 3 federal territories. The official head of nation is the Paramount Ruler (Yang Di-Pertuan Agong). Under the Federal Constitution 1957, where 7 of those states (Kedah, Perak, Kelantan, Pahang, Selangor, Terengganu and Johore) have Rulers (Sultan), Yang Di-Pertuan Besar Negeri Sembilan and The King of (Raja) Perlis, elect a monarch, the Paramount Ruler every 5 years while Penang, Malacca, Sabah and Sarawak have governors appointed by federal government. The federal government is based on a parliamentary system, headed by an elected Prime Minister from the majority political party whose win the election.

The parliament consists of a partially appointed senate and a house of representatives whose members are elected by universal adult suffrage. The power of state government are limited by Federal Constitution, under term of federation, Sabah and Sarawak retain certain constitution prerogatives. The federal government has powers on external affairs, defence, internal security, civil and criminal law, federal citizenship and naturalisation, finance, trade, commerce and industry, taxation, customs and excise duties, shipping, navigation and fisheries, communications and transport, federal works and power, education, medicine and health, social security and tourism, while the state has powers on land and administration, Islamic Law,
Malay Customs, permits and licenses for mines prospecting, agriculture, forests, local government, states works and water and riverine fishing.

As pointed out in Chong (2006), more power is vested in the cabinet led by the Prime Minister in the executive branch of government than in the legislative where legislative power is divided between federal and state legislatures. On the other hand, Menteri Besar selected from each state assembly lead the nine (9) states government (Perlis, Kedah, Perak, Kelantan, Pahang, Selangor, Negeri Sembilan, Terengganu and Johore) while Chief Minister lead the rest of four (4) states government (Penang, Malacca, Sabah and Sarawak). Each state has its own state constitution, head by Menteri Besar or Chief Minister and state cabinet, and legislate on matters outside the federal parliament sphere.

**Historical Outline of Cadastre**

The earliest formal cadastral survey was undertaken in Penang in 1851 when Broad Surveys of Lands under occupation were surveyed using tape and plane table technique. The outcome of those surveys was then found to be unreliable due to its low technical value. Another was the cadastral survey work in Malacca somewhere in 1860 which using plane table technique to survey almost one third of the state, which included most town and coastal areas. However, no permanent boundary marks were planted during those surveys in Penang and Malacca but only using areca palms were planted by occupants to mark the property boundaries. Later similar surveys were also carried out in other state in Peninsular Malaysia. In that period, plane tabling survey method or prismatic compass and chain survey techniques were utilised in the determination of boundaries of such occupied lands but not all defined by boundary marks. Later, the Torrens system, based essentially on the Fijian Act, was introduced into the Federated Malay States between the years 1879 and 1890.

According to Nordin (2001), the Boundary Ordinance of 1884 was introduced to obtain a legal definition of the land to be included within each registered title and also the survey information shown on the cadastral map. Therefore, resurveys were conducted to produce up-to-date administration maps showing existing holdings. This time, permanent marks were emplaced and boundaries surveyed using the theodolite and the chain survey techniques. In spite of that, there were still
jurisdictions at that time, which employed less rigid methods of survey. For instance, in Kelantan, plane table techniques were adopted in 1915. This adoption consequently resulted in a legacy of land problems which had to wait until 1956 for their systematic and expensive resolution under the Kelantan Land Settlement Scheme.

As stated by Nordin:

“As a consequence of the aforementioned experiences, there appears to be some form of conviction assumed by the cadastral survey authorities, which had a significant impact on subsequent cadastral practices. They can be generally summarised as follow:

(a) That no survey system other than that utilising suitably accurate methods of surveying and properly controlled, as well as checked by computation, can satisfy the requirements of the legislated land tenure; and

(b) That various less demanding survey approaches had been tried but costly experiences of the past had forced the rejection of less rigid survey methods in favour of more reliable ones.”

(Nordin, 2001: 64)

Through succeeding political changes in the country, the National Land Code 1965 (Act 56) was enacted to establish a uniform land system to replace the existing systems. Prior to the passing of the National Land Code 1965 (Act 56), two quite different systems of land tenure existed side by side. The former British Colonies of Penang and Malacca retain a system peculiar to the pre-war ‘Straits Settlements (modelled on the English laws of property and conveyancing) whereby privately executed deeds are the basis of title to land while the remaining nine Malay states, by contrast, employ a system based on the principle that private rights in land can derive only from express grant by the state or secondarily from state registration of subsequent statutory dealings.
5.2.2 Country Cadastral System

Government Organisations
Peninsular Malaysia is a federation of states, each of which is responsible for its own land matters. All States operate a Torrens system of registration, administered by the State Land Offices and coordinated by the Department of Land and Mines. On the other hand, cadastral surveys are controlled by the Department of Survey and Mapping Malaysia which is a federal department. Department of Survey and Mapping Malaysia is responsible for undertaking cadastral survey work within Peninsular Malaysia but is supported by a growing number of licensed land surveyors, whom are primarily responsible for engineering and subdivision surveys. Notwithstanding the above, the cadastre in the states of Sabah and Sarawak are administered by the Department of Land and Surveys. They have the ideal setup of having land administration and cadastral surveys under the control of a single organisation, which is a state entity.

Purpose of Cadastral System
The objects of the Malaysian Cadastral System are to provide security and simplicity to all dealings with land. It establishes and certifies, under the authority of the government, the ownership of an indefeasible title to land and simplifies, hastens and cheapens all land dealings. The title is conclusive proof that the person mentioned therein is the owner of the land described therein. Valid titles require an accurate description of boundaries and as such cadastral survey plays an important role in the system.

Types of Cadastral System
The Malaysian Cadastral System has essentially two basic components, which are the very pillars of the system’s reliability and credibility. They are the land registration and the cadastral survey components.

Cadastral Concept
The most important element in the land registration component is the type of title called system of land tenure and the nature of government guarantee. The system provides for registration to confer indefeasible title or interest, except in certain
circumstances, such as through fraud or misrepresentation or registration obtained by forgery or by means of an insufficient or void instrument. Essentially, for alienation under final title, it only becomes effective from the time of the registration of the Register Documents of Title (RDT) at the Land Office, whereby the Issue Document of Title (IDT) would be simultaneously issued to the registered proprietor of the land. Both the Register Documents of Title and the Issue Document of Title have affixed to them and appropriately sealed, a plan of the land, certified as correct by or on behalf of the State Director of Survey.

The proprietor of any land enjoys the right of effecting dealings with respect to his land and the interest therein. Such dealing is affected by an instrument being registered into the documents of title. The instruments capable of being registered include any transfer of land, lease or sub-lease, charge, or surrender thereof. Effectively, the register is conclusive evidence that the person named in it as the proprietor of an interest in land is the legal owner of that interest. More importantly, the system compels that interests in land can only be varied or changed by registration.

The government having decided the nature of the land registration system and given statutory expression to it, it is then the business of the cadastral survey authority to decide the scope of the surveys and the standards of accuracy essential to the validity of the type of title called for by the law. The law specifies the manner in which surveys are to be carried out for the purpose of the issuance of a final title. It is only after this survey that other transactions such as subdivision, partition, amalgamation and so on, of that parcel of land can be carried out.

As mentioned, the law requires every parcel of land to be surveyed and demarcated on the ground prior to the issuance of final title. It provides for fixed rather than general boundaries. Parcel definition is by officially emplaced and mathematically coordinated boundary marks rather than by topographical details. The surveyor emplaces the boundary marks which demarcate the parcel and carries out a survey of these boundary marks based on the state survey controls provided. On the completion of the survey, a plan is drawn and when authenticated by the Director of
Survey becomes a certified plan. Copies of the certified plan are utilised in the preparation of title documents.

One important aspect of the registration system is the peculiar practice of issuing temporary land titles, termed as Qualified Titles. The purpose for this is to enable land to be alienated in advance of survey or prior to survey and in the broader context as well as to speed up land development.

Content of Cadastral System
The Malaysian Cadastral System provides for textual and spatial information that is consistent with the two aforementioned components of the system. They are as follows:

(a) Textual aspect – the land register furnishes all necessary information, the basic ones being the name of the proprietor and the actual land alienated through a description of its area and location, and the survey plan showing the limits. Other information include those on owner’s rights, encumbrances, express conditions, caveats and prohibitory orders, if any. However, not all imposed conditions and restrictions are stated in the register. There are some that are provided by law and have to be abided by the proprietor.

(b) Spatial aspect – the country’s cadastral parcel fabric can be conveniently viewed from the cadastral map produced and maintained by Department of Survey and Mapping Malaysia. With the exception of land parcels that are held under temporary titles (awaiting surveys and finalisation of boundaries) the map depict all land surveyed parcels together with their unique lot numbers or identifiers, as well as the certified plan numbers for ease of reference and search. Hard copy maps are now completely replaced with digital ones through a conversion exercise which ended in 2002.

Although not strictly part of the cadastral system, valuation, local government and planning authorities are heavily reliant on the cadastral system. They made use of
the information provided by the system in the conduct of their businesses and work in close coordination with the institutions supporting the system.

Cadastral Map

Cadastral mapping is based on the Cassini Soldor Coordinate System. Each state has its own origin and reference meridian. Cadastral maps are used primarily for identification of land parcels for land management. On these maps are plotted all lots that are surveyed by both government and licensed land surveyors. All states currently have cadastral maps in digital form based on a graphical representation of geometric components, through the implementation of the Cadastral Data Management System project, which was completed in 2002.

5.2.3 Towards 3D Property Formation

The development of 3D cadastre registration are more on technical part where researchers study on the process of adding 3D cadastre objects in the current cadastre data model and information accessible among Department of Survey and Mapping Malaysia, State Land and Mines Office and District Land Office, unfortunately the two stated database which are Cadastral Data Management System (CDMS) and Computerised Land Registration System (CLRS) database works separately in different authorities and still in two-dimensional situation. As mentioned in this research previously, Malaysian Land Administration are based on the Torrens System where Cadastral Map and legal document with spatial and textual information as a legal evident under the rules and regulations are needed in order to have fully institutional coordination. Therefore, a good institutional is very important, so as to achieve an excellent and wonderful cadastre registration system. However, due to many historical constrains, it seems quite difficult to realise this unless with fully cooperation from various legislative agencies, technical agencies, organisations and other land related governments and private sectors as well.

Recently, the 3D cadastre proposed registration model focused on the combination of these two different databases mentioned above and these two cadastre registration databases namely the legal rights land attributes and the spatial objects geo-data. These three authorities, Department of Survey and Mapping Malaysia, State Land
and Mines Office and District Land Office that are mentioned above are the main
government agencies that responsible for the cadastre registration system where they
integrate and coordinate each other, in order to have an integrated and fully cadastral
system in Malaysia by using the 2D/3D hybrid cadastre approach (Stoter, 2004).
Figure 5.1 shows the 3D cadastre objects in land registration model where the Core
Cadastral Data Model (CCDM) as mentioned in Chapter 4 is still applicable for this
alternative with an additional class of Legal Rights.

![Figure 5.1: Unified Modelling Language Class Diagram of 3D cadastre
objects in land registration model (Adapted from Stoter, 2004; Van-Oosterom
et al., 2006; Chong, 2006; and Ahmad-Nasruddin, Hassan and
Abdul-Rahman, 2008)](image)

The 3D cadastre objects such as strata building, construction above and below the
ground surface, such as underground tunnel, metro station, skywalk and other things
is a real property object that being built on the two-dimensional land parcel, which
are the responsible by Department of Survey and Mapping Malaysia, State Land and
Mines Office and District Land Office on the ownership registration and object
registration respectively. Apart from this two-dimensional land parcel, there is also a
three-dimensional land parcel, which is similar to three-dimensional physical object
based on the hybrid solution by Stoter (2004), together form from the Register
Object, where the two-dimensional land parcel is represented as a two-dimensional
geometry while three-dimensional land parcel is form with two-dimensional
geometry and three-dimensional information. Figure 5.2 shows the two-dimensional
land parcel and three-dimensional land parcel, both registered as an object in current registration system. 

The two-dimensional land parcel is inherited from the current registration system that is the cadastral lot that consists of boundary lines and boundary marks. On the other hand, three-dimensional land parcel is projected with the three-dimensional bounded space that consists of face, node and vertex with list of coordinates that form flat faces and forming of three-dimensional objects which better known as three-dimensional cadastre object later. Figure 5.3 shows the two-dimensional land parcel data model inherited from Register Object in the cadastral registration. Meanwhile, Figure 5.4 illustrates the three-dimensional land parcel data model inherited from also from Register Object in the cadastral registration.
To sum up, 3D cadastre registration is a combination of land registration with two-dimensional and three-dimensional land parcel of cadastral registration. There are
combination of legal rights of land attributes, 2D cadastral objects and three-dimensional information. The combination of this concept data model can be shown in Figure 5.5.

Figure 5.5: Unified Modelling Language Class Diagram of 3D cadastre registration concept data model (Adapted from Ahmad-Nasruddin, Hassan and Abdul-Rahman, 2008)
5.3 Malaysian Land Administration

Malaysian Land Administration traditionally base on Malaysia land law while cadastral system in Malaysia consist of land registration system and cadastral survey and mapping registration system which have different structures and authorisations, since land registration is a state government juridical while cadastral survey and mapping is under federal jurisdiction. It provides a variety of rights, depending on the traditions at the country but the legalistic cadastral system and land law are still using two-dimensional geometric in legal and law expression for land and property tenure and have not been prepared to register in three-dimensional situation. For instance, as we notice that National Land Code 1965 (Act 56), Strata Titles Act 1985 (Act 318), Building and Common Property (Maintenance and Management) Act 2007 (Act 663), Cadastral Map as well as Document of Register which as a binding and legal document do not give enough volume and height information for strata and stratum objects.

Land use rights are one of the rights that are often based on occupation of land over a long period and can be defined in written law or by traditions. In addition, land as the fundamental or base for all forms human activities where it serves human needs for shelter, labour, the economic needs for business, food, financial and other resources as well as the different kinds of societal needs of the community. Hence, a systematic record of lands in all matter that is registration of the detail of transaction and other things are very importance in the land administration, planning and development of land. This means that, due to more and more needs ground space, the two-dimensional paradigm in law and legal should be changed (Nordin, 2001). Land administration in Malaysia is generally responsible for collection of revenue, title registration such as registration of strata and manage application for land dealings such as transfer of land and interest, lease, charge, certificate of sale, granting or releasing of easement and change of condition of land use, subdivision, partition or amalgamation of land or building and so on.
5.3.1 The Development of Land Tenure and Land Law Systems

The land tenure and land law are a complex set of rules that have developed gradually and naturally within each society to ensure its orderly running and the peaceful behaviour of its members. As United Nations Economic Commission for Europe (1996) mentions that there are statutory law in which all rules and regulations are written down and codified. On the other hand, customary law in which there is written record, but the code is assumed to be will known by all members of society. Common law which grew out of customary law but were over time the judgment of the courts have been written down to create precedents where by new cases can be judged. According to Chong (2006), land law provides a variety of rights, depending on the traditions of the country while land use rights are one of the rights that are often based on occupation of land over a long period and can be defined in written law or by traditions. There are four major sources of national land law, on chronological order that include Malay Customary Law (Undang-undang Adat Melayu), Islamic Law (Undang-undang Islam), English Law (Undang-undang Inggeris), and National Land Code 1965 (Act 56) (Kanun Tanah Negara) (Buang, 1995).

The National Land Code 1965 (Act 56) comes into force on 1st January 1966 to administer all land matters in Peninsular Malaysia and Federal Territory of Labuan while Sabah and Sarawak still use their own land ordinance. Where Sabah is still using Sabah Land ordinance 1930 (Cap. 69), Land (Subsidiary Title) Enactment 1972 and Land Acquisition ordinance (Cap. 69) while Sarawak is using Sarawak Land Code 1958 (Cap. 81), Mining ordinance 1985 (Cap. 83), Land Control of subdivision ordinance (Cap. 82) and Strata Title Ordinance 1957.

5.3.2 System before National Land Code 1965 (Act 56)

The customary land tenure in Peninsular Malaya, prior to British occupation of Malacca and exercise by British of effective protecting power over the Malay states, followed the same pattern as in Sumatra, Java, Sarawak, Borneo, Burma, Siam and parts of India and Ceylon. At the time of cede, Penang was virtually uninhabited island with no settled law, much less a recognised land system. Historical records
show that before the arrival of the English traders in 1786, the year that Ruler of Kedah ceded the Penang to English East India Company, there was no any English Laws having been established in Penang. In other words, before the arrival of the English traders, the Peninsular Malaya was already governed by Islamic Law and local Customary Law. It can be seen from some historical records that were in the Malaka Laws of 1523, the Pahang Laws of 1596, the Kedah Laws of 1605, the Johore Laws of 1789, the Perak Code and the Ninety Nine Laws of Perak 1765 (Buang, 1989; Das, 1963). Besides, the Malay states were never ceded by the British, so, there is no question of English Law or the Deeds System having been introduced into the Malay states before the Malay states accepted British protection. The only law at that time applicable to the Malay was Mohammedan Law modified by local custom. (B86, B47, ms171)

The principle fundamental characteristic of Malay Customary Tenure is that a person can acquire proprietary rights in land by occupying, cleaning and continuously cultivating forest land while the second fundamental characteristic of Malay Customary Tenure is the inherent right of the Ruler to have a certain prescribed share of produce of soil. According to the Malay Customary Law, the land holder do not own the land or soil, they only own the rights to cultivate and to derive income and livelihood from the land or soil. According to (Buang, 1989; Das, 1963), there are two basic types of customary dealing in Malay Customary Law, namely pulang belanja and jual janji. In pulang belanja, the new proprietor bought out the existing proprietor by paying him a compensator sum for his labour to obtain the right to occupy the land instead of purchase the land. While under a jual janji transaction, the proprietary right in the land of a person who is in need of money will transfer o a purchaser. By reply the sum advanced by the purchaser within a specified time or at anytime thereafter, the land will be transferred back to the existing proprietor. Beside the rules for pulang belanja and jual janji, there are also harta sepencarian and Joint Proprietorship relating to the customary rules of the Malays. (B86, B47, ms171)

According to the Holy Quran, land, air, water and sunshine like everything on the earth belongs to Allah, is meant for common use and benefit of the whole community. Land is a free gift of Allah and is created for the benefit of all alike. So, land should be properly used and developed by the land owner, otherwise the states
has a right to force the land owner to use it properly or to take it away by giving to another person who really need it and for the benefit of the community because the supply of land is limited. Land may be required for pasture, public gardens, playgrounds, railways, canals, roads and other public purposes. Again, according to the Holy Quran, Allah has the absolute ownership of land and from The Allah to the states or communities, is given the right of benefit, sale and purchase.

Thus, the individual has the right to benefit from land and use it properly for cultivation without destroy his neighbour’s property or cause the neighbour cannot live in ordinary comfort or carry on his ordinary occupation. Otherwise, the state has the right to withdraw the trust from the particular person and give to other person who really needs (Ibrahim, 1989). According to the traditional Islamic System of land tenure, there were three types of land holdings named holdings of private property held in full ownership, holdings of *wakaf* lands and holdings of state owned lands with various conditions of tenure (Ibrahim, 1989). While Ibrahim himself mentioned the early Muslim jurists classified cultivated land on the basis of the type and amount of revenue accruing to the state from such lands. Thus, lands were classified as *Ushri* or *Kharaji*. They also classified the Muslims land into *Amir* or inhabited and cultivated and *Mawat* or dead and uncultivated. There were two different methods of cultivation, named hill farm system, known as *huma* or *hill-padi* and *lalang* for growing different edible vegetables and fruits. (B47, ms189)

The Malay Customary Land Tenure relating to acquisition and ownership of the soil reveal such similar with the rules contained in the classical Islamic law of property. The Malay Customary Land Tenure as well as the Islamic law classified land into live land (*tanah hidup*) and dead land (*tanah mati*). The basic principle of live land is if someone makes an activity such as builds a house on that piece of land or cultivates it into a *huma* or *lalang* or *sawah* or *bendang* and so on, no one can proceed against him. On the other hand, dead land considered nobody has property to it and there is no sign of its being under cultivation by someone and had been abandoned and neglected his land for a period of time. If any person proceeds to cultivate on it, no one has any right to dispute it with him for it has been abandoned voluntarily by its former owner.
The early English Land Law modelled from the English Laws of property and conveyancing that was introduced into Penang was known as the Deeds System, which recording land transactions in the form of deeds or indentures. According to Das (1963), the Deeds System was introduced in Penang properly as early as 1807 by English first Chapter of justice and in Singapore in 1819, later extended to Malacca by the second Chapter of Justice in 1826. The land law in Penang remained the same with Deeds System even after the Torrens System was introduced in the Malay states until 31st December 1965. However, Malacca was different from Penang. Prior to the arrival of the English, Malacca had a long history of self rule under the Malay Sultanates before occupied by the Portuguese, Dutch and English. Therefore, the Malacca land tenure system was a combination of traditional Malay Customary Law, Islamic Law, Portuguese and Dutch Laws. The Malay Customary Tenure endured and continued in force in Malacca until late 1886 when the English Deeds System became fully implemented. As was the case in Penang, the Deeds System lasted in Malacca until the passing of the National Land Code (Penang and Malacca Titles) Act 1963 which came into force simultaneously with the National Land Code 1965 (Act 56) on 1st January 1966.

The introduction of Torrens System in the four (4) states after they united in 1896 and formed the Federated Malay States, started when Pahang in 1887, Perak, Negeri Sembilan and Selangor in 1874 accepted the Residency System. The first land tenure enactment, named General Code of Regulations Regarding land (Perak) was enacted on 28th February 1879, follow by Selangor General Land Regulations No. 2 of 1882, Negeri Sembilan Land Regulations of State Council Minutes on 8 April 1887 and Pahang General Land Regulations in 1889. The land tenure and enactment of the 1890s of each of the four Federated Malay States was repealed and re-enacted in 1903. Later, in 1911, the first united land enactment of Federated Malay States were passed, named Land Enactment No. 11 of 1911 (Federated Malay States) and the Regulation of Titles Enactment No. 13 of 1911 (Federated Malay States). These two Federated Malay States enactment of 1911 remained in force until amended by the Land Code 1926 (Cap 138), effected on 1st January 1928 which unified the land law held on Registry Title and Mukim Registry until it was repealed by the National Land Code 1965 (Act 56) on 1st January 1966.
There was a proposal to amend substantially the Land Code 1926 (Cap 138) in 1936 which was suggested by members of the Supreme Court, Registrars of Titles, Collectors of land Revenue and members of the Bar but many of the proposals were not implemented. The Titles of land (Occupation Period) Ordinance 1949 came into force on 10th October 1949 to remedy certain irregular transactions carried out during the occupation period by Japanese invasion of Malaya during World War II (1941-1945). This ordinance also applied to Unfederated Malay States and was amended several times until it was repealed by the National Land Code 1965 (Act 56) on 1st January 1966 (Sihombing, 1989).

Unfederated Malay States came under British protectorate after the Anglo-Siam treaty between England and Thailand in 1909 where the former possessions of Thailand in Kedah, Kelantan, Perlis and Terengganu be taken over by England while Johore accepted the status of a protectorate in 1914. Johore enacted a land law named Enactment No. 1 of 1910 which repealed any former laws or orders in council dealing with the alienation of land and the collection of royalties on forest produce. This enactment amended and repealed from time to time including Ordinance No. 57 of 1949 and Ordinance No. 51 of 1952, Federation of Malaya until repealed by National Land Code 1965 (Act 56) on 1st January 1966. Kedah had the land Enactment 1324 (1906) before British protectorate which attempted to detail concise provisions for the alienation of land and for dealings in land. This enactment was repealed by the Land Enactment 1332 (1914) after formed Unfederated Malay States and it was amended and repealed several times including Land Enactment No. 56 of 1352 (1930), Federal Enactment No. 72 of 1371 (1949), Regulations 293 of (1381) 1959 and Enactment No. 4 of 1387 (1965) before wholly repealed by the National Land Code 1965 (Act 56) on 1st January 1966.

The first written laws or rules on the land system in Kelantan was the Land Enactment 1926 effected from 1st August 1926. Prior to this enactment, the power of alienation of land was vested in the Ruler through the Chiefs issued notifications or notices in lands were to be alienated. The Land Enactment 1926 was amended and repealed from time to time including Land (Amendment) Enactment No. 3 of 1930, the Land Enactment 1938, Ordinance No. 71 of 1949, Ordinance No. 11 of 1952 and Ordinance No. 51 of 1955, Federation of Malaya until repealed by the National Land Code 1965 (Act 56) on 1st January 1966.
Code 1965 (Act 56) on 1st January 1966. The early land law in Perlis was passed two years before Perlis came under British protection and as known as the Land Tenure Regulations 1326 (1907). This regulation superseding all previous laws, regulations, rules, custom relating to the land tenure and was amended and repealed many times including Enactment No. 2 of 1340 (1922), Enactment No. 8 of 1355 (1933), Land Titles Enactment No. 10 of 1356 (1938) until it was wholly repealed by the National Land Code 1965 (Act 56) on 1st January 1966. There were no earlier land laws in Terengganu other then Settlement Enactment 1924 and Land Enactment No. 5 of 1334 (1921) until the Land Enactment 1344 (1926) came in force. This enactment later was amended and repealed from time to time including Land (Amendment) Enactment 1348 (1929), Enactment No. 7 of 1355 (1937), Land Enactment 1361 (1939) and federal Ordinance 68 of 1950 until the introduction of the uniform National Land Code 1965 (Act 56) on 1st January 1966 (Zahir, 1989).

The amending, repealing and replacing of such land laws, ordinances, codes, rules and regulations throughout the period for this land tenure system is to suit the needs of modern economic development and the increased use of land on a commercial basis. From the occupation of British to Penang in 1786, to Singapore in 1819 and to Malacca in 1824, later with the formation of the Straits Settlement of these three states in 1826, the Deeds System was widely used. English Laws or better known as the Torrens System were brought into Federated Malay States as earlier as 1874 and into Unfederated Malay States in 1909. This Torrens System act in all Federated Malay States and Unfederated Malay States land code and had been amended and repealed many times until a uniform system of land laws and registration of title, named National Land Code 1965 (Act 56) came into force on 1st January 1966 to the whole of peninsular Malaysia was established. With its enforcement, all states came under a uniform land law for the first time in the history of land administration in Peninsular Malaysia (Nordin, 2001).

5.3.3 System after National Land Code 1965 (Act 56)

while Sabah and Sarawak still use their own land ordinance. For Sabah, there are Sabah Land Ordinance 1930 (Cap. 69), Land (Subsidiary Title) Enactment 1972, and Land Acquisition Ordinance (Cap. 69) while for Sarawak, there are Sarawak Land Code 1958 (Cap. 81), Mining Ordinance 1985 (Cap. 83), Land Control of Subdivision Ordinance (Cap. 82), and Strata Title Ordinance 1957.

5.4 Land Legislation Framework

The law and legal are a complex set of rules that have developed gradually and naturally within each society to ensure its orderly running and the peaceful behaviour of its members. As United Nations Economic Commission for Europe (1996) mentions that there are statutory law in which all rules and regulations are written down and codified. Customary law in which there is to written record, but the code is assumed to be will known by all members of society. On the other hand, common law which grew out of customary law, but were over time the judgment of the courts have been written down to create precedents where by new cases can be judged.

5.4.1 The Torrens System in Peninsular Malaysia

As described in the previous section, National Land Code 1965 (Act 56) was formed after many amendments and repealing had been done onto the previous land codes. By the way, British first introduced an English Land Law or better known as the Deeds System into Penang in 1809, follow by Singapore in 1819 and later into Malacca in 1826. This system remained the same in Penang and Malacca although the Torrens System was introduced in the Federated Malay States and Unfederated Malay States until it repealed by the National Land Code 1965 (Act 56) on 1st January 1966. Deeds registration system registered the rights in land where a copy of the transfer document is deposited in a deeds registry and then provides evidence of dealing. Usually, the deeds registry is under the state control where a copy of all agreements regards the ownership and possession of the land must be registered at the registry offices and one copy of all documents is retained. A purchaser should feel confident that the owner has the right to sell the property by doing a search of the registry for the most recent document of transfer because the registry will show the condition of the owner obtained the property. Hence, to proof the previous
transaction was legitimate, the previous transaction should be inspected and so on through a sequence of inspection until the purchaser is confident that there is a clear chain of title.

Another alternative of documents registration is the title registration system of rights in land or better known as the Torrens System. Here, a land parcel is defined on a map that is Certified Plan after a survey had been done and the rights associated with it are recorded on the register. The owner’s name must be recorded in the registry and it changed subject to the transaction of the whole property. However, when part of the land is transferred, the plan must be amended and new plan and document is issued. According to United Nations Economic Commission for Europe (1996), Torrens System is essentially simple and relatively cheap to operate. Transfer of land parcel can be done in the Land Office without hireling a lawyer but many people choose to take professional advice when dealing with land. As pointed out in Ibrahim and Sihombing (1989), the main features which distinguish the Torrens System from other systems are registration of a dealing in statutory form produces title, that is the state guarantees title, caveats can be entered on the register to protect unregistered interests, equity is banished from the system, land survey is essential, provision is made for an assurance fund to compensate loss caused by official negligence and mortgaging of land by way of registered charge. All these features mentioned above help Torrens System well fitted in many local conditions by that period.

As mentioned before, land laws in Federated Malay States and Unfederated Malay States are based on Malay Customary Law and Islamic Law before Torrens System was introduced. The Torrens System was introduced onto these Malay states by the General Land Registration Regarding land (Perak) which enacted in 28th February 1879, later onto Selangor in 1882, Negeri Sembilan in 1887 and Pahang in 1888 but this enactment was not a mirror principle of Torrens System (Das, 1963). Whilst, the first mirror principle of Torrens System were enacted in 1891 in Selangor, 1897 and 1898 in Negeri Sembilan, 1897 in Perak and Pahang. These were following by Johore in 1910, Kedah in 1906, Kelantan in 1926, Perlis in 1907 and Terengganu in 1921. Amongst the early principle characteristics of the Torrens System in Malay states were all land vest on the Ruler, all dealing in land must be in the prescribed
form and must be duly registered with the relevant authorities, owners of land are
given indefeasibility of title, the traditional method of land acquisition under Malay
Customary Tenure was abolished, transfers of forms of dealings and recognised
private caveats and registrar’s caveats (Buang, 1995).

5.4.2 Land in Malaysian Legislation

In Malaysia land registration, the process of recording rights in land is via
registration of title of land. “Land is a state matters”, according to Federal
Constitution 1957, land matters is under the jurisdiction of state government, handled
by the respective state Registry or District Land Office, depending on where the
document of title was formerly registered. Beside Federal Constitution 1957,
legislatures such as National Land Code 1965 (Act 56), Strata Titles Act 1985 (Act
318), Group Settlement Areas Act 1960 (Act 530) and Land Acquisition Act (Act
486) are some legislatures involved with land matters. National Land Code 1965
(Act 56) came into force since 1st January 1966 and it remained relatively unchanged
in scope and content except for Sections 151 to 157 and Sections 355 to 374 that had
been repealed by Strata Titles Act (Act 318), Rules & Order on 1st June 1985.

Land Ownership as governed by the National Land Code 1965 (Act 56) is based on
the Torrens System (see previous sections). It is protected by the National Land
Code 1965 (Act 56) in Section 340 (indefeasible title or interest) and is guaranteed
by the Federal Constitution 1957 as stated under Article 13 (rights to property).
Once an ownership is being registered, the owner’s title and interest is indefeasible
except it involved fraud or misrepresentation. Furthermore, no body shall be
deprived of property unless had been paid an adequate compensation. This is clearly
stated in National Land Code 1965 (Act 56), Section 340 (Registration to confer
indefeasible title or interest, except in certain circumstances):

“(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
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.

(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 thereout shall be liable to be set aside in the hands or any person or body in whom it is for the time being vested:

Provided that nothing in this sub-section shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration, or 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 time being force, or any power of avoidance conferred by any such law; or
(b) the determination of any title or interest by operation of law.”

(National Land Code, 1965: 270-271)
Furthermore, Federal Constitution 1957, Article 13 (Rights to property) states:

“(1) No person shall be deprived of property save in accordance with law.
(2) No law shall provide for the compulsory acquisition or use of property without adequate compensation.”

(Federal Constitution, 1957: 7)

There are three ways to acquire land. Firstly, the land can be acquired through alienation from the state authority under Section 42 and Sections 76 to 78, National Land Code 1965 (Act 56), secondly is by dealings and finally through inheritance. State Authority or Federal Government required through State Authority can acquire land through Land Acquisition Act 1960 (Act 486), Rules & Order. Section 3 (Acquisition of land) of this act mention:

“(1) The State Authority may acquire any land which is needed-
(a) for any public purpose;
(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 the public generally or any class of the public; or
(c) for the purpose of mining or for residential, agricultural, commercial, industrial or recreational purposes or any combination of such purposes.”

(Land Acquisition Act, 1960: 5)

According to Federal Constitution 1957, Chapter 4 (Land) also, federal government can acquire state land for federal purposes if it is satisfied that land in a state not being alienated, the federal government may after consultation with the state government, require the state government alienate the said land to the federal government or to such public authority as the federal government may direct.
Alienation means to dispose of state land in perpetuity or for a term of years, in consideration of the payment of rent and others condition, while dealing means any transaction with respect to alienation land and any like transaction effected under any previous land law such as transfer, lease, charges, sales, liens and easements but does not include any caveat or prohibitory order. Beside alienation, the disposal of state land can be done by non-alienation method such as permit to use air space above state land and reserved land, removal of rock material, temporary occupation of land and reservation of land for any purpose use (for more detail of disposal otherwise than by alienation see Division II, Disposal of Land, Part Four, National Land Code 1965 (Act 56).

5.4.3 Malaysian Land Registration

Peninsular Malaysia is a federation of states where each state is responsible for its own land matters. All states operate a Torrens System of title registration system whereby registration is regulated by the National Land Code 1965 (Act 56), administered by the District Land Office under State land Office. Surveys, on the other hand, are responsible and controlled by a federal survey department namely Department of Survey and Mapping Malaysia which responsible of works like (i) to provide evidence which will completely and permanently identified the land conveyed by the title issued by the government, (ii) to compile records of alienation necessary for intelligent land administration, and (iii) to make reliable maps (Dale, 1976). Department of Survey and Mapping Malaysia is responsible for undertaking many survey works like survey of new alienation land within Peninsular Malaysia but is supported by the licensed land surveyor profession which is primarily responsible for all engineering work and most of the cadastral survey works.

5.4.4 Rights and Powers of the Federation and State Authority

Section 6 of National Land Code (Act 56 of 1965) &Regulations states the Director General of Land appointed under the Federal Commissioner Ordinance 1957 shall be known as the Director General of Lands and Mines; the Yang di-Pertuan Agong may appoint a Deputy Director General of Lands and Mines and many Assistant Director Generals of Lands and Mines. The Director General of Lands and Mines delegated
the power from the Minister may consult and correspond through meetings with State Directors, require them to furnish him with reports and information relating to land administration within the state as well as enter within and inspect the Land Registry or land Office records in any states with their approval. Article 91 of the Federal Constitution 1957 provides for establishment of National Land Council or better known as Majlis Tanah Negara (MTN) and it usually chair by the Prime Minister, one representative from each states, who shall be appointed by the Ruler or Yang Di-Pertuan Negeri, usually Chief Minister or Menteri Besar and the maximum of ten (10) representatives from the federal government. The duty of the National Land Council is to formulate from time to time in consultation with the Federal and State Governments, and the National Finance Council a national policy for the promotion and control of the utilisation of land throughout the Federation for mining, agriculture, forestry or any other purpose, or in respect of any proposed legislation dealing with land as well as administration of any laws. It is compulsory for both the federal and state governments to follow the policy formulated by the National Land Council.

Section 11 of National Land Code 1965 (Act 56) specifies the state authority may be notification in the Gazette the administrative areas by divide it into districts, mukims, town or village after the surveyed and declared by the State Director of Survey and Mapping. The state authority may appoint a State Director and many Deputy and Assistant Directors of Lands and Mines, a Registrar and many Deputy and Assistant Registrars, a Director and many Deputy and Assistant Directors of Survey and Mapping, District and Assistant District Land Administrators, Survey and Settlement Offices and other officers that the state authority consider necessary. Sections 40 to 42 of National Land Code 1965 (Act 56) also points out, all state land, minerals and rock material within the territories of the state shall be vested solely in the state authority. Furthermore, the state authority shall have power to alienate state land (see Section 76 of National Land Code 1965 (Act 56)), reserve state land and grant leases of reserved land (see Sections 62-64 of National Land Code 1965 (Act 56)), permit to occupation of state land, reserved land and mining land under temporary occupation licences (see Sections 70-75 of National Land Code 1965 (Act 56)) and permit the use of air space on or above state land or reserved land where such air space shall be within the confines of a structure (see Section 75A-75G of National
Land Code 1965 (Act 56)). Whereas, the power of the state authority is limited to dispose any land for mining purpose under Mining Enactment, permit the extraction or removal of rock material from any land for obtaining metal or mineral purpose, dispose of any land for removal of forest produce purpose or alienate any land less than two-fifths of a hectare under category agriculture for agriculture purpose unless under exceptional circumstances.

5.5 Cadastral Survey and Registration in Malaysia

Cadastral survey and registration are undertaken at the request of the Land Office on the issue of request for survey. The work of the Land Office is concerned with registration of title and with land alienation, either for individuals, government agencies, companies or groups. Meanwhile, the Federal Department of Director General of Lands and Mines (JKPTG) has a purely advisory role in state land matters and is staffed by servant administrators.

At present, with the advancement of Information and communication technology, it is becoming more advantageous to introduce Coordinated Cadastral System for the purpose of further improving the efficiency of the cadastral survey and mapping registration. Coordinated Cadastral System is a cadastral system that is based on coordinates, Geographical Information System and Global Position System to enhance data acquisition, storage, processing and management operations. The Coordinated Cadastral System has been implemented in May 2010 after the re-coordination of all the state’s Digital Cadastral Database to form a seamless homogenous National Digital Cadastral Database and reforms of Malaysian Cadastral System that includes offices reforms and field reforms.

5.5.1 Cadastral Survey

The objectives of cadastral survey are primarily concerned with the determination of definition of properties boundaries, locations and areas, through their marking and description on the ground and plans or maps respectively, for the purposes of alienation, subdivision, partition, amalgamation and conveyancing. The system as practised is one of fixed and defined boundary whereby parcel definition is by the
officially emplaced and mathematically coordinated boundary marks (Nordin, 2001). In addition, the principal objectives of the cadastral survey as stated in the Survey Regulation of Peninsular Malaysia are:

“1.1 To provide evidence which will completely and permanently identify the land conveyed by any title issued by the Government.
1.2 To compile records of alienation necessary for intelligent land administration.
1.3 To make reliable maps for both military and civilian use.”

(Survey Regulation, 1976: 1)

Before final survey of particular property, no register title can be registered and issued as final until the cadastral survey has been completed and the final title prepared by the Survey Department or Licensed land Surveyor. However, temporary land titles or better known as Qualified Titles may be issued on the basis of a rough survey. The purpose of issuing the Qualified Titles is to speed up land development so that, once planning approval has been obtained for any area, development can commence prior to the execution of precise surveys. This avoids the delay of development since the Qualified Titles allows finance to be borrowed.

It is here to assert that, Section 396 (1) of National Land Code 1965 (Act 56) specifies that, for the purpose of the act, land shall not be taken to have been survey until:

“(a) its boundaries have been determined by right lines;
(b) its boundaries as so determined have been demarcated on the surface of the land by boundary marks or, if by reason of the configuration thereof or for any other cause the placing of boundary marks on the actual line of the boundary is to any extent impossible or impracticable, boundary marks have been so placed as to enable that line to be ascertained;
(c) the area enclosed by its boundaries as so determined has been calculated;
(d) a lot number has been assigned thereto by the Director of Survey; and
(e) a certified plan, showing the situation of the land, the position of its boundaries as so determined and of the boundary marks placed thereon and the area and lot number thereof, has been approved by the Director of Survey.”

(National Land Code, 1965: 292-293)

In general, in considering the huge volume of survey works by the government surveyors and although the Department of Survey and Mapping Malaysia is responsible for carrying out land surveying and mapping, the coming into effect of the Licensed Land Surveyors Act 1958 (Act 458) and Regulations, an act relating to the licensing and control of private land surveyors, allowed non-government surveyors licensed by the Land Survey Board, that is Licensed Land Surveyor to practice their profession as a land surveyor and shall be authorised to carry out title surveys (Licensed Land Surveyors Act, 1958). This was to encourage a gradual transfer of responsibility for executing title surveys to private professional body to help Department of Survey and Mapping Malaysia to carry out title surveys, while Department of Survey and Mapping Malaysia retaining its rights to control such activities (Chong, 2006).

5.5.2 Cadastral Registration

The traditional cadastral registration system that is practiced in Peninsular Malaysia are parcel bounded system with two-dimensional nature and provide essential lands and properties information of the lots and land parcels (Hassan, 2008). Furthermore, Valstard (2006) points to the fact that traditionally land has been described and registered into two-dimensional and all cadastral systems of the world are in fact two-dimensional nature. The existing traditional Malaysia cadastral survey and mapping registration system and land registration system deals with properties not only located on the surface level, but above the surface level and also below the surface level. Therefore, the rights, restrictions and responsibilities (RRR) of the proprietor of the surface parcel shall also apply to the proprietor of the above that is
air space and underground land as well (Tan, Hussin and Ernest Khoo, 2010a). We will further discuss and look into the code and act which relating to lot, land parcel and land registry such as National Land Code 1965 (Act 56), Strata Title Act 1985 (Act 318), Rules & Order, and Building and Common Property (Maintenance and management) Act 2007 (Act 663).

The current Malaysia cadastral registration system does not consists and includes three-dimensional objects registration and three-dimensional rights as well, but this current system is more similar to land administration system. As stated in United Nations Economic Commission for Europe (1996), land administration consists of cadastral survey and mapping registration system and land registration system where both of them contain a set of records about land. This type of 2D cadastral system being practice in Malaysia for a period of one hundred years and it provides essential information about land and property like ownerships of the lots and land parcels for the country. In Malaysia, the cadastral system is managed by three main authorities namely Department of Survey and Mapping Malaysia, State Land and Mines Office and District Land Office. In general, cadastral survey and mapping is under the jurisdiction of Department of Survey and Mapping Malaysia where it responsible for carrying out land survey and mapping, then follow by registration of cadastral objects there are lots and land parcel boundaries while State Land and Mines Office and District Land Office are responsible for the land title registration. They are Registry Titles and Land Office Titles.

There are two systems namely Cadastral Database Management System (CDMS) and Computerised Land Registration System (CLRS) which operated by Department of Survey and Mapping Malaysia and State Land and Mines Office and District Land Office. The Cadastral Database Management System database stored land attributes, spatial objects and other things while the Computerised Land Registration System database stored land ownerships, land tenures and so on. But these two systems work separately in each organisation with difference legal aspect and still in nature of two-dimensional. This mean, there are no three-dimensional object property rights as well as 3D cadastral rights. These two systems later on can be incorporated in the registration form with the present advance and modern technologies such as Geographical Information System, internet, web based and e-commerce applications.
Figure 5.6 shows the current system with the proposed concept of legal aspect for 3D objects registration and visualisation rights as well as 3D property rights. For more discussion and detail on 3D property rights, see Paulsson (2007).

There are vast number of studies by local researchers (amongst others Ahmad-Nasruddin, Hassan and Abdul-Rahman, 2008; Hassan, 2008; Ahmad-Nasruddin, 2008; Hassan et al., 2008; Ahmad-Nasruddin and Abdul-Rahman, 2007; Hassan, Abdul-Rahman and Stoter, 2006; Ahmad-Nasruddin and Abdul-Rahman, 2006; Abdul-Rahman, 2006; Abdul-Rahman, Stoter and Nordin, 2005; Mariappan, 2005; Chong, 2006; and Nordin, 2001) studied and look into about the interoperability between Cadastral Database Management System and Computerised Land Registration System.
5.6 Malaysian Cadastral Database

The arrival of computer and the rapid development of Information and Communication Technologies (ICT) has resulted widespread technological reforms in the field of cadastral system and in line with the government objective of providing efficient and quality land administration services to the public. Realising the importance and potential of this new technology, Department of Survey and Mapping Malaysia and State Land and Mines Office had initiated their computerisation programme in the early 1980’s and 1990’s respectively. The most significant change that information and communications technology has brought about is that the shift from conventional analogue data to digital data and consequently the introduction of the concept of digital database which forms the base component of a Land Information System (LIS) which in turn has been identified as having an indispensable role in the process of decision making in resource management and planning. For instance, State Land and Mines Office has computerised two of its main operations in land administration named Computerised Land Registration System and land Revenue Collection System (LRCS) to cater the land registration and revenue collection activities. On the other hand, Department of Survey and Mapping Malaysia has implemented a data collection and processing facility named Cadastral Data Management System for cadastral activity, the Computer Assisted Topographic Mapping (CATMAPS) for mapping activity and also the Automated District Survey Office System (ADSS) for district survey office activity, and then both Cadastral Database Management System and Computerised Land Registration System enabled the process of land registration and measurement of ownership to be accelerated (Chong, 2006).

5.6.1 Computerised Land Registration System (CLRS)

The Torrens System, based essentially on the Fijian Act, was introduced into Peninsular Malaysia between the years 1879 to 1890 and later become the back bone for the National Land Code 1965 (Act 56) in Peninsular Malaysia, the Sabah Land Ordinance 1930 in Sabah and the Sarawak Land Code 1958 in Sarawak. Under this Torrens System, the register reflects all the facts material and evident to the
registered owner’s title in the land. These material facts mentioned such as the name of the proprietor for the time being, the alienated land, area, location, survey plan boundary limits as well. According to Das (1963), the Torrens System has thus endowed the register with two attributes. First, an attribute of a mirror of sorts that can reveal all the necessary particulars relating to the land that would interest a potential purchases or charge, it can also call the mirror principle. A second attribute of the Torrens system is that the register becomes a curtain, this means, in any transaction between the registered owner and any potential purchaser, the latter will be concerned only with the register and nothing else and the purchaser can safely rely on the information revealed in the register, and no need to look behind it to search for the history like what in the Deeds System. In addition, the cumulative effect of these principles is that the Torrens System has conferred on indefeasibility of title to the registered owner.

In fulfilling the requirements of Act A832, the National Land Code 1965 (Act 56) has been amended in 1992 to add on section 5A and 5B. That is to introduce the Computerised Land Registration System into land registration throughout the country. Section 5A in National Land Code 1965 (Act 56) explain the term of Land Registry and gives a right for a registrar and explain the responsibilities relating to the produce, dealing, endorsement or correction on any document of title and shall be read with the modifications, amendments, additions, deletions, substitutions or adaption as provided in the Fourteenth Schedule while the approval of the National Land Council, by order published in the Gazette of the Federation, make any amendment to any of the Forms in the Fourteenth Schedule that necessary, desirable or expedient. With the implementation of the Computerised Land Registration System, a system to modernise and to facilitate the registration of land title and dealings, data are extracted from both the documents of title and other land related documents. Meanwhile, the information in the Computerised Land Registration System database are based on the records kept in the land registers and relevant files with include information on ownership (Person), land identification (Register Object), restriction (RRR) and record of dealings. As mentioned by Chong (2006), the register furnishes all information pertaining to the ownership (person), the land (object, through description of area and location and boundary limits from the Certified Plan and rights (details of encumbrance, expressed conditions, caveats and
prohibitory orders and other things)). However, not all restrictions are stated in the register, some are implied by law for example National Land Code 1965 (Act 56), planning control and so on.

5.6.2 Cadastral Data Management System (CDMS)

In 1986, a Computer Assisted Land Survey (CALS) system which generated the Digital Cadastral Database (DCDB) at a scale of 1:4000 was initiated for Johore as a pilot project. After that, the success of this Computer Assisted Land Survey system pilot project led to the implementation of another Computer Assisted Land Survey system project in Pahang in 1993. The confidence gained by the successful implementation of earlier Computer Assisted Land Survey system projects in Johore and Pahang, and encouraged by the demonstrated increases in efficiency and productivity in the production line, has led to the introduction in the Mini- Computer Assisted Land Survey system throughout the remaining state survey departments of Peninsular Malaysia in 1995. After that, a Document Image Management System (DIMS) will be implemented in all state survey departments and will integrate the existing Computer Assisted Land Survey system and it Digital Cadastral Database. The integrated system then know as the Cadastral Data Management System and will provides a network for the survey department to access the Digital Cadastral Database and the digital image library from any personal computer within the network, with a single window and single point of access. Digital Cadastral Database holds digital cadastral base maps that are used for building up Geographical Information System and land related applications, while the image library holds scanned and indexed certified plans stored in the disk arrays at every state survey departments. Cadastral Data Management System is also capable of receiving orders from clients through remote access, e-mail, dial-up and other things as well as providing an automatic invoicing, billing and accounting system and it also cater for remote access to and from the District Survey offices. A system which forms part of the Cadastral Data Management System that is Quality Assurance System (SPEK) is a module to preserve the integrity, and accuracy of the Digital Cadastral Database.
5.6.3 Malaysian Cadastral Data Model

The Core Cadastral Domain Model (CCDM) which introduced in the current version of model (Van-Oosterom et al., 2006) mentioned that this data model is the foundation of most land administration, which means that, this foundation of core cadastral data model is designed for various land registration system and cadastral system all over the world and as a base for all cadastral registration. In other words, the relationship between the three core classes in the Unified Modelling Language diagram as in Figure 5.7, they are Person (subject), right, restriction and responsibility (RRR) and Register Object (real property objects), can used to illustrate Malaysia Cadastral Data Model. According to Chong (2006), adapted by Ahmad-Nasruddin, Hassan and Abdul-Rahman (2008), and will further discuss in this research. [P54, B2, P194]

![Figure 5.7: Unified Modelling Language Class Diagram of Core Cadastral Domain Model (CCDM): Person, right, restriction and responsibility (RRR) and Register Object (Adapted from Stoter, 2004; Van-Oosterom et al., 2006; and Chong, 2006)]](image-url)
5.6.4 Integration of Cadastral Database Management System and Computerised Land Registration System

There could be extensive benefits if these two systems, which are Computerised Land Registration System of State Land and Mines Office and District Land Office and Cadastral Database Management System of Department of Survey and Mapping Malaysia, are linked together. For that reason, a pilot project being started in Kuala Lumpur in 1st April 1995 to electronically connect and integrate the Computerised Land Registration System with the Cadastral Database Management System for the whole Kuala Lumpur then to develop the operational systems that can subsequently be implemented throughout the country in Peninsular Malaysia. Therefore, with the integration of attribute data from Computerised Land Registration System and spatial data from Cadastral Database Management System and through identified application, efficiency of land administration can be greatly improved. Nordin (2001) stated that the envisaged applications include on-line registration for survey and preparation of title, extending Digital Cadastral Database enquiry module to the land administrators and on the hand, linking the Qualified Title information to the Digital Cadastral Database. Although conceptually tenable, the eventual implementation would need substantial negotiation and compromising in among State Land, Mines Office and District Land Office and Department of Survey and Mapping Malaysia.

With the vast changing in the Information and Communication Technologies, such as Geographical Information System, internet and web based application and together with the initiative of Malaysian Geospatial Data Infrastructure (MyGDI) National Spatial Data Infrastructure (NSDI), e-Land of Ministry of Natural Resources and Environment (NRE) and e-Cadastre of Department of Survey and Mapping Malaysia, Computerised Land Registration System and Cadastral Database Management System database could be integrated electronically. In order to achieve the goal of comprehensive Land Information System from district level up to state and eventually at the national level, the integration of spatial Cadastral Database Management System database with the textual Computerised Land Registration System database play a preliminary requirement of all these (Tan, Hussin and Ernest Khoo, 2010b). Moreover, Mariappan (2005) introduced a mechanism to integrate
these two standalone databases. Coordination among Department of Survey and Mapping Malaysia, State Land, Mines Office and District Land Office can be provided by the installation of centralised server or distributed server at each of their office which act as the transporters and bridges in exchanging data between Computerised Land Registration System and Cadastral Database Management System. Figure 5.8 illustrates the conceptual integration of cadastral survey and title registration databases. Although there are a lot of benefits from an integrated textual title registration database and the graphic as well as spatial cadastral database, but there are still many hurdles to solve at this stage. Mariappan (2005) also underlines the following issues associated with the integration (expected solution given in parenthesis).

1. Organisational—there is no mechanism for exchanging data among organisation (through e-Land and e-Cadastre);
2. Technological—compatibility of existing hardware and software (through advance technology);
3. Data—data quality and integrity (through standardisation for example ISO TC/211, SIRIM MS 1759 and Unique Parcel Identifier (UPI));
4. Legal—data custodian and rights (through amending current related guideline and law); and
5. Different working procedures and practices (through minimisation and integration).
5.7 Issues Related to Land Administration

5.7.1 Limitation in Malaysian Land Legislation

As stated by Stoter in the need of a 3D cadastre:

"Pressure on land in urban areas and especially their business centers has led to overlapping and interlocking constructions….Even when the creation of property rights to match these developments is available within existing legislation, describing and depicting them in the cadastral registration, process a challenge….The challenge is how to register overlapping and interlocking construction when projected on the surface in a cadastral registration that register information on 2D parcels. Although property has been located on
top of each other for many years, it is only recently that the question has been raised on to whether cadastral registration should be extended into the third dimension….”

(Stoter, 2004; 3)

Poudyal, 2005 defined institutional as the humanly devised constraints that shape human interactions, the rule of the games and organisations are the players of the games. The costs of reducing uncertainly in human interactions are fairly dependant on the quality of the institutions, and how seriously these are enforced. Later Feder and Feeny (1991) place property rights in general and land rights in particular in institutional structure of society and economy. Following this, they distinguish three basic categories of institutions, namely the constitutional order, institutional arrangements, and normative behavioural codes.

The 3D cadastre whether a full 3D cadastre, the hybrid cadastre approach or a 2D cadastre with 3D tags (Stoter, 2004) has not been developed and implemented in Malaysia. There are still some examples where the legal registry and cadastre was integrated on legal basic and organisational level in Malaysia, but these three organisations are still exist under different authority.

The increasing of the land management professionals & licensed land surveyors mean that current two-dimensional land registration and cadastral systems are insufficient for the high booming of complex high density developments in urban areas. So, in big cities, metropolitan areas there is growing interest and needs in using space above or below the ground surface for construction real estate objects, further, some of the buildings been built on top of each other or crossing boundary edge (Hassan, 2008; Hassan, Abdul-Rahman and Stoter, 2006; Chong, 2006 and Ossko, 2005), but the legal changes in the land registries did not follow the growing request mentioned above and there are still constrains, difficulties to register the ownership of real estate properties which created above or underground surface. Therefore, there is a need of registration of stratify property of the legal status of real estate objects, so that, to be able to define and manage the juridical situation
satisfactory, three-dimensional information are becoming absolutely necessary for land administration in Malaysia. [P1, P5*B25, B6, P91]

Based on the discussions mentioned previously, it shows that it still have many cases in the legal and organisational aspects of 3D cadastre problem which need to be investigated further. By the way, the three-dimensional situations need a good system and must clearly revealed the drawbacks for these real work situations (Abdul-Rahman, 2006, and Abdul-Rahman, Stoter and Nordin, 2005). [P8, P190]

In the land registry there are difficulties to register the ownership and other rights of real estate objects above or below the round surface. These mean, public facilities, like roads, streets have not been the part of many land registry and many objects have been constructed above or below the ground surface of public domains. For example public utilities, underground tunnels, garages and metro stations, a complex shopping and business centres, skywalks, using of air space as well as the mining and marine rights. Furthermore, the delineation of surface parcels, spatial sub parcels and spatial parcels that are vertically layered requires a spatial description, including data defining the vertical and horizontal boundaries between these units. The ability to present spatial characteristics of land parcels will allow a better definition of cadastral spatial subdivision with three-dimensional presentation, so that, it will provide better results for inspection and analysis of data than the existing two-dimensional (Shoshani et al., 2004). [P121]

5.7.2 The Limitation in Land and Cadastre

Current cadastre registration systems, bounded on two-dimensional topological and geometrically described parcels, have shown limitations in providing insight in (two-dimensional and three-dimensional) location of three-dimensional constructions (for example pipelines, tunnels, building complexes) and in the vertical dimension (depth and height) of right established for three-dimensional constructions (Stoter and Ploeger, 2002; Stoter and Ploeger, 2003; and Stoter and Van-Oosterom, 2006). In addition, cadastre should be able to describe the property ownership as overall especially in Strata Title ownership. A 3D cadastre is defines as a cadastre that registers and gives insight into rights and restrictions not only on parcels, but also on
3D property units (Stoter, 2004). Thus, such conditions for example, overlapped building and utility that prohibited property to be registered according as legal and organisational aspects using 2D cadastre could be handled by 3D cadastre. (P31, P24, P13, P19)

Besides cadastre relating to land, an introductory by Sam et al. (2004), and Sutherland and Nichols (2002) that coastal and marine areas are ever increasing in value to the welfare of countries, communities and regions which provide natural, social and economic functions that contribute to increased quality of life. Coastal and marine environments are also very sensitive to the negative effects of factors ranging from geology and climate, to human terrestrial, coastal and marine activities. Sam et al. (2004) also pointed out it is almost impossible to control geology and climate as well on very difficult to avoid human impact on coastal and marine environments as these environments play an integral role in the quality of human life. (P133, P191)

The uses of marine spaces including sources of food from animals, plants and fishers, means of transportation and communication and an areas for development, recreation, dumping waste, scientific research, mineral and hydrocarbon extraction and so on (Teo and Nordin, 2006). Beside the uses of marine spaces, maritime economic activities which cover the production, distribution and consumption of goods and services involving the sea also play significantly to be economy of Malaysia and among them are inshore and offshore fishing, offshore oil and leisure, ship building and repairing, port services, shipping services, naval administration and defence and maritime auxiliary services, that is banking, insurance, legal and consultancy services (Khalid, 2005). (P187, P191)

In the last couple of decades, there has been a demand in urban areas for dividing up ownership in buildings so that different owner can own different parts or can own a delimited space below ground, a demand which the existing legislation is unable to amend (Julstad, 2001). Prior to this, the question can arise of stratify property ownership between one part used for commercial activities, for example shops and another part of the same building which is used in housing purposes or better known as service apartment in Malaysia. In addition, another question arises of using of
underground surface for different types of activity, which have no connection with the use of the ground above surface. According to Onsrud (2003), land below the level of any surface property is called no-man-land, and may under certain circumstance by occupy the land at the entrance to a tunnel. However, tunnels, storage halls or other underground constructions in most cases in Malaysia are made without subdivision and formal registration in the cadastre and in the land registry; in fact, in most cases above or underground constructions have been considered an extension and enclose to the adjacent surface land as cross boundaries objects. 

Hendriatiningsih et al. (2007) noted that the development of a region could not be disconnected from the growth of population where lead to the increasing insistent and peremptory request of settlement and land. On the other hand, the insufficient for the demand of land will lead to the improvement of the land management. While, Ossko (2001), and Aydin, Penir and Atasoy (2004) give a summary of besides overpopulation, increasing vehicle, pedestrian traffic and new transportation facilities like light rail transit, highways, underground stations, tunnels had to be constructed above and below the surface in urban areas to avoid traffic difficulties and provide healthy urban life. Because of the problems above, many parties in the private and government sectors trying to solve these problems by constructing engineering structures above and below the ground surface in urban areas to ease and avoid traffic difficulties. On the other hand, the traditional cadastral map, survey regulation and land registry which still in two-dimensional situation are not enough in technical as well on legal and organisational aspects and have not been prepared to cater all this three-dimensional situation. In order to solve this situation, we need to have a more advanced cadastral system like 3D cadastre (Stoter, 2004) and this means we need to extend the 2D cadastre system into a 3D cadastre system (Abdul-Rahman, 2006; and Abdul-Rahman, Stoter and Nordin, 2005).

A new cadastral system should reflect the existence of the real world objects according to the three-dimensional physical and appearance and have its own legal rights. Therefore, 3D cadastre with complete legal, organisational and technical aspects perhaps to solve the problems arises on from two-dimensional nature to three-dimensional nature. Thereby, Cadastre 2014 introduced a more general
definition of a land object with homogeneous conditions inside its boundaries and its match’s representation of the real world, where one land parcel may have one or more different ownerships especially for multi-storey buildings and constructions below the ground surface where peoples need to have access to some part of its visible exterior (Rebecca and Christopher, 2003).

5.7.3 The Limitation in Legal and Organisational Aspects

The 2D cadastre information which serves us for more than a century may not able to serve us anymore due to the lack of advanced level of legal and organisational situations in three-dimensional registration of legalistic information in the new era, for example the rapid and complex development of such complicated construction moving skyward in large city centres such as in Kuala Lumpur city, Georgetown of Penang and Johor Bahru of Johore (Tan, Hussin and Ernest Khoo, 2009a). Therefore, in major city centre, land use is becoming so intensive, as different types of land use and properties are located in a complex three-dimensional situation (Ahmad-Nasruddin and Abdul-Rahman, 2006).

According to Molen (2003a), cadastres register rights to land and consequently are dependent on the institutions. In other words, cadastres cannot operate properly without appropriate legislative frameworks and transparent public administrative structures. In order to perform determining, recording and dissemination of information on land in 3D situation for all cadastre tasks, the technical development of 3D cadastre should therefore go together with the development of proper institutional conditions. Molen (2003a) also say the role of institutions and appropriate legal frameworks and transparent public administrative structures are very important for the implementation of 3D cadastre. Benhamu (2006) say development of 3D cadastre involves solving technological geodetic problems on one hand, and solving the legal aspects on the other hand. In addition, institutional aspects are relevant for the cadastre because the successful of implementation 3D cadastre in Malaysia needs an appropriate institutional context.

Although there are many researches carry on and a lot of publications by universities and law related agencies, such as Universiti Teknologi Malaysia and Department of
Survey and Mapping Malaysia, examples are (Ahmad-Nasruddin, Hassan and Abdul-Rahman, 2008; Hassan, 2008; Ahmad-Nasruddin, 2008; Hassan et al., 2008; Ahmad-Nasruddin and Abdul-Rahman, 2007; Hassan, Abdul-Rahman and Stoter, 2006; Abdul-Rahman, 2007; Hassan, Abdul-Rahman and Stoter, 2006; Ahmad-Nasruddin and Abdul-Rahman, 2006; Abdul-Rahman, 2006; and Abdul-Rahman, Stoter and Nordin, 2005), but all researches are only related to the technical aspects of the 3D registration of land parcel and none is related to the institutional issue especially in legal and organisational aspects. However, they are current studies (Chong, 2006) showing the institutional issue, that is legal and organisational aspects, but still insufficient. On the other hand, the increasing amounts of storeys and underground properties and constructions have lead to the urgent implementation of 3D cadastre in Malaysia. Thus, the study on the institutional issue is urged and urgently needed to make in line with the technical issue.

In various countries, there are different solutions to solve the registration of three-dimensional ownership to volumes, unfortunately in most cases the actual volume is not registered as a separate entity, but is linked to the surface parcel in a descriptive way (Valstard, 2006). Thus, this solution of registration is not sufficient to satisfy the three-dimensional structures owners because it might not be the same as the surface parcel. Furthermore, the owners of the three-dimensional structures want their ownership registered in a proper way as constructions above or below the ground surface. The need for a change in the law is of course due to the demand for 3D property use, coupled with the impossibility of forming property units which are three-dimensional defined (Julstad, 2001).

From a general introduction by Ossko (2005), there are especially facing legal difficulties to register the objects, as properties, constructed above and below the ground surface in the traditional cadastral system and land registry due to some legal constrains since these have been created for two-dimensional space for long time ago. In Malaysia, the main thing that hinders the progress has been the national legal systems (Tan, Hussin and Ernest Khoo, 2009a), because there were no previsions and lack of proper Malaysia cadastre law to cater the registration of legal and organisational aspects for 3D property units in full 3D cadastre as described by Stoter (2004). Therefore, the legal profession is always very conservative, they are always
attached to the old and traditional land registry law and legal changes generally takes quite a long times. \[P91, P107, PO-TAN2, B3 \]

The registration of properties in stratify property requires comprehensive tools and solution in the legal and mapping sides, especially in the cadastre and land registry. As pointed out by Ossko (2005), simultaneous solution can guarantee the data consistency even in Europe, there are several kind of cadastre and land registry concerning data content, legal and organisational frameworks, and therefore there is no single recipe and solution. We have to find the elements and contexts which are common in different systems, creating new guidelines even through changing the law for those countries facing the problem of three-dimensional registration in cadastres and land registries. Ossko (2005) pointed out also, stratify property units as properties have Unique Parcel Identifier and physical description, therefore it is possible to register them in the land registry and cadastral system. Hence, the first attempt should be start from the legal registration of stratify property units in the cadastral system and land registry, as a kind of three-dimensional registration, meanwhile underground tunnel, using of air space and others will be proceed later. \[P91 \]

Cadastre consists of spatial and non spatial land information while land registration consists of non spatial (textual) information. Under current Malaysia practice, the issue of dispute between cadastre and land registration is whether the existing 2D cadastre legislative framework and title registration in organisational framework is able to reflect the real world spatial and non spatial information in institutional issue about the rights of modern construction and development. Meanwhile, the registration of properties in three-dimensional is also different in countries running single authority unified land registry or separate cadastre and land registry under multi authority. In case of multi authorities, the comprehensive decision making is more difficult, but the implementation of three-dimensional registration is separate organisations maybe is easier because the full data consistency between the organisations not always compulsory by law. On the other hand, in case of single authority unified land registry, there is one decision maker and the comprehensive solution is easier to achieve, the data consistency between the legal and mapping part
is compulsory by law, therefore, the implementation of three-dimensional registration is more complicated (Ossko, 2005).

According to Ossko (2001a); Ossko (2001b); and Ossko (2005) and some extended by (Chong, 2006; and Hassan, 2008), experience in developed countries has shown that stand alone or isolated approaches where data processes were maintained separately are not sustainable. A non-unified land registry system is known to have the following failure to meet a certain standard:

a) Legislative framework where land registration system and cadastral survey and mapping registration system are not well legalize in three-dimensional situation,

b) Organisational framework where work flow, data updating, sharing and service are inefficient,

c) Quality, standard and consistency of information are difficult to maintain due to parallel registration and updating, and

d) Less cost effective where include overheads to deal with four separate government authorities for single land related transaction-one might be located at the federal or state capital, but other at district, or extra efforts to make sure data integrity during data exchange as several set of records are inter dependant.

Prior to this, Valstad (2006) notes that no country has established and implemented proper legal and organisational aspects in the future full 3D cadastre. Until today some countries have developed some works relating to 3D cadastre depending on mainly their legal systems, organisational and technical needs. According to his knowledge, a few countries have recent laws that provides for the registration of specialised three-dimensional parcels although the cadastral system itself is still two-dimensional nature. Norway and Sweden has passed laws that make it possible to register three-dimensional construction parcels as well as in the Netherlands, but not as a separate unit. British Columbia in Canada and Queensland in Australia have provisions in their laws to subdivide limitations. For more detail see Stoter (2004); and Stoter and Van-Oosterom (2006).
5.7.4 Intergovernmental Coordination

According to United Nations Economic Commission for Europe (2005), land administration services strongly relate to the areas of responsibility of many ministries and government organizations such as real property taxation, environmental protection, agriculture, forestry and urban and housing development. In theory, public agencies are able to combine data from different sources, share spatial information, develop a spatial information market policy for cost recovery, and improve cooperation with potential users and the private sector, and related value added services. On the other hand, in practice, this is not so easy because of poor coordination between public bodies and discontinuities in both the vertical and horizontal flow of information.

United Nations Economic Commission for Europe goes on to points out that:

“The main reasons for the lack of strong cooperation and coordination are common to almost every country. They include the existence of different short-term priorities in each ministry and organization; cultural issues and traditional attitudes of mind; and concerns over copyright and financial matters. There may be technical issues (such as a lack of information technology and deficiencies in the national spatial data infrastructure); uncertainty over legal responsibilities for coordination; or a lack of specialized knowledge and experience. There may also be rivalry and competition between different ministries and organizations, thus preventing a land administration system from working effectively and resulting in much overlap in land administration activities. This leads to inefficient governance and creates additional expense and delays in implementing projects, adversely affecting the land market and inconveniencing customers. It may even result in the failure of some land administration projects.”

(United Nations Economic Commission for Europe, 2005: 62)
Land administration should ideally be under the supervision of a single authority that acts as the lead agency. Such an arrangement will guarantee the best possible coordination between the various parts of the whole process and provide the necessary framework for establishing a unified land information system and service however this ideal principle does not exist in most countries. In practice, many countries have a tradition of separate governmental institutions whereby the cadastre recording property boundaries and other information for taxation, a separate legal registration system under the control of federal ministry, and the local government being responsible for land and land use rights. Each ministry often makes up its own rules, while cooperation between authorities depends more on personalities than on policies. This results in separate inquiries having to be made about rights of ownership and rights of use before any transfer can take place, leading to duplication of effort, inconsistencies and hence inaccuracies in the data with additional costs (United Nations Economic Commission for Europe, 2005).

In general, more often lawyers have given precedence to the transfer of real property rights and legal issues, while land surveyors have been more concerned with the survey of property boundaries of the properties than with cost or delivery times. Valuer have been concerned with value more than land use management, while town planners have concentrated more on broad trends than individual technical details. Agriculturists have concentrated on matters in rural areas and complex developments, while town planners have focused on the urban environment. Therefore, these multidisciplinary, multi professional approach and the different priorities of each profession need to be recognised and reconciled.

In conclusion, I strongly support the idea that one way to ensure closer cooperation between government bodies is to establish a higher level of land administration coordination board, such as the National Land Council or better known as Majlis Tanah Negara which chair by the Prime Minister that can help to coordinate the administration of land and the environment and can develop policies for handling land related data that are in line with the federal government and its local authorities. It can help to reduce overlaps between ministries, increase efficiency, and provide a forum in which improvements to land administration services can be discussed in the light of changing circumstances and any consequent need to amend the law. It can
also recommend policies for archiving data that may be needed in the long term national interest and address personal privacy matters as well as the confidentiality of data in order to protect the interests of private citizens.

7.1 Introduction

Chapter 7 discusses literature on good governance and e-government in the first two sections. The chapter continues with the discussion on e-government in Malaysia which consists of e-Land, e-Cadastre which consists of Coordinated cadastral System, Virtual Survey System and Cadastral Data Integrity System, and the Electronic strata Module that consists of Strata Lodgement Module, Electronic Strata Survey Module and Strata Verification Module before end with the conclusion.

7.2 Good Governance

Good governance is one of the important issues in land administration system developments, which affect the need for and access to information. According to Steudler (2004), the concept of governance is not only about government, it rather recognises that power exists inside and outside the formal authority and government institutions, among the government, private sector and civil society. It recognises that decisions are made based on complex relationships between the different actors with different priorities and this can be seen from the Global Campaign on Urban Governance (United Nation-Habitat, 2002) proposes that good urban governance is characterised by sustainability, subsidiarity, equity, efficiency, transparency and accountability, civic engagement and citizenship, and security, and that these norms are interdependent and mutually reinforcing.

Also according to Enemark (2009b), governance refers to the manner in which power is exercised by governments in managing a country’s social, economic and spatial recourses. The concept of governance includes formal and informal actors involved in decision making and implementation of decisions made that have been set in place to implement (Enemark, 2009a). As described by Williamson et al.: 
“Governance refers to the manner in which power is exercised by governments in managing a country’s social, economic, and spatial recourses. It simply means: the process of decision-making and the process by which decisions are implemented. This indicates that government is just one of the actors in governance. The concept of governance includes formal as well as informal actors involved in decision-making and implementation of decisions made, and the formal and informal structures that have been set in place to arrive at and implement the decision.”

(Williamson et al. 2008: 10)

To sum up, good governance is at the heart to good land administration. The successful land administration requires an accountable government, stable institutions, transparent and zero corruption. Weak governance in land administration can leads to massive over regulation, conflicting production as well as gap ridden of laws, standards and legal documents (Williamson et al., 2008). Therefore, a national capacity of create laws through legislation is necessary in implementing good governance.

7.3 E-Government

Since twentieth century when land oriented infrastructures started to use all benefits of information and communication technologies to facilitate the processes of government and public administration. These more happen especially during twenty first century when the geographical information technology became more advance and combined with the rapid growth of global information networks such as wider networks, mobile computing and the internet making e-government widely known (Ting, 2002), land oriented business is constantly evolving, looking for optimal solutions. The broad use of such technologies can improve the delivery of government services and result in more efficient government greater empowerment of citizens, increased transparency, less corruption, less labour incentive transactions, increased revenue and lower operating costs (United Nations Economic Commission for Europe, 2005). In this regard, e-government has become another newly emerging
concept and an issue in all segments of land administration systems. Quite often, the meaning of e-government is misunderstood. It requires transformation of existing public procedures to more simplified forms but still maintain enough transparent for the public.

With the implementation of e-government, businesses between citizens and government services can be made available online every second. This enables government agencies to align efforts to significantly improve services delivery and reduce operating cost. As pointed out by Warnest (2005), an effectively deployed e-government initiatives make conducting business with government easier, on the other hand, privacy and security is maintained. It is important to note that e-governance is related to the utilisation of e-government combined with processes for wider consultation within and between government, private sector and the community. A comparison of e-governance and e-government is where e-governance is about creating more reciprocal relationships enhancing two way information flows and improving opportunities for participatory decision making while the later is concerned with the delivery of services and information from government to all community (Ting, 2002).

As described by United Nations Economic Commission for Europe:

“E-government aims to provide services that are government-to-citizens or government-to-business and inter agency communications in ways that are friendly, convenient, transparent and inexpensive. The key is not only in the technology but also more importantly in having data available in digital form. Over the past decades many countries have successfully converted their land registration and real property records from large collections of paper documents into a computerized form. Such records then need to be updated in a simple, straightforward manner using computers.”

(United Nations Economic Commission for Europe, 2005: 26)
In conclusion, in present day, there is an increasing demand for rapid access to land related information as a strategic resource for development and business. The computerised multipurpose cadastre is one tool for the efficient handling of land and property related information that has potential to provide many benefits both from governments and land related information users across all sections of the community by adding value through the combining of data sets and making these widely available. In addition, United Nations Economic Commission for Europe (2005) noted that e-government can be successful only if it is properly designed and accepted by citizens, companies and administrations.

7.4 E-Government Malaysia
7.4.1 E-Land (E-Tanah) Malaysia

To realise computing the overall management and administration of land in the country, the Ministry of Natural Resources and Environment (NRE) plan to create an integrated computerised system, known as the **Sistem Permodenan Pejabat Tanah** (SPPT) project or Electronic Land Administration System (e-Land). **Sistem Permodenan Pejabat Tanah** study was completed in August 2002. The study was submitted to the Committee of **Sistem Permodenan Pejabat Tanah** and the Committee of IT and Internet and central agencies and accepted as the basis for implementing this project. Under the Economic Stimulus Package announced on 21st May 2003, **Sistem Permodenan Pejabat Tanah** project is listed as one of the systems to support land administration at all levels of management in fast track. **Sistem Permodenan Pejabat Tanah** included in the agenda of Electronic Government Steering Committee meeting on 14th August 2003 and known as the e-Land. Intention to implement the e-Land has also informed in the meeting of the National Land Council or better known as **Majlis Tanah Negara** (MTN)) on 18th December 2003 and has been recognised as one of the e-government projects as the prime applications that have been implemented by the government.

E-Land is an integrated and fully computerised system to handle the management and administration of Land Offices in order to improve the speed and quality of service delivery to the public for all land related transactions. The e-Land enables the public to make payments online and print the payment receipts, checking details
or their own land and so on. E-Land will be implemented in the State Offices of the Director of Land & Mines, Department of Survey and Mapping Malaysia Office and all Land Offices in the state of Penang as a pilot project, besides the Headquarters of Ministry of Natural Resources and Environment and Institut Tanah & Ukur Negara (INSTUN). The project will be extended to other states after the pilot project in Penang is successful.

The e-Land is designed to improve the delivery of land administration and management services in the Peninsular Malaysia using an integrated Information and Communication Technologies infrastructure. Currently, the Ministry of National Resources and Environment has implemented two (2) systems for the administration of land information, namely Sistem Pungutan Hasil Tanah (SPHT) and Sistem Pendaftaran Tanah Berkomputer (SPTB). Both systems are already being used in all State Lands and Mines Offices and District Land offices in Peninsular Malaysia. The next effort in expanding the usage of Information and Communication Technologies in other areas of land administration is through the Sistem Permodenan Pejabat Tanah (SPPT).

E-Land consists of nine main modules with 85 major business processes in accordance to the existing National Land Code 1965 (Act 56). The e-Land business processes supported by the e-Land will maximize the utilisation of the existing Information and Communication Technologies infrastructure, will take into account the existing processes and procedures, and will be integrated with the existing systems accordingly. They are disposal of land, registration of land titles, strata title, land acquisition, revenue & quit rent, land development, enforcement, enquiry and order of sale, and permit/transfer of approval/charge. With all these modules existed, it made e-Land advantages for customer to get quick and efficient service and potential increase in revenue for state and federal government.

The objective of e-Land is to develop a comprehensive system in land offices in order to modernise all activities that are related to land to realise the implementation of electronic government in the public sector. Meanwhile e-Land’s vision is towards the achievement of an updated, effective, and accurate National Land Administration System via Information Communication and Technology. In addition, the mission of
e-Land is to develop and implement a National Land Administration System via Information Communication Technology towards enhancing the growth of national development. As shown below are the concept and the core business of e-Land:

**Concept**

(i) Provide point of contact for customers at the counter in getting service.

(ii) Customers can obtain land related information and services online.

(iii) Tax payments can be made at the local payment centre such as Post Office besides at any State Land Office.

(iv) The request for survey and printing of Certified Plan can be done online between Land Offices and Department of Survey and Mapping Malaysia.

(v) Technical review by government technical department can be accelerated with the help of Malaysian Geospatial Data Infrastructure (MyGDI).

(vi) Processing internal affairs through the computer can be made more easily and quickly.

(vii) To facilitate decision making process.

(viii) To facilitate the control and monitoring of processes.

(ix) Development of web based system to facilitate the users in Land Offices and the access to information by customers without compromising safety aspects.

**Core Business**

(i) To establishing a comprehensive system for Land Offices and to modernise all the land related business activities in order to realise the implementation of electronic government in the country.

(ii) Improvement in work processes, physical and legal infrastructure to facilitate and streamline existing work processes.

(iii) To develop and improve the function of the existing systems in accordance with Information Technology Strategic Planning, Department of Lands and Mines Office. These systems will be integrated to form an integration system between land administration and management.

The focus of the project will be on major processes that can be implemented without any changes on the existing law. One important aspect of the project is that the
e-Land project will not require any amendment to the existing law. Any required changes to the existing law will be done later under different exercises. Hence, the focus of the project will be on major processes that can be implemented without any changes on the existing law. Nevertheless, the module and the e-Land will be designed to be flexibility to address possible changes to the system as a result of the changes in the existing laws.

In general, the design of the module adheres to the best practices in application development. Emphasises are given to aspects such as ease of use, security, flexibility, traceability and expandability. These fundamental design aspects of the module and the e-Land in general will ensure that the system will be able to handle the existing and future requirements on the system.

7.4.2 E-Cadastre (e-Kadaster) Malaysia

The vision of Malaysian government is to become a developed country by year 2020 encompasses the realisation of an efficient public delivery system at various levels. Among the national emphasis are land related matters which include cadastral survey. Government has approved e-Cadastre project under the 9th Malaysian Development Plan (2006-2010) to be implemented by the Department of Survey and Mapping Malaysia (DSMM) that towards a fully digital Malaysia by 2015.

Since 1995, Department of Survey and Mapping Malaysia has embarked on a modernisation program that saw the dramatic computerisation of both its office and field processes of its cadastral survey division. The Digital Cadastral Database was created by capturing the survey accurate information of all land parcels. Under the e-Cadastre project, a comprehensive nationwide readjustment of the meshwork of parcels would be carried out based on a new geocentric datum. A dense network of Real Time Kinematic Global Positioning System permanent stations has been established to provide precise geocentric positioning. This network model is known as the Coordinated Cadastral Systems and is to be implemented through the e-Cadastre project. Upon the successful implementation of e-Cadastre, Department of Survey and Mapping Malaysia has envisaged a significant reduction of time taken
in any cadastral survey process from the existing average of 2 years to within 2 months.

The current system of cadastral survey is unable to capitalise on the advent of satellite based technology. A complete revamp of the system is required before any improvement to the delivery system could be achieved. The new environment will allow various cadastral survey processes such as planning, design layout submission, field data capturing, completed job submission, quality control, and approval to be carried out remotely via the mobile telecommunication network. Global Positioning System will provide real time positioning at centimetre resolution homogenously to the entire country and coordinates will replace relative measurements as the ultimate prove of boundary mark position. Additional features such as building footprint and space images will be incorporated into the new database in a move towards a multipurpose cadastral.

Meanwhile, JUPEM2U is envisaged to be the remote one-stop interface via the internet for designated users to conduct their business with state Department of Survey and Mapping Malaysia without being physically present at its state offices. As such JUPEM2U application is to be developed using web technologies as well as Geographical Information System engine, and be installed at dedicated servers at respective state Department of Survey and Mapping Malaysia office. The primary aim of this system is to cut down on multiple and repeated travel times to and from the department’s offices, thereby achieving huge productivity gains. Intended users of the JUPEM2U services are district surveyors, field officers, licensed land surveyors, Cadastral Reference Mark users and others deemed necessary. Use of such a website is accessed via a pre-registration, login with password. Upon login, the users will be presented with the appropriate HTML web pages complete with functionalities and modules relevant to the corresponding user role. Duly approved users, once logged in are able to perform a variety of functions that is only lodgment of data, access, view status of job processing or download data.

The primary objective of e-Cadastre is to expedite the delivery system for land title survey. This would entail the creation of a survey accurate database at the national level suitable for Geographical Information Systems users. Various issues related to
the generation of a survey accurate database need to be addressed. There are three main components in e-Cadastre, namely Coordinated Cadastral System, Virtual Survey System and Cadastral Data Integrity System. The implementation of Coordinated Cadastral System is a major part of the e-Cadastre project which includes field and office reengineering to reduce processes and increase the use of digital technology.

7.4.2.1 Coordinated Cadastral System

Malaysia is rapidly developing and as such, faces great challenges in meeting the demands of development and also in addressing population pressures and environmental concerns. With the long term vision of achieving the status of an industrialised nation by 2020, there is a sense of urgency and obligation on all to contribute towards the fulfilment of the set target. Therefore, those involved in the field of cadastre had their share of responsibility as they have a strategic role to play in the rural and urban development plans of the country.

In order to cope with the continuous and rapid land development, especially over the last two decades, Peninsular Malaysia’s land law and survey regulations had been promulgated and put into practice. Related statutes and prescribed practices had previously provided a reliable foundation onto which the country’s land management and administration policies could be successfully implemented. However, there were deficiencies in its cadastral system and those invalidating defects were increasingly conspicuous. Some of the deficiencies identified areas are as follows:

(i) Difficulties resulting from the use of different projection systems
(ii) Incompatibility with current technologies
(iii) Inadequacy of the Digital Cadastral Data Base (DCDB)
(iv) Obsolete rules and regulations.

Consequently, in a move to address the problems, particularly in regards to the issue of the cadastral system’s incompatibility with current technologies, Department of Survey and Mapping Malaysia had then decided to look into the feasibility of
implementing Coordinated Cadastral System (CCS) in Peninsular Malaysia. The benefits of Coordinated Cadastral System for Peninsular Malaysia are as follow:

(i) The opening up of opportunities in coping with and in accruing benefits from the advances in technology. Since coordinates are the basic input and output of most modern equipments, such as Electronic Total Station and Global Positioning System, the introduction of Coordinated Cadastral System would thus be synergistic with the operations of such equipment and systems.

(ii) It will also facilitate the integration of cadastral and map based information as well as the use of rapid data acquisition, storage, processing and management techniques.

(iii) Apart from that, many nations from the developed world have also recognised that the Coordinated Cadastral System underpins the Land Information System as well as Geographical Information System. In considering that land and geographic information itself is a very valuable resource, it is evident that the Coordinated Cadastral System is of essence.

Since 1996, Department of Survey and Mapping Malaysia has work closely with the engineering and Faculty of Geoinformation Science and Engineering, University Technology Malaysia on the development of coordinated cadastral system for Peninsular Malaysia. Among the research conducted were the use of least square adjustment for cadastral survey, use of Global Positioning System for transfer of control for cadastral survey in isolated area, application of geocentric datum for cadastral and mapping to ease integration of both datasets, possible use of Rectified Skew Orthomophic (RSO) in cadastral survey, issues related to legal traceability, standards and specification on use of Global Positioning System, the institutional and legal aspect of using coordinated system and the cost benefit of Coordinated Cadastral System. Among the main products of the pilot project is the prototype database re-coordination system and design of the Cadastral Control Infrastructure to constraint the propagation of error in the cadastral network. Subsequently, the
Prototype modules were tested in a pilot project carried out in Malacca state. Improvements were made to the modules and workflow modified to suit production roll out.

The main objective of Coordinated Cadastral System formulated from the pilot projects, is to develop a homogeneous cadastral database based on the geocentric datum with a spatial accuracy of better than 5cm in urban area and better than 10cm in semi urban and rural areas. The present accuracy of the Digital Cadastral Database is a few meters level and is not homogeneous. This is partly due to the inherent inaccuracy found in the underlying datum and unconstrained propagation of error within the network. Subsequently, in 2003, Department of Survey and Mapping Malaysia decided to adopt the Geocentric Datum of Malaysia 2000 (GDM2000) which is supported by permanent Global Positioning System tracking stations and real time kinematics stations. However, the Cassini projection is maintained but is now based on the new Geocentric Datum of Malaysia 2000 parameters. At the national level, the process requires the readjustment of the cadastral network based on coordinates obtained from Global Positioning System observation.

In order to achieve the above objective there is a need to establish a dense Cadastral Control Infrastructure grid of 0.5km spacing in urban area and 2.5km spacing in semi urban and rural areas. The underlying technologies needed for the establishment of Cadastral Control Infrastructure includes Global Positioning System positioning based on Geocentric Datum of Malaysia 2000 geodetic datum and least squares adjustment. Once the dense Cadastral Control Infrastructure has been established the readjustment of the cadastral network will be carried out and this adjusted National Digital Cadastral Database will then form the base layer for all future title surveys. The readjustment uses least square methodology will distribute the residues homogeneously in the large cadastral network. Consequently, cadastral survey practices will be revamped to accommodate the use of least square adjustment. Validation of work under Coordinated Cadastral System environment will be much faster and simpler. The control infrastructure is currently supported by an advance Real Time Kinematic Global Positioning System network which can provide real
Virtual Survey System will equip the field surveyor with Information and Communication Technologies, total station, Geographical Information System and Global positioning System. The surveyor will be able to interact with the system to extract information that will assist him in the field operation and most of the work will be automated to reduce tedious computation. The Virtual Survey System will reengineer the field processes and permit real time digital submission of completed surveys to servers located at the state Department of Survey and Mapping Malaysia for verification. The most obvious change will be to replace the current field survey system with the use of coordinates based system such as Geographical Information System.
System and Global positioning System. Figure 7.2 shows the various components in the e-Cadastre environment.

All requests for title survey either from the land office or the private licensed land surveyors will be lodged with Department of Survey and Mapping Malaysia prior to field survey. The spatial location of the land parcels will be verified against the National Digital Cadastral Database (NDCDB) to ensure that there is no encroachment. Initially the Department’s Cadastral Control Mark group will facilitate the field survey teams by establishing Global Positioning System control marks surrounding the perimeter of the new request for survey. All information related to the Global Positioning System control can be accessed by the Cadastral Control Mark group, Department of Survey and Mapping Malaysia field officers and private field surveyors via mobile internet. The field surveyor may start the survey based on controls obtained from existing marks stored in National Digital Cadastral Database, Cadastral Control Mark layer or through Real Time Kinematic Global Positioning System Network services provided by Department of Survey and Mapping Malaysia. Once the survey is completed, it may be submitted to the Virtual
Survey System servers located at the state Department of Survey and Mapping Malaysia for quality verification. The surveyor may choose to work in real time environment or online through the website depending on the communication bandwidth available. Rules will be coded to control workflow and decision making and subsequently minimize human intervention. The field surveyor will be informed on the acceptability of the job in near real time. This will allow the surveyor in the field to rectify the survey if required. The most significant change will be to allow surveyor the flexibility to use best practices in a totally digital environment. The final adjusted coordinates will then be posted into the National Digital Cadastral Database. Finally, a digital copy of the title plans will be generated based on the coordinates stored within the National Digital Cadastral Database and be kept in a separate database for security purposes.

7.4.2.3 Cadastral Data Integrity System

Cadastral Data Integrity System comprises of all the office applications which include pre-survey verification, field survey data computation and verification, digital title plans generation and approval. This system will be developed to ensure high integrity of the data and ready in Geographical Information System application. Various checks will be put in place to assist users when making decision on the validity of data before posting it to the database. The raster title plans which are generated based on National Digital Cadastral Database will be delivered online to the Land Office.

Subsequently, dataset from other land related agencies will be incorporated to complete the requirement of a complete cadastral database especially the Qualified Title layer. Graphical user interface will be provided to assist users in data capturing, editing and manipulation. Additional servers will be added to increase processing speed and storage space. The present communication network will be upgraded to cater for the high volume of data throughput between servers and users, including the daily field operation. Much of the applications will be designed based on a fully integrated system via web.
New requirements will be the need to capture three-dimensional data to cater for strata, stratum and the marine environment. This process will be performed in the Electronic Strata Module which consists of Strata Lodgement Module, Electronic Strata Survey Module and Strata Verification Module. These databases will be coordinates based which are tied to Geocentric Datum of Malaysia 2000 to better serve all future cadastral surveys. The system will be integrated with other land related systems such as the Land Office and the Licensed Land Surveyors Board through handshaking process. Ultimately, the various databases will support the implementation of utility mapping.

7.5 Electronic Strata Module

Electronic Strata Module consists of three modules, they are Strata Lodgement Module, Electronic Strata Survey Module and Strata Verification Module.

7.5.1 Strata Lodgement Module

Strata Lodgement Module developed especially to fulfill the requirement of spatial database for strata. This Strata Lodgement Module consists of four main functions as below:

(i) Data Entry
(ii) 3D Graphic Display
(iii) Electronic Strata Survey Module (eSSM) Data Preparation
(iv) *Pangkalan Data Ukur Strata Stratum Marine* (PDUSSM) Data Update

The important of Strata Lodgement Module are:

(i) To capture hardcopy strata data into digital format.
(ii) To check digital strata data received from Licensed Land Surveyor (LS) and Land Office (PTD/PTG))
(iii) To prepare strata data for checking purpose at field.
Based on the Figure 7.3 above, Licensed Land Surveyor will send digital strata data through JUPEM2U to state. The digital strata will be processed by Department of Survey and Mapping Malaysia (Jabatan Ukur dan Pemetaan Malaysia (JUPEM)) by using Strata Lodgement Module. All the strata data will be saved and update into Pangkalan Data Ukur Strata Stratum Marine database, and user able to prepare Electronic Strata Survey Module for field checking.

7.5.2 Electronic Strata Survey Module

Electronic Strata Survey Module (eSSM) is developed to be use to perform strata job verification on ground and at the same time collect the data by using the distometer available with the field officer.

Strata Job is basically divided into two phases, namely Phase 1 (Peringkat I) and Phase 2 (Peringkat II). Phase I describes how Department of Survey and Mapping
Malaysia will react to the requisition for comment of a particular strata job while Phase II illustrates process taken by Department of Survey and Mapping Malaysia to prepare the Strata Title Plan before sending back to Land Office.

In the first phase, Department of Survey and Mapping Malaysia will receive the strata data from both Licensed Land Surveyor and Land Office. As the result, Department of Survey and Mapping Malaysia need to review and examine the manually before sending their officers for field inspection.

While working in the field, the field offices will first retrieve the strata job to perform checking. Job checking can be basically divided into two section, firstly direct observation and secondly observation by using data capturing tool, known as distometer. Data captured will be stored through the Electronic Strata Survey Module application before sending the output file back to Pangkalan Data Ukur Strata Stratum Marine database. Once the output file produce by using Electronic Strata Survey Module has been sent to Pangkalan Data Ukur Strata Stratum Marine database, Department of Survey and Mapping Malaysia need to prepare the comment towards the specific strata job before sending back to Land Office.

With the implementation of e-Cadastre, user can now making use of the new strata application to carry out the checking process for both field work and office task while strata related Pangkalan Data Ukur Strata Stratum Marine database will be create for the purpose of repost the digital strata data submitted by both Licensed Land Surveyor and Land Office. With this new approach, Department of Survey and Mapping Malaysia is able to create the digital strata plan and digital strata title plan. Therefore, the time taken to complete the Phase I and Phase II will be reducing. Figure 7.4 and Figure 7.5 show the process in Phase I and Phase II of Electronic Strata Survey Module.
Figure 7.4: Phase I strata work flow for Electronic Strata Survey Module (Adapted from Electronic Strata Survey Module User Guide, 2008) 

Figure 7.5: Phase II strata work flow for Electronic Strata Survey Module (Adapted from Electronic Strata Survey Module User Guide, 2008)
7.5.3 Strata Verification Module

Strata Verification Module is developed mainly to fulfill the needs of spatial usage for data checking from field check. This module consists of a few functions as below:

(i) Display Strata Data
(ii) Display 3D Graphic
(iii) Display Strata Data Checking

After all the data being checked, officers from Department of Survey and Mapping Malaysia can deliver the checked data after making remarks or comments on the Strata File to Land Office. Figure 7.6 shows the Phase I strata work flow for Strata Verification Module.

![Figure 7.6: Phase I strata work flow for Strata Verification Module (Adapted from Strata Verification Module User Guide, 2008)](image)

7.6 Conclusion

In conclusion, once e-Cadastre is implemented the time required for cadastral survey will be significantly shorten, thus allowing qualified titles, which are issued in
advance of survey to cope with the fast pace of development in the country, to be phased out. The current National Land Code 1965 (Act 56) already permits the issuance of final title without having to first issue qualified title. The image of Department of Survey and Mapping Malaysia will be greatly enhanced with the expedient issuance of titles and for being the sole custodian of the complete cadastral database for the country, which is much sought after by many government departments and agencies.

It is envisaged that e-Cadastre will be fully integrated with e-Land to form a complete Land Information System for Malaysia capable of completing all surveys and title delivery within a week. The Malaysian Land Information System will serve as fully digital system that will help thrust Malaysia into the digital era. This system will greatly benefit the citizen who will receive their final land title within short period and also to generate greater confidence in the land market.

6.1 Introduction

This chapter explores the Malaysian property rights land related legal document that related to multi-level buildings. The chapter starts with a section about the introduction and history of National Land Code 1965 (Act 56), Strata Title Act 1985 (Act 318) Rules & Order and Building and Common Property (Maintenance and Management) Act 2007 (Act 663). In the same time, discuss in this chapter also includes document of register and Cadastral Map before end with the conclusion.

On the other hand, there are also many other legal documents relating to land, building, real estate ownership, survey and construction currently govern the land registration, and important towards implantation of 3D property for strata and stratum objects in Malaysia. Amongst are Federal Constitution 1957, Real Property Gains Tax Act 1976 (Act 169), Town and Country Planning Act 1976 (Act 172), Street, Drainage and Building Act 1974 (Act 133), Uniform Building By-Laws A984 (G.N.5178/85), Gas Supply Act 1993 (Act 501) and Electricity Supply Act 1990 (Act 447).
6.2 National Land Code 1965 (Act 56)

The basis of National Land Code 1965 (Act 56) was being formulated in the 1950s until pre 1965 era before it came into effect since 1st January 1966. Before this, all land dealings were governed by the Federated Malay States (Cap 138) Land Code 1926 which affected on 1st January 1928 and others five separate state legislation in each of five Unfederated Malay States and the English Deeds System in former Straits Settlements of Malacca and Penang. With independence coming soon, these land codes would be too inadequate to cope with the fast economy paces that have taken place after independence of Malaya in 31st August 1957 and formulation of Malaysia in 16th September 1963. Therefore, it is imperative to come out a new National Land Code which can achieve uniformity of law and administration in all States and Federal Territories except Sabah and Sarawak (Buang, 1995). The Federated Malay States (Cap 138) Land Code 1926 and the National Land Code (Penang and Malacca Titles) Act 1963 was also enacted to bring change from the English Deeds System in these two states to the Torrens System, became the model to the new National Land Code to achieve uniformity for all the nine Malay states and to former Straits Settlements. These two codes came into force on the same day of 1st January 1966. This idea of having an adequate and progressive National Land Code was originated lately by Malaysia former Prime Minister Tun Musa Hitam (Khoo, 1995).

The National Land Code 1965 (Act 56) is the principle law that to amend and consolidate the laws concerning to land and land tenure, the registration of title to land and dealings, and the collection of revenue within the states of Johore, Kedah, Kelantan, Malacca, Negeri Sembilan, Pahang, Penang, Perak, Perlis, Selangor, Terengganu and the Federal Territories. Enacted more than four decades ago, under Article 76(4) of the Federal Constitution 1957 for the purpose of ensuring uniformity of law and policy, to make a law 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, this National Land Code 1965 (Act 56) essentially retained the same system and principles of the previous land laws but at the same time also incorporated changes that reflected the prevailing social and economic needs.
6.2.1 The Introduction of National Land Code 1965 (Act 56)

The National Land Code 1965 (Act 56) contains 6 divisions and is divided into 42 parts with 513 sections. However, one part had been repealed. In Division I: Introduction, Part One contains preliminary provisions relating to constructions of the Act and its application to West Malaysia. Besides that, Part One (A) mentions about Computerisation Land Registration System while Part One (B) lays down the modifications to facilitate the implementation of the Pengurusan Danaharta National Berhad Act 1998 and Part One (C) describes the modifications to facilitate the implementation of Electronic Land Administration System. Part Two mentions the administration which contains the powers of the Federation and federal officers, power of the States and their officers, general provisions relating to officers and provisions relating to enquires. Part Three provides the rights and powers of the State authority which deals with the property in land and powers of disposal, classification and use of land. In Division II: Disposal of land, Part Four describes the disposal otherwise then by alienation with provisions of reservation of land, temporary occupation of land, removal of rock material and permit to use air space above State land and reserved land. Part Five contains the disposal by alienation which mentions about the introductory, approval of land for alienation and alienation under final title, while Part Five (A) lays down the provisions on disposal of underground land (National Land Code, 1965).

In Division III: Alienated lands-incidents and registration of title, Part Six includes rent with its provisions on general description, collection of arrears of rent and revision of rent while Part Seven lays down the conditions and restrictions in interest with its provisions on the general introduction, summary of conditions and restrictions in interest affecting alienated lands, implied conditions, express conditions and restrictions in interest, and enforcement of conditions. Part Eight contains the forfeiture while Part Nine describes the subdivision, partition and amalgamation of lands while Part Nine (A) lays down the powers of attorney. Part Ten provides the preparation and maintenance of registers of final title while Part Eleven talks about the Qualified Title with its introductory, alienation under Qualified Title, Final Title and Qualified Title in Continuation and conversion of
Qualified Title into Final Title. Part Twelve describes the surrender of title and its re-alienation (National Land Code, 1965).

In Division IV: Alienation land-dealings, Part Thirteen provides the general description of the dealings, Part Fourteen relates to the transfers issues while Part Fifteen provides provisions for leases and tenancies which includes powers of leasing, express and implied provisions, forfeiture and determination of leases and tenancies. Part Sixteen touches on charges and liens, creation of charges and some general provisions like implied provision, it also includes the remedies of charges like sale, possession, discharge and the liens while Part Seventeen relates to the easements, its creation, release extinguishment and cancellation. Part Eighteen contains registration of dealings and includes in this part are presentation of instruments for registration, procedure generally, determination of fitness for registration, manner of registration, powers of attorney, cancellation of registration and endorsement of exempt tenancies while Part Nineteen contains the restraints on prohibitory orders (National Land Code, 1965).

In Division V: Alienated Land-supplemental, Part Twenty mentions the indefeasibility of title and interest while Part Twenty One deals with the co-proprietorship and trusts. Part Twenty Two focus on the transmission on death and bankruptcy while Part Twenty Three concentrates on reversion in absence of proprietor. Part Twenty Four describes the resurvey of land that having natural boundaries while Part Twenty Five deals with the subdivided of building but it had been repealed and replaced by the Strata Titles Act 1985 (Act 318) (National Land Code, 1965).

Division VI contains general and miscellaneous provisions. In this division, Part Twenty Six deals with powers and duties of the registrar while Part Twenty Seven deals with the searches. Part Twenty Eight regards the provisions on land administrator’s right of way while Part Twenty Nine gives general provisions on the survey and deposited plans. Part Thirty provides the registration of statutory vesting while Part Thirty One contains of jurisdiction of the court while Part Thirty One (A) lays down the powers investigation. Part Thirty Two deals with the powers of arrest and seizure and penalties while Part Thirty Three provides service and publication of
notices. Part Thirty Three (A) lays down the restrictions in respect of non-citizens and foreign companies while Part Thirty Four in turn contains miscellaneous provisions for determination, and payment of compensation under this Act, its rules, forms and procedures. Finally, Part Thirty Five contains repeals and transitional provisions (National Land Code, 1965). 

There are seventeen schedules to the Act. However, three schedules had been repealed. First Schedule provides for forms while Second Schedule contains the provisions for additional implied conditions applicable to country land alienated or approved for alienation before the commencement of the Act. Third Schedule provides the provisions for additional implied conditions applicable to town or village land alienated or approved for alienation before the commencement of the Act while Fourth Schedule lays down the provisions for equivalent or variant expressions relating to *padi* or *bendang*. Fifth Schedule provides provisions for officers or other persons to arrest executions of instruments effecting dealings under this Act while Sixth Schedule touches on the agreements which may be incorporated in leases. However, Seventh Schedule, Seventh Schedule A, Seventh Schedule B, Eighth Schedule, Nine Schedule and Eleventh Schedule had been repealed. Tenth Schedule in turn contains supplementary provisions as to forms and procedure while Twelfth Schedule contains the modifications provision for State Kelantan. Thirteenth Schedule touches on special provisions for land subject to the conditions in the Second and Third Schedules while Fifteenth Schedule lays down the provisions for modifications to facilitate the implementation of the Pengurusan Danaharta Nasional Berhad Act 1998. Finally, Sixteenth Schedule contains provisions for Electronic Land Administration System (National Land Code, 1965).

### 6.2.2 The Concept of Land

According to Section 5, National Land Code 1965 (Act 56):

“Land includes:

(a) the surface (including air space) of the earth and all substances forming that surface;
(b) the earth below the surface and all substances in the surface;
(c) all vegetation and other natural products, whether or not requiring the periodical application of labour to their production, and whether on or below the surface;
(d) all things attached to the earth or permanently fastened to anything attached to the earth, whether on or below the surface; and
(e) land covered by water.”

Section 75A of National Land Code 1965 (Act 56) allows the issue of a permit for a period not exceeding twenty-one (21) years for the purpose of erecting, maintaining and occupying a structure on state land or reserved land, or over state land or reserved land as an adjunct to any structure on the adjoining land. However, these types of rights of the proprietor of any alienated land were limited to the exclusive use and enjoyment of only so much of the land below and above that surface as is reasonably necessary to the lawful use and enjoyment of the land.

Land was previously regarded as dimensions on the surface in term of length and breadth, without much restriction on the height and depth in the use of land, as long as the land use is lawful and consistent with the category of land use, implied or express conditions and complied with planning requirements and the local authority by-laws (Chong, 2006). However, in Section 44(1)(a), National Land Code 1965 (Act 56) say, the extend of the exclusive use and enjoyment of so much of the column of air space above the surface of the land, and so much of the land below that surface is limited only to such a height and depth reasonably necessary to the lawful use and enjoyment of the land. Furthermore, according to Section 92B and Section 92E of National Land Code 1965 (Act 56), the State Authority may specify the depth up to which the underground land directly and immediately, below the alienated land may be used, and different depths may specified in respect of different parts of such underground land. Provided that where any regulations made under this part provide for the minimum depths, the depth shall not be less than the minimum depth provided for class, description of location of land to which the alienated land
belongs, or followed the regulations that made by the Minister, that is under Section 92I of National Land Code 1965 (Act 56).

Therefore, Department of Director General of Lands and Mines (JKPTG) with the respond by the Department of Mineral and Geosciences (JMG) and Department of Public Work (JKR) had prepared a proposal for fixing the minimum depth for the use of underground surface and it depend on the usage and category of land on the land surface and also the geology factor of a local area. A regulation was made in 22 November 2006 to specify the minimum depth of such underground lands, that is National Land Code (Underground Land) (Minimum Depth) Regulations 2006 in National Land Code 1965 (Act 56). However, geology factor is different from one place to another and it is different to uniform the depths. For the category of agriculture land use, the fixing of minimum depth is based on, firstly, type of crops and the needs to protect the rooting zone as well. This because the depth of the rooting zone for crops in Malaysia can only reach until the maximum of five (5) metres depth. Secondly, the right of enjoyment of land owner for construct the traditional dug well for obtaining the alternative water supply. The depth of the traditional dug well is depend on the level of the underground water of a local area and usually it is approximately six (6) metres from the earth surface. After taking consideration these two factors, it is suggested that the minimum depth of alienation land underground surface is six (6) metres from the earth surface. Meanwhile, for a category of building and industry land use, the fixing of minimum depth is depended on the depth of piles for building on the earth surface. The determination of type and size of the piles used is depended on the type of the soil. Usually, the basis depth of a single and double storeys building for residential purpose are eight (8) metres and ten (10) metres respectively while for industrial purpose are ten (10) metres and fifteen (15) metres respectively for type of hard soil. For category of building, it is suggested that the minimum depth of alienation land underground surface is ten (10) metres from the earth surface while it goes to fifteen (15) metres from the earth surface for category of industry.
6.3 Strata Title Act 1985 (Act 318)

“In order to maximise the potential of the land, no part of the land must be wasted in most development plans, the areas not utilised for infrastructure works or buildings become open areas, which form, as required, a certain percentage of total area.”

(Khoo, 1984: 34)

As suitable land for development in the urban area becomes scarcer, it is necessary that every single piece of land be developed and utilised to its maximum. One way is to increase density in the building forms. As land in the city gets more expensive to acquire, the natural tendency is to build upwards. However, many issues should be carefully studied for this purpose. For instance, the economics involved in balancing land costs against building costs, the building structure and equipment requirements as well as the topography of the specific land.

In Peninsular Malaysia especially in the middle of 1960s, the emphasis was on the development of complex multi-storey buildings as a response to urbanisation and the need to resettle urban squatters. Coupled with the demands for rights of ownership, it was thus made necessary to provide the means whereby individual apartments or office units could be bought and sold as conveniently as lots of land. Moreover, the time and money expended in maintaining such building types were much reduced as compared with houses (Teo, 1998).

The twentieth century has seen many growing social economic changes in urbanisation in most countries including Malaysia. As a consequence, many people choose to live in high rise buildings (Hussain, 1999). This is due to the increasing population and economic activities around the established urban areas. This urbanisation has led to the development of high rise buildings in high density areas as a measure to optimise the land use and enhance the living standard. High rise buildings occupies are normally consist of small families whose preference for such occupation is because of the improved urban environment, the ready availability of
recreational and other facilities in such development itself, the security purpose, easy access to work place and so on (Liow, 2003).

Initially, the provision for subdivision of building was provided in the National Land Code 1965 (Act 56) which under Section 355 to Section 374 before the enactment of the Strata Titles Act 1985 (Act 318). However, many inadequacies were discovered in terms of technical, administration and legislative requirements. This, even though after this Act was implemented in 1st June 1985, and many amendments have been made onto this Act, there still not much progress has been made on the issuance of strata titles. Indeed, many unsolvable problems such as three-dimensional (3D) property rights arose in the administration, legislation and practices under this Act.

6.3.1 The History of Strata Title Legislation

Due to the Federated Malay States Land Code 1926 did not provide for strata title ownership, various devices were resorted to in order to meet the increase in demand for high rise buildings (Teo, 1998). The Malaysian strata titles registration owes its origin to the Australian New South Wales Conveyancing (Strata Titles) Act 1961, was first introduced in Peninsular Malaysia on 1st January 1966 by the National Land Code 1965 (Act 56) under Section 355 to Section 374 which dealt with subsidiary titles, to each of the parcels within a building having two or more storey. With such strata titles, owners are able to enjoy the benefits of indefeasible title, unfettered right to charge and to transfer or lease their properties in a similar way that owners of landed properties can. These included a grant of lease of such high rise building, the home unit company system and the device of tenancy in common (Hussin, 2006).

The Rapid housing development growth in 1970s and 1980s have introduced technological advancements in the construction industry and architect innovations, which made the provisions in National Land Code 1965 (Act 56) inadequate and need some amendment or further improvement to cope with the need during that time (Teoh, 2003). The provisions on strata titles in National Land Code 1965 (Act 56) therefore were amended several times in 1977 (Act A386), in 1979 (Act A444) and in 1981 (Act A518) before they were repealed by 1985 (Act 318). As in other
jurisdictions, prior methods of providing property rights to high rise buildings had been principally through leases and joint ownership through tenancy in common but these were found to be subject to some kinds of disadvantages as had been experienced elsewhere (Hussain, 1999). Among the inadequacies encountered by Liow (2003) were:

(i) There was no obligation on a developer to apply for subdivision of a building.
(ii) Some unscrupulous developers used properties containing apartments already sold as security for further loans.
(iii) Inability to obtain legal title caused problems for purchasers requiring finance to purchase an apartment in the apartment itself could not be offered as security for a loan.
(iv) Purchasers had to pay quit rents and rates even though they were not the legal owners of the property.
(v) The requirement that only buildings with ground areas of 5000sqft or more could be subdivided.
(vi) There was no provision for phased development.
(vii) There was no provision for the inclusion of accessory parcel like parking bays and storerooms as part of the strata title.
(viii) There were many kinds of bureaucratic delay.

Finally, in order to simplify and overcome the inadequacies of these provisions in the National Land Code 1965 (Act 56), the National Land Council Review Committee has gone through a lot of deliberations and decided to recommend that a separate legislation on strata titles be enacted and the existing National Land Code 1965 (Act 56) for subsidiary titles provisions be repealed and replaced by the Strata Titles Act 1985 (Act 318), Rules and Order which come into force in 1st June 1985. It also consider modernised the provisions subsidiary titles and added new provisions relating to accessory parcels, club house, provisional blocks and special provisions for low cost buildings were added and general improvements were made to the procedures in the processing of applications for strata titles and to the management of subdivided buildings. Although the provisions on strata titles are now in Act 318,
this new act is still to be read and construed together with the provisions and rules of the National Land Code 1965 (Act 56).

6.3.2 The Introduction of Strata Titles Act 1985 (Act 318)

The Strata Titles Act 1985 (Act 318) was enacted on 22\textsuperscript{nd} May 1985, published in the Federal Gazette on 30\textsuperscript{th} May 1985 and has been in force since 1\textsuperscript{st} June 1985. Formerly, it was enacted to facilitate the subdivision of building in parcels. Later in 2007, it included the subdivision of land into parcels in a strata scheme. In essence, the Strata Titles Act 1985 (Act 318) comprises the former provisions relating to subsidiary title under the National Land Code 1965 (Act 56). However, new provisions and concepts along the lines of the New South Wales and Singapore strata titles legislation have been incorporated into the Strata Titles Act 1985 (Act 318) to further improve on the procedures and processing of applications, to overcome inadequacies of former provisions on this subsidiary titles, and to meet current development and socio-economic needs (Teo, 1998). After studying the provisions of strata title legislations of New South Wales and Singapore, the National Land Code Review Committee eventually decided to retain the National Land Code 1965 (Act 56) concept of subdivision of building and bolstering it with new features like accessory parcels and provisional blocks and improving further on the existing provisions. The rationale behind this decision was to ensure the smooth implementation of strata titles legislation (Liow, 2003).

The Strata Titles Act 1985 (Act 318) contains 101 sections and is divided into 11 parts. However, one part had been deleted. Part I contains preliminary provisions relating to construction of the Act and its application to Peninsular Malaysia. Part II lays down the procedural requirements to subdivision of building or land while Part III provides for registration of strata titles upon approval of subdivision of building or land. Part IV in turn contains provisions regarding provisional block which facilitate phased developments of strata scheme. Part V touches on the division and amalgamation of parcels while Part VI lays down the right and obligations attaching to individual parcels and provisional blocks. Part VII deals with the management of subdivided building upon destruction of building. Part IX formerly contains special provisions for low cost buildings but is deleted since the third amendment of this Act.
with added in Part IX (A) which lays down the provisions regarding the Strata Titles Board. Finally, Part X contains miscellaneous, applicability of National Land Code 1965 (Act 56) in relation to dealings and insurance of title in continuation and other things (Strata Title Act, 1985).

There are five schedules to the Act. The First Schedule provides for forms while the Second Schedule contains provisions for the management corporation. The Third Schedule contains By-laws for the regulation of subdivided buildings while the Fourth Schedule lays down the provisions of repeal and amendment of National Land Code (Act 56 of 1965) & Regulations which were repealed and amended upon the enforcement of the Strata Titles Act 1985 (Act 318). Finally, Fifth Schedule contains provisions for Computerisation System of Strata Titles (Strata Titles Act, 1985).

6.3.3 The Amendment of Strata Titles Act 1985 (Act 318)


The various amendment introduced by the 1990 amendment were aimed at further improving the procedures for and the processing of applications for the subdivision of buildings, to further safeguard the interests of purchasers who buy into a strata scheme, to improve certain aspects of the management of a strata scheme, to remove ambiguities in the provisions themselves, and to do away with the provisions which are anomalous when viewed in the context of the general legislative framework of the Strata Titles Act 1985 (Act 318) as a whole (Teo, 1998).

Later, to make it easier to apply for strata titles, the 1996 amendment enables the developers of a building to submit an application for such titles even if the land is
still held under a Qualified Title or the Certificate of Completion and Compliance for occupation or use of the building has not been issued. However, before approval can be granted in respect of the application, the final titles to the land must have been registered and the Certificate of Completion and Compliance issued, among others. As for the issuing of strata titles for mixed developments, which comprise multi-storey buildings, the 1996 amendment has resolved the problem by allowing strata title to be issued for single storey buildings if they were part of the same strata scheme. It may also be noted that to further facilitate the management of the subdivided building, changes have been made by the 1996 amendment to the definition of unanimous and special resolutions so as to allow for a more flexible decision making process among members of the management corporation (Teo, 1998).

The 2001 amendment provides primarily for the establishment of a Strata Titles Board to settle disputes, its jurisdiction as well as matters pertaining to the proceedings and representation before the Board. Provisions are also made to empower the Director of Lands and Mines in a State and the Land Administrator in the Federal Territory to appoint a managing agent to exercise the functions of the management corporation when they found that the management corporation does not function satisfactory. For the prosecution of offences under the Strata Titles Act 1985 (Act 318), the written consent of the Public Prosecutor is required (Hussin, 2007).

Finally, the 2007 amendment mainly concentrate on the amendment by substituting for the words ‘and the Federal Territory of Kuala Lumpur’ to the words ‘and the Federal Territory of Kuala Lumpur and Federal Territory of Putrajaya’, and by inserting after the word ‘building’ wherever appearing by the words ‘building or land’. In this case, meaning that any alienated land having two or more buildings held as one lot under final title shall be capable of being subdivided into land parcels with building not more than four storeys which is held under a same strata scheme. Provisions are also made into the operation of the Computerisation System of Strata Titles in any land registry with inserting of the new Fifth Schedule which allowed making an entry on a document of title under the Computerisation System of Strata Titles. To sum up, according to this 2007 amendment, there will be three types of
application to be made in subdivision of building where application involved for buildings only, for buildings and lands or for lands only. Finally, plans are afoot to enact legislation to overcome the problem of maintaining common areas in high rise developments before the setting up of the management corporation. This will alleviate the problems of maintenance and provision of services for these areas. Therefore, the Building and Common Property (Maintenance and Management) Act 2007 (Act 663) came along with the 2007 amendment was enacted on 12th April 2007 to provide for the proper maintenance and management of buildings, lands and common properties.

6.3.4 The Concept of Strata Title

The idea of strata title is based on the horizontal and vertical subdivision of a building or of air space, instead of the normal vertical subdivision of land. The lands and buildings erected upon it are divided into parcels, land parcels and common properties. Each parcel and land parcel consist of an individual apartment or house for which a separate strata title is issued to the registered proprietor, whilst all parts of the building and land which do not form part of an individual apartment or house become common property which manage by the management corporation or body corporate of the strata scheme on behalf of all the proprietors of parcels and land parcels in the strata scheme (Hussain, 1999).

As stated in Strata Titles Act 1985 (Act 318), parcel and land parcel are respectively described as follow:

“Parcel in relation to a subdivided building, means one of the individual units comprised therein, which (except in the case of accessory parcel) is held under separate strata title, and in relation to a subdivided land, means one of the individual units of land parcel.”

(Strata Titles Act, 1985: 11)
“Land parcel means a unit which is comprised therein a subdivided land on which there is a completed building of not more than four storeys which is held under a strata title.”

(Strata Titles Act, 1985: 10)

In a strata subdivision, the land and improvements erected on it are divided into parcels, land parcels and common properties. Section 6 of the (Strata Titles Act 1985 (Act 318) allows building or land being subdivided into parcels or land parcels and read as follows:

“(1) Any building having two or more storeys on alienated land held as one lot under final title (whether Registry or Land Office title) shall be capable of being subdivided into parcels; and any land on the same lot shall also be capable of being subdivided into parcels each of which is to be held under a strata title or an accessory parcel.

(1A) Any alienated land having two or more building held as one lot under final title (whether Registry or Land Office title) shall be capable of being subdivided into land parcels each of which is to be held under a strata title or as an accessory parcel.

(2) Notwithstanding subsection (1), the State Authority may, by rules, published in Gazette, prohibit the subdivision of buildings or land of any class or description as may be specified in such rules.”

(Strata Titles Act, 1985: 15)

6.4 Building and Common Property (Maintenance and Management) Act 2007 (Act 663)

Along with the Strata Titles (Amendment) Act 2007 (Act A1290), the Building and Common Property (Maintenance and Management) Act 2007 (Act 663) was enacted and has been in force since 12th April 2007. It was enacted to provide for the proper
maintenance and management of buildings, lands and common properties in a strata scheme.

6.4.1 The Introduction of Building and Common Property (Maintenance and Management) Act 2007 (Act 663)

The Building and Common Property (Maintenance and Management) Act 2007 (Act 663) contains 46 sections and is divided into 8 parts. Part I contains preliminary provisions relating to construction of the Act and its application to West Malaysia. Part II mentions the administration of the Act that is appointment of commissioner of Buildings and other officers while Part III provides provisions for the management of building or land intended for subdivision into parcels, the establishment of a Joint Management Body one the building has been completed and delivered by the developer to purchasers but the management corporation has not come into existence and its rules and orders. Part IV touches on the building maintenance account while Part V lays down the building maintenance fund and sinking fund provisions. Part VI deals with the provisions for managing agent, their powers and duties while Part VII lays down the provisions on the deposit and recover of charges by the developer and Joint Management Body. Finally, Part VIII contains miscellaneous provisions for representation in civil proceedings, liability of directors, service of notice or order, power of entry, power to compound, regulations and prosecution. Meanwhile, there are two schedules to the Act. First Schedule provides the provisions for the Joint Management Body Committee while Second Schedule provides for forms (Building and Common Property (Maintenance and Management) Act, 2007).

6.5 Other Related Legal Documents

Beside law, code, enactment and ordinance mentioned above, there are many other direct or indirect legal documents relating to land administration and real estate ownership as well on survey and construction currently govern the land registration and are also very important towards implantation of 3D property formation in Malaysia. There are as follow:
a) Federal Constitution 1957
b) Real Property Gains Tax Act 1976 (Act 169)
c) Town and Country Planning Act 1976 (Act 172)
d) Street, Drainage and Building Act 1974 (Act 133)
e) Uniform Building By-Laws a984 (G.N.5178/85)
f) Gas Supply Act 1993 (Act 501)

6.6 Document of Title

The document of title can be considered as the pillar of the record machinery in the registration system (Nordin, 2001). The registration records are in the form of bound books, to be known respectively as the register of grants and the register of state leases which means every document of title is compiled in books series and serially numbered for every piece of property.

Nordin (2001) noted that the document of title serves as evidence of ownership and with it the proprietor can make any dealing such as charge, transfer, lease, sale or grant right of easement over the property. In this respect, two documents of title are prepared for each piece of property at the first time of registration, namely Register Document of Title (original) and issue Document of Title (duplicate). Register Document of Title means any document registered retained and maintained by the Registry of Land Office, and made available for title search by the public while the Issue Document of Title means any document prepared for issue to the proprietor of any property, being a copy of or an extract from the Register Document of Title to enable the owner of the said property to carry out dealings. Both documents of title have attached a location plan of the property which certified by Department of Survey and Mapping Malaysia that shown the cadastral survey information. This, all transactions will be recorded and the new owner’s or owners’ name will be endorsed on both the Register Document of Title and Issue Document of Title. The later will be surrendered to Land Office for this process.

According to Nordin (2001), the registration system provides for registration to confer indefeasible title unless for fraud or registration obtained by forgery or by means of a void instrument, and for the correction of errors in documents of titles.
Therefore, there is no guarantee for compensation from the government to the aggrieved proprietor for any loss incurred as a consequence of the mistake. As mentioned earlier, the registration system is governed by the National Land Code 1965 (Act 56) with the principles of the Torrens system. Firstly, with mirror principle, the register reflects completely and accurately the latest facts, material to the registered proprietor’s title to land. In addition, this meant indefeasible title is conferred with its security, clear and simplicity makes it very useful for dealing. Secondly, with curtain principle, the intending purchaser can solely refer to the register and no need to look further behind or beyond it to search for information about the legal title as in Deeds System.

Registrations of titles are compulsory in the Torrens System depending on the type of titles to be registered. Peninsular Malaysia practices Land Office Title in State Land Office and Registry Title in State Lands and Mines Office. Land Office Title is considered appropriate in the case of country land that lands above the shoreline that not exceeding ten acres in area. On the other hand, Registry Title is considered appropriate in the case of town land and village land that land also include in any part of the foreshore and sea bed that exceeding 4 hectares in area.

There are six types of title depending on town land, village land or country land, the size which more or less than 10 acres, the term of years holding the land, and whether the land has been final survey of not. So, titles must be in the form of Form 5BK (State Grant), 5CK (State Lease) or 11AK (State Qualified Title) for Registry Title, or 5DK (Mukim Grant), 5EK (Mukim Lease) or 11BK (Mukim Qualified Title) for Land Office Title. Here, grant that is freehold is holding in perpetuity while lease that is leasehold is holding only for a term of period, such as 60 or 99 years, and qualified title is title issued prior to final survey. Sample copies of land title are shown in Appendix B1-B6.

Meanwhile, there are three types of title depending on different types of lands and areas under Strata Titles Act 1985 (Act 318). The Registrar of Titles is required to prepare and maintain a register of strata titles to be known as the Strata Register. They take charge of strata titles which are dependent on Registry Titles, while strata title which are dependent on Land Office Title are responsibility of the Land
Administrator. The Strata Register shall consist of a series of books, each relating to one lot. Every books shall contain an index, a statement of matters capable of affecting the parcels, a copy of strata certified plan and the registered documents of title of each parcel and each provisional block. The register document of title to each parcel and each provisional block must be in the form of Form 4 (State Grant or Mukim Grant) and Form 4A (Provisional Strata Title which prohibited for dealings) respectively. Sample copies of strata title are shown in Appendix B7-B9.

6.7 Cadastral Map (Certified Plan)

Under Torrens System, the boundaries of each surveyed line in land parcel are defined by coordinated bearings and distances. Lot can be defined either by physical demarcation or described mathematically based on a coordinate system. Lot and other information are shown in a cadastral map. It provides information for identification of land or building parcels for survey and land administration. The description of parcel boundaries and cadastral survey data are shown in graphical information. It commences with preparation of the survey plan that would be submitted for authentication by the survey department. The authenticated cadastral map for Malaysia is called Certified Plan (CP). There are three types of certified plan, the normal land parcel certified plan is prepared in a standard format that permits the presentation of useful technical data such as bearings, boundaries dimensions, areas, lot numbers, boundary marks, abuttal’s of adjoining parcels and the two-dimensional coordinates of two extreme boundary marks as well as other relevant information when dealing with strata and stratum alienations.

Certified strata plan which contains the parcel information like floor areas, parcel numbers, boundary dimensions where the buildings resides in a strata scheme and also additional information on the storeys height of the building and the strata parcels. Likewise, the certified stratum plan provides the additional depth and mean sea level information of the underground volumetric parcels. However, there is no certified stratum plan submitted until recently due to lack of knowledge on cadastral survey and registration of stratum objects.
The certified plan then becomes the root document relating to the creation of the parcel boundaries and specific provision had been made as regards its role and status in the National Land Code 1965 (Act 56). The said Act gave much significance to the certified plan in the sense that land would not be considered to have been surveyed if the plan is not authorised or approved by the Director of Survey and Mapping (National Land Code, 1965) with evidence of the boundaries, boundary marks and areas shown on it (Nordin, 2001). Sample copies of certified plan are shown in Appendix C1-C4.

9.1 Sections Related to Cadastre, Property and Rights in Malaysian Legal Documents


9.1.1 National Land Code 1965 (Act 56)

Sections related to cadastre, property and rights in National Land Code 1965 (Act 56) are as table below:
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Interpretation-Alienate, Alienated land, Building, Land Administrator, Digital cadastral database, Disposal, Document of title, Foreshore, Grant, Land, Land Office title, Lot, Mining land, Mukim grant, Mukim lease, Proprietor, Purchaser, Register document of title, Registrar, Registry title, Reserved land, Restriction in interest, Shore line, State land, State lease</td>
</tr>
<tr>
<td>5A</td>
<td>Coming into force of the Computerization Land Registration System</td>
</tr>
<tr>
<td>5D</td>
<td>Coming into operation of the Electronic Land Administration System in any land Registry</td>
</tr>
<tr>
<td>6</td>
<td>Director General of Land and other Federal Officers</td>
</tr>
<tr>
<td>9</td>
<td>National Land Council: Initiation of action with respect to certain matters</td>
</tr>
<tr>
<td>10</td>
<td>Regulation of procedure, etc., of Survey and Mapping Department</td>
</tr>
<tr>
<td>11</td>
<td>Administrative areas</td>
</tr>
<tr>
<td>12</td>
<td>State Director and other State Officers</td>
</tr>
<tr>
<td>13</td>
<td>Delegation of powers of State Authority to State Directors, etc</td>
</tr>
<tr>
<td>14</td>
<td>Power of State Authority to make rules</td>
</tr>
<tr>
<td>15</td>
<td>General powers of State Director, etc</td>
</tr>
<tr>
<td>40</td>
<td>Property in State land, minerals and rock material</td>
</tr>
<tr>
<td>41</td>
<td>Powers of disposal of State Authority, and rights in reversion, etc</td>
</tr>
<tr>
<td>42</td>
<td>Powers of disposal</td>
</tr>
<tr>
<td>43</td>
<td>Persons and bodies to whom land may be disposed of</td>
</tr>
<tr>
<td>44</td>
<td>Extent of disposal: General</td>
</tr>
<tr>
<td>45</td>
<td>Extent of disposal: Mineral, rock material and forest produce</td>
</tr>
<tr>
<td>49</td>
<td>Effect of advance or retreat of sea, etc</td>
</tr>
<tr>
<td>50</td>
<td>Power of State Authority to vary provisions, extend time, etc</td>
</tr>
<tr>
<td>51</td>
<td>Classification of land</td>
</tr>
<tr>
<td>52</td>
<td>Categories of land use, and application thereof to lands alienated under this Act</td>
</tr>
<tr>
<td>57</td>
<td>General (Rights of access to, and use of alienated lands)</td>
</tr>
<tr>
<td>58</td>
<td>Nature and extent of rights</td>
</tr>
<tr>
<td>61</td>
<td>Compensation</td>
</tr>
<tr>
<td>62</td>
<td>Power of reservation of State land</td>
</tr>
<tr>
<td>63</td>
<td>Power of lease reserved land</td>
</tr>
<tr>
<td>70</td>
<td>Power to permit extraction and removal of rock material</td>
</tr>
<tr>
<td>75A</td>
<td>Power to permit use of air space above State land or reserved land</td>
</tr>
<tr>
<td>75B</td>
<td>Application for permits</td>
</tr>
<tr>
<td>75C</td>
<td>Issue of permit on approval</td>
</tr>
<tr>
<td>75D</td>
<td>Conditions etc., of permits</td>
</tr>
<tr>
<td>75E</td>
<td>Permits not capable of assignment except with consent of State Authority</td>
</tr>
<tr>
<td>75F</td>
<td>Deposit or security in respect of permits</td>
</tr>
</tbody>
</table>
75G Power to cancel permits
76 Meaning of alienation
77 Titles under which land may be alienated
79 General provisions relating to approvals
83 Survey for purposes of alienation under final title
84 Re-computation of items of land revenue after survey
85 Register and issue documents of title
86 Form of documents for Registry title
87 Form of documents for Land Office title
89 Conclusiveness of register documents of title
90 Issue of issue documents of title
92 Indefeasibility of final title, and rights of dealing, etc
92B Specification of rights in respect of underground land upon alienation
92C Alienation of underground State land
92D Application of independent use or alienation of underground land below alienated land
92E Specification of rights in respect of underground land upon the grant of lease of reserved land
92F Lease of underground land below reserved land
92G Application for independent use of underground land below leased reserved land
92H Relationship of this Part to other provisions of this Act
92I Regulations by the Minister
104 Conditions and restrictions in interest to run with the land
105 Duration of conditions and restrictions in interest
108 Conflict with local by-laws, etc
109 Conditions, etc., applicable on alienation
113 Manner in which changes may be effected
114 Implied conditions affecting all alienated land
115 Implied conditions affecting land subject to the category "agriculture"
116 Implied conditions affecting land subject to the category "building"
117 Implied conditions affecting land subject to the category "industry"
120 Imposition of express conditions and restrictions in interest on alienation under this Act
121 Category: Agriculture
122 Categories: Building and Industry
135 Power of proprietor to sub-divide with approval of State Director or Land Administrator
140 Powers of co-proprietors to partition with approval of State Director, Land Administrator or State Authority
146 Power of proprietor to amalgamate contiguous lots with approval of State Director or Land Administrator
158 Registry title-the register of grants and the register of State leases
159 Land Office title-the Mukim Registers
176 Purposes and effect of qualified title
177 Forms of qualified title, and documents of title appropriate thereto
| 205 | Dealings capable of being effected, and persons capable of taking thereunder |
| 214 | What may be transferred, and restrictions on exercise of powers |
| 221 | Power of proprietors to lease for terms exceeding 3 years |
| 241 | Powers of dealing |
| 282 | Meaning of “easement” |
| 283 | Rights able to be granted as easements |
| 284 | Necessity for express grant |
| 285 | Restrictions on power to grant |
| 286 | Form, and effect, of grants |
| 287 | Enjoyment of easements by lessees, tenants and chargees in possession |
| 288 | Special provisions as to easements of way |
| 289 | Release of easement by dominant proprietor |
| 290 | Extinction of easement by unity of title and possession |
| 291 | Cancellation of easements by Registrar |
| 319 | Nature and effect of Registrar’s caveats |
| 320 | Circumstances in which Registrar’s caveats may be entered |
| 321 | Procedure with respect to Registrar’s caveats and duration thereof |
| 322 | Nature and effect of private caveats |
| 323 | Application for entry of private caveats |
| 325 | Withdrawal of private caveats |
| 326 | Removal of private caveats by Registrar |
| 327 | Removal of private caveats by the Court |
| 330 | Creation and effect of lien-holder’s caveats |
| 331 | Determination of lien-holder’s caveats |
| 332 | Nature and effect of trust caveats |
| 333 | Creation of trust caveats and duration thereof |
| 340 | Registration to confer indefeasible title or interest, except in certain circumstances |
| 342 | Meaning of co-proprietorship, and when it arises |
| 388 | Land Administrator’s rights of way |
| 389 | Characteristics of Land Administrator’s right of way |
| 390 | Creation of right |
| 394 | Sharing of right by adjacent proprietors |
| 396 | Manner in which survey is to be carried out |
| 396A | Amendment of Survey Plan |
| 398 | Powers of Director of Survey and Mapping |
| 398A | Duty to complete survey |
| 399 | Duties of Director of Survey and Mapping |
| 410 | Nature of deposited plan |
| 411 | Description of land by reference to deposited plan |
| 422 | Penalty for false statements, etc |
| 423 | Penalty for fraudulent alteration, destruction, etc., of documents |
| 425 | Unlawful occupation, etc., of State land, reserved land or mining land |
| 425A | Unlawful use of air space above State land or reserved land |
9.1.2 Strata Titles Act 1985 (Act 318)

Sections related to cadastral, property and rights in Strata Titles Act 1985 (Act 318) are as table below:

**Table 4.2: Sections related to cadastral, property and rights in Strata Titles Act 1985 (Act 318)**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Interpretation-Accessory parcel, Building, Certificate of completion and compliance, Certified strata plan, Commissioner means the Commissioner of Buildings, Common property, Land parcel, Managing agent, Management corporation, Parcel, Proprietor, Provisional block, Provisional strata title, Purchaser, Strata units, Storey, Strata register, Strata titles, Subdivided building</td>
</tr>
<tr>
<td>4A</td>
<td>Coming into operation of the Computerization System of Strata Titles in any Land Registry</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Fifth Schedule Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Interpretation-Computerization System of Strata Titles</td>
</tr>
<tr>
<td>3</td>
<td>Forms of documents for Registry title or Land Office title</td>
</tr>
<tr>
<td>4</td>
<td>Plan for strata title to be issued separated</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Construction of the Act</td>
</tr>
<tr>
<td>6</td>
<td>Building or land capable of being subdivided into parcels</td>
</tr>
<tr>
<td>7</td>
<td>Proprietor of alienated land may apply for subdivision of a building or land</td>
</tr>
<tr>
<td>8</td>
<td>Circumstances in which it is compulsory for a proprietor to apply for subdivision of a building or land</td>
</tr>
<tr>
<td>9</td>
<td>Conditions for approval</td>
</tr>
<tr>
<td>10</td>
<td>Application for subdivision of building or land</td>
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<tr>
<td>10A</td>
<td>Application for subdivision in the case of phased developments</td>
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<tr>
<td>10B</td>
<td>Application for subdivision in the case of low-cost buildings</td>
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<tr>
<td>12</td>
<td>Powers of Director of Lands and Mines in relation to applications</td>
</tr>
<tr>
<td>13</td>
<td>Action by Director of Survey after approval of subdivision</td>
</tr>
<tr>
<td>14</td>
<td>Issue of strata titles to individual parcels</td>
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<tr>
<td>15</td>
<td>Preparation and maintenance of strata register</td>
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<td>16</td>
<td>Documents of strata title</td>
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<tr>
<td>17</td>
<td>Effect of opening of book of strata register</td>
</tr>
<tr>
<td>18</td>
<td>Share units of parcels</td>
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<td>19</td>
<td>Provisional share units of a provisional block</td>
</tr>
<tr>
<td>Section</td>
<td>Title</td>
</tr>
<tr>
<td>---------</td>
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</tr>
<tr>
<td>20</td>
<td>Application for strata title upon completion of building</td>
</tr>
<tr>
<td>21</td>
<td>Power of Director of Lands and Mines in relation to application</td>
</tr>
<tr>
<td>25</td>
<td>Power to divide and amalgamate parcels</td>
</tr>
<tr>
<td>27</td>
<td>Conditions for approval of division or amalgamation</td>
</tr>
<tr>
<td>32</td>
<td>Preparation of new certified strata title plan by Director of Survey</td>
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<tr>
<td>33</td>
<td>Modification of strata register and issue of fresh documents of title</td>
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<tr>
<td>33A</td>
<td>Effect of registration in respect of common property created upon division or amalgamation</td>
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<tr>
<td>34</td>
<td>Rights of proprietor in his parcel and common property</td>
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<td>35</td>
<td>Rights of support, service and shelter</td>
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<td>36</td>
<td>Share unit entitlements</td>
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<td>37</td>
<td>Restrictions on voting rights</td>
</tr>
<tr>
<td>39</td>
<td>Establishment of management corporation</td>
</tr>
</tbody>
</table>

### Second Schedule

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Constitution of council</td>
</tr>
<tr>
<td>5</td>
<td>Delegation of powers and duties</td>
</tr>
<tr>
<td>6</td>
<td>Power to employ agents and servants</td>
</tr>
<tr>
<td>8</td>
<td>Annual general meeting</td>
</tr>
<tr>
<td>11</td>
<td>Quorum at general meeting</td>
</tr>
<tr>
<td>13</td>
<td>Manner of deciding questions at general meetings</td>
</tr>
<tr>
<td>14</td>
<td>Proxy</td>
</tr>
<tr>
<td>15</td>
<td>Voting rights of proprietor</td>
</tr>
<tr>
<td>16</td>
<td>Voting rights of co-proprietors</td>
</tr>
</tbody>
</table>

### Section

<table>
<thead>
<tr>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>40</td>
</tr>
<tr>
<td>40A</td>
</tr>
<tr>
<td>42</td>
</tr>
<tr>
<td>43</td>
</tr>
<tr>
<td>44</td>
</tr>
</tbody>
</table>

### Third Schedule

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Duties of proprietor</td>
</tr>
<tr>
<td>3</td>
<td>Common property for common benefit</td>
</tr>
<tr>
<td>4</td>
<td>Provision of amenities or services</td>
</tr>
<tr>
<td>5</td>
<td>Functions of the corporation</td>
</tr>
<tr>
<td>6</td>
<td>Prohibitions for proprietor</td>
</tr>
</tbody>
</table>

### Section

<table>
<thead>
<tr>
<th>Title</th>
</tr>
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<tbody>
<tr>
<td>45</td>
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<td>55A</td>
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<td>56</td>
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<tr>
<td>57</td>
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<tr>
<td>67A</td>
</tr>
<tr>
<td>Section</td>
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<tr>
<td>67B</td>
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<td>67E</td>
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<td>67H</td>
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<td>67I</td>
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<td>67K</td>
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<td>67X</td>
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<tr>
<td>80</td>
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<tr>
<td>81</td>
</tr>
<tr>
<td>82</td>
</tr>
</tbody>
</table>

### 9.1.3 Building and Common Property (Maintenance and Management) Act 2007 (Act 663)

Sections related to cadastre, property and rights in Building and Common Property (Maintenance and Management) Act 2007 (Act 663) are as table below:

**Table 4.3: Sections related to cadastre, property and rights in Building and Common Property (Maintenance and Management) Act 2007 (Act 663)**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Interpretation- Building, Building or land intended for subdivision into parcels, Managing agent, Property, Common property, Parcel, Accessory parcel</td>
</tr>
<tr>
<td>3</td>
<td>Appointment of Commissioner of Buildings and other officers</td>
</tr>
</tbody>
</table>
4 Establishment of a Joint Management Body
5 Duty of developer to convene meeting
6 First meeting of Joint Management Body
8 Duties and powers of Joint Management Body
11 Joint Management Committee
13 Right of purchaser
14 House rules
15 Dissolution of Joint Management Body
16 Developer to open and maintain Building Maintenance Account
17 Duties of developer as to Building Maintenance Account
18 Moneys to be deposited into Building Maintenance Account
20 Prohibition of collection of charges
21 Duty of developer in respect of charges for building completed before commencement of this Part
22 Building Maintenance Fund
23 Purchaser to pay maintenance charges
24 Joint Management Body to open and maintain sinking fund
25 Appointment of managing agent
26 Independence of managing agent
27 Managing agent to lodge bond
28 Powers and duties of managing agent
30 Termination of management agreement
31 Developer to pay deposit to rectify defects on common property
34 Failure or refusal to pay charges
38 Power of entry
44 Non-application of other written laws, contracts and deeds

9.1.4 Other Related Legal Documents

(i) Federal Constitution 1957

Articles related to cadastre, property and rights in Federal Constitution 1957 are as table below:

Table 4.4: Articles related to cadastre, property and rights in Federal Constitution 1957

<table>
<thead>
<tr>
<th>Article</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Supreme law of the Federation</td>
</tr>
<tr>
<td>9</td>
<td>Prohibition of banishment and freedom of movement</td>
</tr>
<tr>
<td>10</td>
<td>Freedom of speech, assembly and association</td>
</tr>
<tr>
<td>11</td>
<td>Freedom of religion</td>
</tr>
<tr>
<td>12</td>
<td>Rights in respect of education</td>
</tr>
</tbody>
</table>
The basis of the Malaysia Federal Constitution is the Federation of Malaya. British agreed to concede independence to Malaya in 1956 after an Alliance’s Landslide victory in the first federal election in 1955 and Tunku Abdul Rahman Putra was appointed as the Chief Minister. The first step towards the formation of a new government was the drafting of Malaya Federal Constitution. For this, the British government formed a working Committee, comprising British representatives, advisors from the conference of Rulers and Malayan political leaders. In January 1956, Tunku headed a delegation to London to discuss the Federal Constitution and negotiate the date for independence of Malaya. Later, in March 1956, a commission chaired by Lord Reid was set up to formulate a draft and refine the Malaya Federal Constitution by taking into the views of political parties, non-political organisations and individuals. The Reid Commission’s draft proposals were published in 1957 and were then reviewed and amended by a working committee in Malaya, and representatives of the Alliance, the Malay Rulers, and the British government at a meeting in London, thus emerged the Merdeka Constitution. Finally, the draft was authorised by the Working Committee as the Malaya Federal Constitution and commencing on the date of the nation’s independence on 31st August 1957. Before the establishment of the Federation of Malaysia in 1963, another consultative process was initiated with Sabah, Sarawak and Singapore in 1962. From this process came forth a social contract (contained in the Cobbold Commission Report) similar to the consensus acquired in 1956-1957 and later several provisions in the Malaya Federal Constitution were amended when Sabah, Sarawak and Singapore joined Malaya in 16th September 1963 and the country’s name was changed to Malaysia. In short, the Constitution, formulated in 1957 and 1963, is based on the social contract on which the country is founded.
The Federal Constitution 1957 contains 201 Articles and is divided into 16 parts. Part I contains provisions relating to the States, religion and law of the Federation while Part II mentions the fundamental liberties. Part III provides the provisions for the acquisition of citizenship, termination of citizenship and supplemental while Part IV touches on the power of the Federation which includes the Supreme Head, the Conference of Rulers, the executive authority of Federation, Federal legislature, legislative procedure and capacity as respects property, contracts and suits. Part V lays down the power of the States while Part VI provides provisions for relations between the Federation and the States and its distribution of legislative powers, executive powers and financial burdens. The definition of land also touches in this part and together with provisions for national development, Federal survey, advice to States and inspection of State activities, National Council for Local Government as well as application to States of Sabah and Sarawak. Part VII provides the financial provisions and its application to States of Sabah and Sarawak while Part VIII touches on the elections. Part IX contains provisions for the judiciary while Part X lays down the public services. Part XI provides special powers against subversion, organised violence and acts, and crimes prejudicial to the public and emergency powers while Part XII contains general and miscellaneous provisions. Part XII (A) lays down the additional protections for States of Sabah and Sarawak while Part XIII touches on the temporary and transitional provisions. Finally, Part XIV contains provisions on saving for Rulers’ Sovereignty while Part XV lays down the proceedings against the Yang di-Pertuan Agong and the Rulers (Federal Constitution, 1957).

There are thirteen schedules to the Constitution. However, one schedule had been repealed. First Schedule contains oath of applications for registration or naturalisation while Second Schedule lays down the provisions for citizenship. Third Schedule touches on the election of Yang di-Pertuan Agong and Timbalan Yang di-Pertuan Agong while Fourth Schedule contains the Conference of Rulers, Sixth Schedule provides forms of oaths and affirmations while Seventh Schedule touches on the election of Senators. Eighth Schedule contains the provisions that to be inserted in State Constitutions while Ninth Schedule provides the legislative lists. Tenth Schedule provides provisions for grants and sources of revenue assigned to
States while Eleventh Schedule contains provisions of the interpretation and General Clauses Ordinance 1948 (Malayan Union Ordinance No. 7 of 1948, applied for interpretation of the Constitution. Finally, Thirteenth Schedule lays down the provisions relating to delimitation of constituencies (Federal Constitution, 1957).

According to the Federal Constitution 1957, under Article 74(1) and 74(2) (subject matter of federal and state laws), the parliament and the legislature of the state may make laws within respect to any of the matters enumerated in the Federal List, that is First and Third List in Ninth Schedule, and State List, that is Second Schedule in Ninth Schedule respectively without prejudice to any power to make laws conferred on it. Furthermore, under Article 77, the legislative of the state shall have power to make laws with respect to any matter not enumerated in any of the list set out in the Ninth Schedule and not being a matter in respect of which parliament has power to make laws. Federal Constitution 1957, List II-State List of Ninth Schedule (2) states that:

“2. Except with respect to the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, land including-
(a) Land tenure, relation to landlord and tenant; registration of titles and deeds relating to land; colonization, land improvement and soil conservation; rent restriction;
(b) Malay reservations or, in the States of Sabah and Sarawak, native reservations;
(c) Permits and licences for prospecting for mines; mining leases and certificates,
(d) Compulsory acquisition of land;
(e) Transfer of land, mortgages, leases and charges in respect of land; easement; and
(f) Escheat; treasure trove excluding antiquities.”

(Federal Constitution, 1957: 152)
For this, Federal Constitution 1957 in List II-State List of Ninth Schedule places land matters and cadastral land surveys under the jurisdiction of state government although Article 76(4) do empower parliament to legislate for states for the purpose of ensuring uniformity of law and policy, make laws with respect to land tenure, the relations of landlord and tenant, registration of titles and deeds relating to land, transfer of land, mortgages, leases and charges in respect of land, easement and other rights and interests in land, compulsory acquisition of land, rating and valuation of land and local government.

(ii) Real Property Gains Tax Act 1976 (Act 169)
Sections related to cadastre, property and rights in Real Property Gains Tax Act 1976 (Act 169) are as table below:

**Table 4.5: Sections related to cadastre, property and rights in Real Property Gains Tax Act 1976 (Act 169)**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Interpretation- Land, Person, Real Property, Valuer</td>
</tr>
<tr>
<td>5</td>
<td>Situation of interest, options, etc</td>
</tr>
<tr>
<td>14</td>
<td>Assessments</td>
</tr>
<tr>
<td>18</td>
<td>Right of appeal</td>
</tr>
</tbody>
</table>

(iii) Town and Country Planning Act 1976 (Act 172)
Sections related to cadastre, property and rights in Town and Country Planning Act 1976 (Act 172) are as table below:

**Table 4.6: Sections related to cadastre, property and rights in Town and Country Planning Act 1976 (Act 172)**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Interpretation- Building, Land</td>
</tr>
<tr>
<td>18</td>
<td>Use of land and buildings</td>
</tr>
<tr>
<td>19</td>
<td>Prohibition of development without planning permission</td>
</tr>
<tr>
<td>20</td>
<td>Prohibition of development contrary to planning permission</td>
</tr>
<tr>
<td>21</td>
<td>Application for planning permission</td>
</tr>
<tr>
<td>45</td>
<td>Power of entry</td>
</tr>
</tbody>
</table>
Sections related to cadastre, property and rights in Street, Drainage and Building Act 1974 (Act 133) are as table below:

Table 4.7: Sections related to cadastre, property and rights in Street, Drainage and Building Act 1974 (Act 133)

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Interpretation- Building, Person, Street</td>
</tr>
<tr>
<td>4</td>
<td>Maintenance and repair of public streets</td>
</tr>
<tr>
<td>35</td>
<td>Sky-signs</td>
</tr>
<tr>
<td>40</td>
<td>Prohibition of laying rails, mains, pipes, etc., along streets</td>
</tr>
<tr>
<td>50</td>
<td>Local authority to construct and maintain drains and water-courses</td>
</tr>
<tr>
<td>65</td>
<td>Local authority may acquire land for part of back-lane</td>
</tr>
<tr>
<td>70</td>
<td>Notice of new buildings</td>
</tr>
<tr>
<td>70A</td>
<td>Earthworks</td>
</tr>
<tr>
<td>77</td>
<td>Buildings over public sewers, etc., not to be erected without consent of local authority</td>
</tr>
</tbody>
</table>

Sections related to cadastre, property and rights in Uniform Building By-Laws A984 (G.N.5178/85) are as table below:

Table 4.8: Sections related to cadastre, property and rights in Uniform Building By-Laws A984 (G.N.5178/85)

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Interpretation- Party wall</td>
</tr>
<tr>
<td>47</td>
<td>Projections over a verandah-way</td>
</tr>
<tr>
<td>72</td>
<td>Basement walls and floors</td>
</tr>
<tr>
<td>86</td>
<td>Party walls</td>
</tr>
<tr>
<td>93</td>
<td>Measurement of the length of a wall</td>
</tr>
<tr>
<td>123</td>
<td>Pipes and service ducts</td>
</tr>
<tr>
<td>137</td>
<td>Floor in building exceeding 30 metres in height to be constructed as compartment floor</td>
</tr>
</tbody>
</table>
(vi) Gas Supply Act 1993 (Act 501)  
Sections related to cadastre, property and rights in Gas Supply Act 1993 (Act 501) are as table below:

**Table 4.9: Sections related to cadastre, property and rights in Gas Supply Act 1993 (Act 501)**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>23</td>
<td>Power to enter on and examine land</td>
</tr>
<tr>
<td>24</td>
<td>Power to enter on land for purposes of construction</td>
</tr>
</tbody>
</table>

(vii) Electricity Supply Act 1990 (Act 447)  
Sections related to cadastre, property and rights in Electricity Supply Act 1990 (Act 447) are as table below:

**Table 4.10: Sections related to cadastre, property and rights in Electricity Supply Act 1990 (Act 447)**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Interpretation- Reserved land, State land</td>
</tr>
<tr>
<td>10</td>
<td>Power to enter on and examine land</td>
</tr>
<tr>
<td>11</td>
<td>Power to enter on land for purposes of construction</td>
</tr>
<tr>
<td>12</td>
<td>Supply lines and other equipment on state land</td>
</tr>
</tbody>
</table>

9.2 The Nature of Condominium

According to (Karr, 1973), the condominium is a place to stay and offers a new, exciting way or life. This type of ownership allowed for individual ownership of a single unit in a multi-unit building or complex of buildings. The responsibilities of ownership under the condominium concept are very similar to ownership responsibilities of a single family home. Condominium living is a new way of life, to the single family home owner and even to bachelor man. The ownership is being made available in favourable metropolitan and resort areas at prices which are reasonable. This is made possible through the sharing of land and building costs by the many individual unit owners.
In certain housing schemes, it is hard to differentiate between a flat and an apartment, and between an apartment and a condominium. Some developers throw terrazzo and ceramic tiles on top of the modified design to price low cost flats at the level of medium cost apartment. Other developers add swimming pools into medium cost apartment projects in order to upgrade their scheme into a condominium project.

9.3 Field of Application

According to (Abdullah, 1996), there are many reasons for buying a condominium. One reason is the change of life style. There are many benefits to condominium living; the security, swimming pool, sports facilities and so on. The terrace house, by its very nature, is an inflexible creature in terms of size and design. It may be too large for a single person or couple. For a couple without children or a retired couple whose children have left the nest, a condominium may be just the right size. It does away with doing the gardening and cleaning of large unused areas.

Unlike the purchase of a link or terrace house, semi-detached or bungalow, the purchase of a condominium, involves the transfer of rights and not of land. What we purchased is the rights to our condominium under the Strata Titles Act 1985 (Act 318). All our rights, pending the issue of strata title, will be in sale and purchase contract document alone. It is the document that proves ownership of rights to the condominium and the developer. To really own the condominium itself, we will have to await the issuance of strata title.

The purchase of a condominium is different from a house. The entire piece of land which the condominium complete sits on is usually in the name of the developer or joint venture partner. Each condominium will therefore not have its own land title. However, once the condominium is fully built the developer is obliged to apply for strata title for each condominium. Unfortunately, it will take more than few years before strata title is issued. Thus if we have bought or decided to buy a condo we will have to settle for our rights being under the sale and purchase contract document only and not in a deed of title.
The management corporation is an integral part of condominium living. It is common for the management corporation to be formed on completion of the condominium or, which is far too late, when grievances start to arise. Condominium management is not that simple. It is defined as the overall control and supervision of the condominium, within pre-set income and expenditure levels, in order to enhance the values of the condominium units in that complex. The aim, in short, is to achieve value added management. Such value added management can only happen with the condominium being run effectively and smoothly, to the overall satisfaction of the owners and residents. A natural consequence of this will be an increase in the values of the units in that condominium.

9.4 **Legal Framework**

When we talk about the legal framework governing the management of subdivided buildings or land, the management of the building after the issuance of strata titles is a very important part of the subdivision of a building. It is an integral component of the concept of strata title ownership and of close community living whereby all parcel owners live together harmoniously under one roof and run the building on a self-governance or self-management basis. The management of the building will go on until the termination of the subdivision that is should be the building is totally destroyed or when all the parcels are owned by the same proprietor and he decides to terminate the subdivision or so on. Thus, it is vital that the provisions of the strata titles laws are fully understood in order that the management of the building is properly undertaken, in accordance with the provisions of the law.

9.5 **Subdivision, Partition and Amalgamation**

The National Land Code 1965 (Act 56) defines subdivision and partition as the proprietor of any alienated land held under Registry or Land Office title may, with the approval of the State Director or Land Administrator subdivide the land into two or more portions to be held by him under separate titles. In addition, any alienated land which is held under Registry or Land Office title by two or more persons as co-proprietors may, agreement between those persons and with the approval of the State Director or Land Administrator be partitioned. On the other hand, any person in
whom two or more contiguous lots of alienated land are vested under separate Registry or Land Office titles may, with the approval of the State Director or Land Administrator amalgamate those lots into one, to be held by him under a single title provided that the amalgamation of any lots which are not situated in the same mukim, town or village.

In Strata Titles Act 1985 (Act 318), a parcel proprietor may, with the approval of the Director divide his parcel into two or more new parcels, each to be held by him under a separate strata title or where he holds two or more contiguous parcels, amalgamate them to form one parcel to be held by him under a single strata title provided they shares at least one boundary, including a boundary which consists of a floor or ceiling, with another of them. In order to sub-divide or amalgamate building or land, a proposed strata plan comprising a location plan, storey plan and delineation plan, to be submitted in triplicate containing details such as (a) the boundaries of the parcels shown must follow features of permanent construction appearing in the building, (b) a written consents to the making of the application of every person who, at the time of the application, (c) specify the number of the lot, the title number and the area of the land, (d) delineate the boundaries and boundary marks of the lot and the position of all buildings, showing which of these buildings are to be subdivided and in the case of an application for subdivision of land into land parcels, delineate the boundaries and boundary marks of the lot and the parcels showing the position of all the buildings, (e) except for the application for subdivision of land into land parcels, includes a vertical section of each such building showing (i) the floor and ceiling of each storey; and (ii) the height of each storey, (f) define the boundaries thereof by reference to floors and walls showing the horizontal dimensions, without it being necessary to show the bearing, (g) specify the approximate floor area of each parcel, (h) distinguish such parts as are not to be included in any of the parcels but are to be part of common property, (i) all accessory parcels, and specify therein the parcels they are made appurtenant to, irrespective of whether the accessory parcels are contiguous to those specified parcels, and (j) show the proposed share units in whole numbers of each parcel and the total share units of all the parcels.

9.6 Boundary
The Malaysian statute describes land shall not be taken to have been surveyed until (a) its boundaries have been determined by right-lines, (b) its boundaries as so determined have been demarcated on the surface of the land by boundary marks or, if by reason of the configuration thereof or for any other cause the placing of boundary marks on the actual line of the boundary is to any extent impossible or impracticable, boundary marks have been so placed as to enable that line to be ascertained, (c) the area enclosed by its boundaries as so determined has been calculated, (d) a lot number has been assigned thereto by the Director of Survey; and (e) a certified plan, showing the situation of the land, the position of its boundaries as so determined and of the boundary marks placed thereon and the area and lot number thereof, has been approved by the Director of Survey.

A unit in a subdivided building or land is known as a parcel for which a strata title is registered. Under Section 13(3) of the Strata Titles Act 1985 (Act 318), the common boundary of a parcel with another parcel or with the common property is taken to be the centre of the floor, wall, ceiling unless provided otherwise in the relevant storey plans. The problem with this definition of boundary is that there may be disputes when damage is sustained to a wall or window or door as to who is responsible for fixing it and to what extent.

9.7 Easement

The Malaysian statute defines easement as any right granted by one proprietor to another, in his capacity as such and for the beneficial enjoyment of his land. Provided that, where on the subdivision or partition of any land the benefit or burden of any easement ceases to be attached to, or binding upon, any portion shall thereafter be construed in relation to that easement as excluding the portion in question.

The rights capable of being granted as easements are as (a) any right to do something in, over or upon the servient land; and (b) any right that something should not be so done. However, the said rights do not include (a) any right to take anything from the servient land; or (b) any right to the exclusive possession of any part thereof provided that nothing shall prevent the existence as an easement of any right
involving the placing and maintaining in or upon the servient land of any installations or other works.

In addition, no right in the nature of an easement shall be capable of being acquired by prescription (that is to say, by any presumption of a grant from long and uninterrupted user) except acquired by implied grant. The power of a proprietor to grant easements shall be exercisable in any particular case subject to any prohibition or limitation imposed by any other written law for the time being in force, and to any restriction in interest to which his land is for the time being subject. No easement affecting the enjoyment of land which is subject to any lease, tenancy or charge shall be capable of being granted without the consent of the person or body for the time being entitled to the benefit thereof; and such consent shall be signified in the instrument by which the easement is granted. Again, no cross-easements of support in respect of party wall may be granted by adjacent proprietors except in respect of a wall which stands on their common boundary and is certified by the Director of Survey to do so.

The benefit of any easement granted shall be enjoyed not only by the proprietor of the dominant land and his successors in title, but also by any leasee, tenant or chargee entitled to the benefit or any easement by virtue of this section may take in his own name any proceedings necessary for its enforcement. However, any easement granted may be released or extinguished by the proprietor of the dominant land or by operation of law at any time respectively.

9.8 Parcel

The Malaysian statute defines parcel as:

“Parcel, in relation to a subdivided building, means one of the individual units comprised therein, which (except in the case of an accessory parcel) is held under separate strata title, and in relation to a subdivided land, means one of the individual units of land parcel.”

(Strata Titles Act 1985 (Act 318), 1985: 11)
It is important for the strata titles owner to know the physical extent of his parcel that part of the scheme in respect of which he has exclusive ownership as opposed to those parts of the scheme which are common property.

In terms of Section 10 of Strata Titles Act 1985 (Act 318), each parcel in buildings comprised in a strata title scheme must be defined on the storey plan (See Section 10(3)(c) of Strata Titles Act 1985 (Act 318)). The storey plan must contain the outlines of each proposed strata parcel and the respective boundaries thereof by reference to their floors, walls and ceilings showing the horizontal dimension. In this instance, there is no necessity to indicate the nearing of the respective parcel (See Section 10(3)(b) of Strata Titles Act 1985 (Act 318)). The storey plan shall contain the numerical figure by which every one of the parcels can be identified (See Section 10(3)(c) of Strata Titles Act 1985 (Act 318)). There are actually no rules of identification provided in the Act. However, the common practice that has been adopted by the housing industry for such identification is by using the block number first, followed by the storey level and lastly, the number of the parcel.

A parcel will therefore include those built-up floors areas that are delineated and marked as parcel by the developer on its approved building plan as well as in its proposed strata plan. Each and every parcel constructed or to be constructed by the developer must have adequate means of access within the high-rise building, which does not pass through another adjoining parcel. It must also have adequate means of internal communication not passing through the common property (See Section 9(1)(h)(i) and 9(1)(h)(ii) of Strata Titles Act 1985 (Act 318)).

Therefore, the peculiar feature of a parcel is that it is surrounded by walls, floors and ceilings. It is also not unusual for a parcel that is located on the ground floor to be separated from the basement and sub-basement floors by its built-up floor space. Any parcels that are intended to be sold as residential or housing accommodations are built on ground level or above level. But as far as office and shopping spaces are concerned, they can be located even below ground level.
Section 10(3)(b) of Strata Titles Act 1985 (Act 318) also requires that every storey plan, which is part and parcel of the strata plan. Must show and depict therein the boundaries of the entire proposed parcel to be constructed. These boundaries may thus be marked by referring to the floors, walls and ceilings that will show the horizontal dimensions, when mapping out those boundaries, there is no necessity to indicate the bearing as well. Under the circumstances, it is well within the developer’s proprietary right to choose, as he or it pleases the boundaries of various parcels in order to determine their varying sizes. The manner of determining the common boundaries of the parcel is left entirely to the decision of the developers (See Section 10(3)(b) and Section 13(3) of Strata Titles Act 1985 (Act 318)). The developer may, if he or it thinks fit, choose the inner surface of the wall, the upper surface of the floor and the under surface of the ceiling as the boundaries lines of the parcels. When he has made a choice, he must indicate it on the storey plan, which will then be used by the land surveyor in preparing the certified strata plan. If he has not made his choice, then and only then the operation of Section 13(3) of Strata Titles Act 1985 (Act 318) comes into effect where the common boundary of a parcel with another parcel or with common property is taken to be the centre of the floor, wall and ceiling unless provided otherwise in the storey plan.

13(3) of Strata Titles Act 1985 (Act 318) being presumptive in nature, does not prevent any strata developer from delineating boundary lines that do not coincide with the centre of the floor, wall or ceiling. In fact, there is absolutely no statutory provision in the Act that will prohibit the strata developer from choosing the inner face or the outer face of a surrounding wall of a strata parcel to be one of the boundary lines of a strata parcel. This may be so, notwithstanding that the particular demarcated boundary line may coincide with a part of the facade of the high-rise building or perhaps even a townhouse. Just like certain parts of the boundaries of two pieces of contiguous alienated land will overlap, the boundary lines of the surrounding walls of the parcel may, likewise, coincide or overlap with the boundary lines of the facade of those relevant parts of the high-rise building.

A parcel is therefore basically a cubic entity formed by the walls, ceilings and floors of a resident apartment or business premise. The centre lines of the outer boundary walls form the vertical boundaries and the centre lines of the floors and ceilings form
the horizontal boundaries of the parcel. In other words the purchaser of a parcel basically purchases the internal space enclosed by the four outer walls, ceiling and floor of his parcel together with part of the structure up to the centre of the walls, floors and ceilings. This means that he also owns all the inner walls dividing the rooms inside the parcel. The outer structure of the building is common property owned by the management corporation.

In may be concluded that a floor area of a parcel includes the built-up areas of the whole inner part of parcel, so long as such built-up areas have adequate means of access not passing through another adjoining parcel and adequate means of internal communication not passing through the common property.

**Evaluation of parcel**

From the above it is clear that a parcel is not confined to a piece of enclosed air space. Parts of the surrounding stonework and other materials comprising the boundary walls, floors and ceilings up to the centre line thereof, are also included.

The boundaries of a parcel are normally identified with reference to physical data, namely walls, ceilings and floors of a particular building as shown on the storey plan. Since the boundaries are actual floors, walls or ceilings of the parcel, one can only encroach upon a neighbour’s parcel by physically moving one of these features. The need for the precision of conventional survey methods is therefore eliminated, with the result that the purchaser of a parcel has no need to verify the boundaries with the help of a surveyor.

The delimitation of a parcel with reference to the centre of the dividing floors, walls and ceilings in the Strata Titles Act 1985 (Act 318) is open to criticism. The reference to a ceiling is unfortunate since it could be that a room in a parcel, for example the garage, may not have a ceiling whereas other parts of the parcel might have both a ceiling and a roof. One could reach the absurd conclusion that since the room has no ceiling it could never be part of a parcel. The space between the ceiling and the roof should strictly be regarded as common property, and that could also lead to absurd results. In order to avoid confusion, the onus rests on the land surveyor or architect who prepares the strata plan to decide whether in a particular case the roof
of the structure must also be regarded as the ceiling of a parcel for purposes of defining the parcel.

However, the position might not be as severe as described above. We have seen that Section 13(3) of the Strata Titles Act 1985 (Act 318) allows the developer discretion as to how he would like to define the boundaries of a parcel in the light of the needs of the development and his own interest. Thus developer who intends to utilise the facade of the building may specify that the boundary thereof is the outside of the exterior wall.

The position of service items such as wires and down pipes that supply individual units with electricity and water are not clear in the Malaysia Statute, in principle their allocation as part of a parcel or the common property normally depends on which side of the centre line they are located. If located in the inside half of a dividing wall of the parcel they would belong to the parcel owner. He would be allowed to alter it but would also be responsible for their maintenance. However, this position is countered by two other provisions in the Act or the by-laws (See Section 44 and Section 62 of Third Schedule, By-laws for the regulation of subdivided buildings of Strata Titles Act 1985 (Act 318)). The first places an obligation on the proprietor to permit the management corporation or its agents to enter his parcel to maintain, repair or renew pipes, wires, cables or other items capable of being used in connection with the enjoyment of any other parcel or the common property (See Section 2(1)(a)(ii) of Third Schedule, By-laws for the regulation of subdivided buildings of Strata Titles Act 1985 (Act 318)). The second creates a reciprocal right of support and right of service (See Section 35(4) of Strata Titles Act 1985 (Act 318)) in favour of and against each parcel proprietor.

9.9 Common Property

The Malaysian statute defines common property:

“Common property means so such of the lot as is not comprised in any parcel (including any accessory parcel), or any provisional block as shown in an approved strata plan.”
The concept of common property facilitates identification of the part of the strata scheme that falls under the management corporation’s responsibility. It is the management corporation’s duty to carry out the necessary repair or maintenance on the relevant part of the building which is part of the common property. As for the part of the building which forms part of the parcel, such duty falls on the proprietor. Determination of where the boundary lies between a parcel and common property is important because the proprietor has the right or power to deal with the former whilst the management corporation deals with the latter.

All land except land that forms parcel and part of an accessory parcel will be included in a strata scheme as common property. Thus the soil beneath the building, the land for the yet undeveloped parts of the scheme and the air space around and above the building are part of the common property. Since the land is utilised in connection with the scheme, for example to provide access to the parcels, it is only natural that certain parts of the land should be part of the common property. However, parts of the land may be withdrawn from the common property and earmarked as accessory parcels. Consequently, when portions of land such as a garden area, open parking space, drying yards on land are added as accessory parcels they do not form part of the common property. The prerogative is given to the developer to exercise his choice in designating land either as accessory parcels or as common property on the draft strata plan.

Apart from land, the common property comprises all parts of the building or buildings that are not included in a parcel or an accessory parcel. Included in the common property are then, if the developer has not specified otherwise, the substance of the outer shell of the strata title building from the centre line of walls, floors and ceilings of the parcel, and the roofs and foundations of the building. Normally all means of access to parcels, for example entrances, lifts, stairways, passages, landings and fire escapes are also part of the common property. To these can be added ventilation shafts and installations for services such as electricity, gas, water, heating, air condition and radio as well as television antennae to serve all the
parcels owners. Self-contained portions of a building can be designated for common property use as a laundry, parking area, indoors swimming pool, and nursery school as well as recreation hall or storage facilities. Even separate buildings can be reserved by the developers as common property, for instance a detached building to serve as a residence for the caretaker or manager of the scheme. In determining whether a built-up area or building structure that is constructed within the high-rise building is or is not common property one has to ask whether that built-up area or that building is for the exclusive use and enjoyment of the parcel proprietor or accessory parcel concerned.

Under the Strata Titles Act 1985 (Act 318), part of the common property can be granted by agreement by the management corporation to any parcel proprietor for his exclusive use and enjoyment of part of the common property or special privileges in respects of the common property or part of it (See Section 3 of Third Schedule, by-laws for the regulation of subdivided buildings of Strata Titles Act 1985 (Act 318)). However, there is no requirement that the grant should be made pursuant to any form of resolution to ensure that it is not prejudicial or detrimental to the interests of other parcel proprietors. Neither is there any provision under the Act for such a grant to be noted on the strata register or for a description of the specific areas of the common property concerned to be recorded thereon. Such provision as noted above should be incorporated in the Strata Titles Act 1985 (Act 318) as it would place intending purchasers in a position in which they would be better informed of the overall state of affairs of the strata scheme in relation to the common property.

Evaluation of common property

A crucial problem with the Malaysia Statute is that it does not expressly designate structural components of the strata scheme as common property. This problem is aggravated by the provision in the Strata Titles Act 1985 (Act 318) that a parcel normally extends to centre of the outer walls, floors and ceilings of a parcel. This means that structural components of the building, like supporting pillars or columns located inside a parcel would form part of the parcel. Further, if the outer walls, floors or ceilings of a parcel were part of the structural components of the building, at least the inside half of these boundaries would be included in a parcel. Where the outside boundary of a parcel is not an exterior wall, ceiling or floor, a structural
boundary would not be included in the common property at all, but would belong to each proprietor up to the centre line. Consequently, the proprietor would be held liable partially for the maintenance of the structural components located in the inner half of the inside walls, floors or ceilings and wholly for all structural components situated inside his parcel. It seems grossly unfair that parcel proprietors should bear the responsibility for maintenance and repair of structural components, which benefits the strata title community as a whole.

Another problem is that since these components are part of a parcel, the proprietor would in principle be free to alter it, as he likes. Although this is subject to reciprocal easement of lateral and subjacent support (See Section 35(1) of Strata Titles Act 1985 (Act 318)) and a by-laws that a proprietor is not allowed to do anything in his parcel that could endanger the stability of the building (See Section 2(1)(c) and 2(1)(e) of Third Schedule, By-laws for the regulation of subdivided buildings of Strata Titles Act 1985 (Act 318)), the principle still applies.

9.10 Accessory Parcel

The Malaysian statute defines accessory parcel as:

“Accessory parcel means any parcel shown in a strata plan as an accessory parcel which is used or intended to be used in conjunction with a parcel.”

(Strata Titles Act 1985 (Act 318), 1985: 8)

The introduction of the concept accessory parcel enables the developer to allocate a utility unit, for example car parking space, storeroom or servant’s quarters to residents in high rise apartments. Under Section 10(4)(c), 5(a) and 5(b) of Strata Titles Act 1985 (Act 318), the concept of accessory parcel was introduced to enable areas on same lot of land and situated within or outside the subdivided building or land to used in conjunction with a parcel which is issued with a strata title, but cannot be dealt with independently of the main parcel to which it is made appurtenant. The developer now have the option either to designate utility units as accessory parcels to
be tied to specific main parcels or to retain them as part of the common property. The accessory parcel is not allocated any share units as mentioned in Section 36 of the Strata Titles Act 1985 (Act 318).

From the above definition, it is clear that an accessory parcel must comply with the following requirements. Firstly, the strata developer must delineate the built-up area that is constructed within or without the multi-storey building as an accessory parcel in the proposed strata plan itself. This is done through its appointed architect and its licensed land surveyor. Secondly, the accessory parcel can only be used in conjunction with the strata parcel assigned and it cannot exist to a strata parcel. An accessory parcel cannot be just an isolated parcel without any attachment to a strata parcel. Any built-up area, even though it was originally intended by the strata developer to be used as an accessory parcel will become common property if that particular built-up area has not been assigned to a strata parcel and has not been so earmarked and delineated in the developer’s proposed strata plan. Finally, the accessory parcel is not capable of being dealt with or disposed off independently of the corresponding strata parcel.

In Malaysia the most common example of an accessory parcel is a car parking bay. Another form of an accessory parcel is a storeroom that is located on the lower floors or basements of a multi-storey building for the storage of household items or golf bags or perhaps personal goods. However, possibly the most expensive accessory parcel likes the form of a high-speed elevator that is for the exclusive use and enjoyment of proprietor of the penthouse. This luxurious accessory parcel is capable of being privately owned if made appurtenant to the penthouse parcel.

There are at least two types of car parking bay, which could be designated as accessory parcels. One type is situated within the high-rise building itself. The car parking bays are then either located in the basement or upper storey car floors, or even constructed within a high-rise car parking block. In such instance, the accessory parcels, in the form of parking bay, are usually bounded by external wall, internal floors and ceilings (See Section c of Strata Titles Act 1985 (Act 318)). The other type of car parking bay is that which is not located within a building. Examples are open air car parking bays, both covered as well as uncovered. Such
accessory parcels are separated, one from another by boundary lines that are delineated and precisely demarcated on the ground surface that is either cement-rendered or pre-mixed.

In terms of the Act, the boundaries of an accessory parcel may also include an area erected within the same parcel of land as a separate tenement or as an extension of any completed building in accordance with the building plans approved by the planning authority. The ability to extend the boundary in this way could benefit multi-storey developments by enabling, say, a garage which is physically separated from the subdivided building or land but located on the same parcel, to be included in the individual parcel (See Section 10(5)(b)(i) of Strata Titles Act 1985 (Act 318)).

The mechanism of accessory parcels is utilised to provide the parcel proprietors the exclusive use of other parcels carved out of the common property of the scheme. These areas are indicated on the storey plan if they are situated in a building and on the location plan if the accessory parcel is situated outside the building (See Section 10(5)(a) of Strata Titles Act 1985 (Act 318)). The strata plan must clearly indicate the parcel to which the accessory parcel forms an accessory and the accessory parcels must be numbered (See Section 10(4)(c) of Strata Titles Act 1985 (Act 318)).

**Evaluation of accessory parcel**

Limited common property is distinguished from accessory parcel or exclusive use areas and general common property in that it is reserved for the use and enjoyment of two or more of the parcel proprietor only. It is neither not for the exclusive use by one proprietor, nor is opens for unencumbered use by all the parcel proprietors. Examples of such limited common property are special corridors, stairways and lifts which served only the penthouse in high-rise structure common to the apartments of a particular storey. The underlying idea of this classification is that the expenses of the maintenance and repair of this limited common property should be borne solely by the owners who benefit from it. A good alternative way is to introduce a Sub-Management Corporation or Two-tier Management Corporation for further enhance the administration and management of the strata scheme of such limited common property. The concept of limited common property could be quite useful in Malaysia to help with the distribution of expenses amongst parcel proprietors. The basic idea
that the expenses of the maintenance and repair related to certain common property should be borne solely by the proprietors who benefit from it is sound.

The concept of an accessory parcel as practised in Malaysia has created problem. It is clear that the maintenance and repair of the common property is the responsibility of the management corporation. However, there is no clear provision as to who is responsible for the maintenance of an accessory parcel. One would presume that it would be mostly the responsibility for the parcel proprietor to whose parcel the accessory parcel is connected, and that the proprietor should to a certain extent be made to pay the proportionate expenses for the upkeep of his accessory parcel.

As indicated above the Strata Titles Act 1985 (Act 318) does not make a difference as to whether accessory parcels are situated in the strata building or not. Thus a part of the land can be designated as an accessory parcel under current Strata Titles Act 1985 (Act 318) where allowed land parcel in the strata scheme. However, it is understood that an accessory parcel must be accessory to a main parcel and must not have an independent existence.

It is clear that the distinction between a parcel, common property and accessory parcel is vitally important since it demarcates which area of the scheme is for the exclusive use of particular proprietor and which area is for the collective use of the parcel’s proprietor. It also helps to define who is responsible for the management and maintenance of particular areas in the scheme. Besides that, a share unit entitlement will only be allotted to a parcel, so it is important to know which parts of the building should be treated as part of a parcel for this purpose. Finally, in order to procure individual insurance, the parcel owner must make sure which property will be covered.

9.11 Provisional Block

The Malaysian statute defines provisional block as:
“Provisional block means:
(a) In relation to a proposed strata plan, a block in respect of a building proposed to be, or in the course of being, erected on building or land, for which a separate provisional strata title is applied for;
(b) In relation to an approved strata plan, such a block shown therein, for which a provisional strata title is to be registered; and
(c) In relation to a book of strata register, such a block shown therein, for which a provisional strata title has been registered.”

(Provisional block means a block of building proposed to be or in the course of being erected, for which a separate provisional strata title is applied for in a phased development. This concept of provisional block which allows for phased development is to overcome the financial burdens faced by the developers for further construction of the uncompleted buildings. Phased development also allows developers to take account of changing market conditions. Moreover, phased development also allows purchasers to obtain strata titles in the earlier phases without having to wait for the whole strata scheme to be completed. This will, in turn, enable financial institutions to obtain better securities from their borrowers.

In order to prevent the developers from taking advantage of the provisions relating to the phased development and to protect the interest of the purchasers of parcels in the earlier stages, more specific conditions (See Section 9(2)(a), 9(2)(b) and 9(2)(c) of Strata Titles Act 1985 (Act 318)) and additional requirements (See Section 10(A)(2a), 10(A)(2b), 10(A)(2c) and 10(A)(2d) of Strata Titles Act 1985 (Act 318)) must be complied with in an application for strata titles.

Under Section 70 of the Strata Titles Act 1985 (Act 318), in any dealing of a provisional block that has been registered, such registration shall not pass any title or interest in the said provisional block, and the Registrar shall, upon discovery of the registration, cancel the registration and no person or body affected by such cancellation shall be entitled to any compensation.
Upon the completion of all the building within the provisional block, the proprietor of the building must, within six months from the date the building is certified by the public or local authority to be fit for occupation or use, make an application for the approval of Director of Lands And Mines or the Land Administrator for the issue of separate strata titles to the completed parcels. Under this provision, the purchasers of the provisional block are assured to be issued a strata title without further delay. In fact, failure to apply within the stipulated period will be subject to penalty and the extension period will be granted only one time by the Director of Lands and Mines by any further period not exceeding three months.

9.12 Share Units

The Malaysian statute defines share units as:

“Strata units, in respect of a parcel, means the share units determined for that parcel as shown in the schedule of share units.”

(Strata Titles Act 1985 (Act 318), 1985: 12)

Each parcel in a strata scheme is allocated with share value expressed in share units, except in the case of an accessory parcel where no share value shall be allocated. The purpose of the share unit entitlements shall determine the voting rights of the proprietors, the quantum of the undivided share of each proprietor in the common property and the proportion payable by each proprietor of the contribution levied by the management corporation pursuant to Section 45, 63 or 66 of Strata Titles Act 1985 (Act 318).

The allocation of share units is based on the guidelines given by the Land Administrator which has set out formula based on either the price list of the parcel or the floor area of the parcel multiplied by the factor based on the usage of that parcel, whether the types of uses are residential, offices, shops or industrial. The number of share units allocated determines the size of the proprietor’s share in the common property, his voting rights at the meeting of the management corporation when a poll
is taken, his proportional obligation to contribute to maintenance contributions, and his right to share in any distribution of surplus funds or compensation payments, for instance, if part of the common property is compulsorily acquired by a government authority, or if the strata scheme is terminated.

9.13 By-laws

In a subdivided building or land, By-laws or better known as House Rules are regulated the control, management, administration, use and enjoyment of the building. The Strata Titles Act 1985 (Act 318), Section 44 provides that the Third Schedule’s By-laws shall be in force for all purposes in the subdivided building or land, from the opening of the book of the Strata Register and shall not be amended by the management corporation.

These by-laws are primarily to clarify the duties expected of a proprietor within a subdivided building or land and the prohibitions imposed on him, as well as to ensure the reasonable use and enjoyment of the common property in relation to other proprietors. The by-laws in force in the subdivided building or land are binding on the management corporation and all the proprietors. The by-laws empower the management corporation to make agreements with a particular proprietor for the provision of amenities or services by the management corporation to and in respect of his parcel. The by-laws also require the management corporation to maintain in a state of good and serviceable repair, the fixtures and fittings existing on the lot; establish and maintain suitable lawns and gardens on common property where practicable; maintain, repair and where necessary, renew sewers, pipes, wires, cables and ducts existing on the lot; and also produce all policies of insurance effected by the management corporation together with receipts for the last premiums paid in respect of the policies, to a proprietor or registered charge of a parcel upon written request.

9.14 The Management

When we talk about the management of a subdivided building or land, we are essentially referring to the concept of a management corporation which is
incorporated under the law to play the pivotal role of managing the building. The importance of the management corporation is becoming more obvious with the increased number of buildings already issued and cannot be ignored nor put on hold anymore. It is high time that the management corporation’s problems are duly addressed by the Director of Lands and Mines and the Ministry of Natural Resources and Environment. The Ministry is well aware that there still exist quite a number of misconceptions regarding management corporations and their task of managing a subdivided building or land.

In strata scheme, there may be one or more completed buildings or land, which are subdivided in parcels or land parcels, including accessory parcels and provisional blocks, if any. All other parts for example corridors, lifts external wall, open spaces and other things are deemed to be common property. As far as he is concerned, the individual proprietor will only be taking care of the maintenance and repair of his own unit including any accessory parcel, if applicable. The responsibility for the maintenance of common property is to be shared among all the owners and this end, for practical purposes, the law provides for the formation of a body corporate known as the management corporation to facilitate the proper control and management of common property for the benefit of all the proprietors.

It is to be noted that in the context of a strata development, the concept of land tenure is a little different in that it involves the issuance of separate titles for individual parcels and provisional blocks (if any) which will be subject to exclusive ownership. Also, there is a shared plot of land held under Final Title, which constitutes the parent title. The individual titles are subsidiary to this parent title, which is under the name of the management corporation. Then there is common property, which is owned in common by the proprietors as a whole.

Strata title ownership also implies a new lifestyle or close community living whereby all the owners, because they live so close together, need to co-exist peaceably with each other and cooperate toward common goals for their common benefits. This is realised in the form of provision for basic maintenance services to the parcel owners for example lights for common corridors or skyways and other common areas, cleaning and upkeep of common areas, maintaining the recreational facilities in good
repair, insuring the building against fire and other risks, paying quit rent of the land and so on and so forth. Additionally, to service the recreational facilities, money is needed to acquire the necessary movable properties and other assets. The proper management of such recreational facilities and other amenities is also vital for the enjoyment of all proprietors. As such, it is for their own good that they come together and set out their goals as a collective whole through a representative body.

The interests of the proprietors in a strata scheme are indivisibly linked in a system of community of property. This community cannot function effectively without a properly structured organisation to handle the many problems and everyday details involved in keeping the scheme functioning smoothly and efficiently. Strata title ownership implies a new life style or close community living in which all the individual parcel proprietors, by virtue of the physical proximity of their parcels, need to co-exist with each other and to work towards common goals for their common benefit. This is manifested in the form of provision of basic maintenance service to the parcel proprietor. In addition to service the recreational maintenance facilities, financial expenditure is needed to acquire the necessary movable and other assets. The proper management of such recreational facilities and other amenities is also vital for the enjoyment of all the proprietors. It is clear then that there is a functional need for all the parcel proprietors to get together and to articulate their goals as a collective whole through a representative body.

9.15 Management Corporation

In the strata scheme, the ownership of the unit is issued by separate documents of strata title while the original land title will be registered under the name of a body corporate known as Management Corporation. The management corporation, which comes into existence immediately upon the opening of a book of the strata register, comprising all the owners of the units, is responsible for the administering the maintenance of the common properties such as the exterior of the buildings, open spaces, lifts, corridors, gardens, facilities services and community facilities; enforcing by-laws or house rules; and collecting contributions for the management fund from proprietors to maintain day-to-day care of the building.
The management corporation is a separate legal entity, which like a company has perpetual succession, a common seal and may hold property, sue and be sued in its own right and is stated not to be subjected to the Companies Act in Malaysia. The management corporation, registered as proprietor of the common property on behalf of all the owners of the parcels, has custody of the land title with the same powers over it as are conferred on a proprietor of land by the National Land Code 1965 (Act 56) (see Section 42(1) and 42(2) of Strata Titles Act 1985 (Act 318)). It is empowered with duties to look after the maintenance of the building and common property, either managed by managing agents appointed by the management corporation or the elected council members on behalf of the management corporation.

The Strata Titles Act 1985 (Act 318), like many other status on condominium or multi-storey buildings, organises the strata proprietor in a central management body, namely the management corporation. A parcel proprietor automatically becomes a member of this corporation when a parcel is registered in his name (see Section 39(1) of Strata Titles Act 1985 (Act 318)). In the interest of effective management, parcel proprietors must sacrifice some independence and power of individual decision making and submit to collective decision making by the management corporation. The management corporation is expected to act in accordance with the Act and the by-laws in making decisions on the management and administration of a wide range of aspects of communal living.

The management corporation is, however, a juristic person without an intellect, voice or other human attributes (see Section 39(1) of Strata Titles Act 1985 (Act 318)). It therefore has to perform its functions through its principal organ, namely its members in general meeting and the board or council appointed by them (see Section 39(4) of Strata Titles Act 1985 (Act 318)). The general meeting sets the standards and policies for the management and administration of the scheme by giving effect to its resolution by exercising and performing its statutory functions (see Section 39(5) of Strata Titles Act 1985 (Act 318)). If these organs fail to fulfil their functions properly, a complaints may be to the Director of Land s and Mines (see Section 50 of Strata Titles Act 1985 (Act 318)) of the state or an application may be made to court them (see Section 51 of Strata Titles Act 1985 (Act 318)) for the appointment of an
administrator to replace the management corporation and its organs managers of the scheme.

The management corporation is the medium through which the parcel proprietors control and manage the strata scheme. The principle sources of law applicable to the management corporation are the provision in the Strata Titles Act 1985 (Act 318). The Act imposes and confers upon the management corporation a number of functions and powers to enable it to efficiently and effectively discharge its obligations and functions for the benefit of all occupants in the strata scheme (see Section 43 of Strata Titles Act 1985 (Act 318)). In particular, it must control, manage and administer common property (see Section 43(1) of Strata Titles Act 1985 (Act 318)). To ensure that the management corporation does not neglect its duties and responsibilities, a sanction is provided against the corporation for breaching or failing to perform any of the duties imposed them (see Section 55 of Strata Titles Act 1985 (Act 318)).

Establishment and termination
The Strata Titles Act 1985 (Act 318) provides for the automatic establishment of a management corporation upon the registration of strata title parcel in the name of an outsider. The management corporation is automatically established from the date on which any person other than the developer becomes a proprietor of a parcel in the strata scheme after opening of the strata register (see Section 39(1) of Strata Titles Act 1985 (Act 318)). At its inception, the management corporation’s members comprise the original proprietor and the new parcel proprietor. Every subsequent proprietor of a parcel in his name and this includes the proprietor of a provisional block or blocks. Only parcel proprietors are members. Other like lessees, charges, family members, visitors and other occupiers or persons with an interest in a parcel do not become members of the management corporation. The original proprietor of the land remains a member of the management corporation as long as he owns a parcel in the scheme. Since ownership of a parcel is a prerequisite for membership of the management corporation, the original proprietor and any other proprietor lose their membership of the management corporation as soon as they cease to own a parcel. Because the management corporation has perpetual succession, its own
existence is not affected by changes in the identity of its members (see Section 39(2) of Strata Titles Act 1985 (Act 318)).

Once the management corporation is established, it continues to exist until its affairs are wound up and it is dissolved pursuant to an order to that effect by the court (see Section 56 of Strata Titles Act 1985 (Act 318)). No parcel proprietor can revoke his membership of the management corporation and it is not possible to dissolve the management corporation by manual consent of the members. A court order for the dissolution of the management corporation will normally be granted after or simultaneously with an order for the winding-up of the management corporation affairs following the actual or deemed destruction of the building or buildings comprised in a scheme (see Section 56 of Strata Titles Act 1985 (Act 318)).

Name, functions, locus standi and resources
The management corporation is known by the name appearing in the book of the strata register for the subdivided building or land (see Section 39(2) of Strata Titles Act 1985 (Act 318)).

The basic functions of the management corporation are to control, administer and manage the common property in accordance with the provisions of the Act and the by-laws and to enforce the by-laws made for the control and management of the scheme (see Section 43(1) of Strata Titles Act 1985 (Act 318)).

With regard to the locus standi of the management corporation, the Act provides that the management corporation is capable of suing and being sued in its own name (see Section 39(3) of Strata Titles Act 1985 (Act 318)). Although the management corporation is similar in character to a company incorporated under the Companies Act 1965, in that it has a common seal, and specific powers, duties and functions, it is, nevertheless, not subject to the Malaysian Companies Act.

The resources of the man in the first place of contributions collected from the parcel proprietors towards the administrative fund established for the upkeep, control, management and administration of the common property. These moneys are usually deposited with a bank or another financial institution in a current or savings account.
The resources also include claims for the contributions owed by parcel proprietors and movables acquired for the management and maintenance of the common property. The management corporation is also empowered to purchase or acquire or lease a parcel and the parcel or the rights acquired become part of its resources (see Section 43(2)(a)(b) & (d) of Strata Titles Act 1985 (Act 318)).

Division of powers between the council and the general meeting

In attempting to define the division of powers between the council and the general meeting, the Act confers the powers and duties of the management corporation on the council. However, the council are to perform the duties and exercise any of the management corporation’s powers subject to any restriction imposed or direction given by the management corporation at a general meeting (see Section 39(4) of Strata Titles Act 1985 (Act 318)).

The general meeting can therefore be regarded as the legislative organ of the management corporation performing the functions, which are reserved exclusively for it by the Act. For example, only the general meeting can amend, add to or repeal the by-laws in force immediately before the holding of the meeting (see Section 41(5)(d) of Strata Titles Act 1985 (Act 318)). Other matters which fundamentally affect the scheme are also reserved by the Act for the general meeting, for instance certain dealings with the common property, the extension of parcels and scheme, and changes to a proprietor’s voting rights or to the basis on which they contribute to expenditure (see Section 42(2) of Strata Titles Act 1985 (Act 318)). Decisions regarding the termination of the scheme must be taken either by the general meeting or by the court (see Section 56 and Section 57 of Strata Titles Act 1985 (Act 318)).

The by-laws of the Act given certain powers to the general meeting and also place restrictions on the powers of the council, for example, the general meeting has the power to elect councils, to remove them from office and to replace council members who ceased to hold office. The general meeting may also impose restrictions on the ability of the council to delegate their powers and functions to one or more of their number.
9.16 Rights and Obligations Attaching to Individual Parcels and Provisional Blocks

A proprietor of a parcel has the powers, similar to those conferred by the National Land Code 1965 (Act 56) on a proprietor of alienated land. Regarding the common property, the proprietor has the right of usage which he would have if he and the other proprietors were co-proprietors (See Section 34 to Section 38 of Strata Titles Act 1985 (Act 318)). A parcel proprietor may apply to have his parcel divided. If he has more than one parcel and they are contiguous, he can also apply to have them amalgamated and issued with one strata title.

Power with regard to parcel
Content of ownership of a parcel

The Strata Titles Act 1985 (Act 318) defines a parcel as a registered parcel proprietor (See Section 4 of Strata Titles Act 1985 (Act 318)). Thus, in order to qualify as a parcel proprietor under the Act, a purchaser of a parcel must abide by and follow the various regimented conveyancing steps and have the strata title transferred to and registered under his name. Upon registration, an individual strata title parcel certificate of title will be issued to the purchaser. In addition to the vesting of ownership in the individual parcel as distinct from the common property, the parcel proprietor must also have his share in the common property endorsed and certified on that transferred strata certificate of title as well as in the strata roll that must be prepared by the management corporation under the Act (See Section 15, Section 16 and Section 17 of Strata Titles Act 1985 (Act 318)).

Section 5 of Strata Titles Act 1985 (Act 318) provides that the Act has to be read and construed as if it were part of the National Land Code 1965 (Act 56). Consequently, the provisions of the National Land Code 1965 (Act 56) and the rules made under it, which are consistent with the provisions of the Strata Titles Act 1985 (Act 318) and the by-laws, and capable of applying to parcels, shall apply in all respects to parcels held under strata titles. The National Land Code 1965 (Act 56) thus treats the rights of registered proprietors to parcels within multi-storey buildings in the same way as it treats the rights of registered proprietors of pieces of land (See Section 92 of National Land Code 1965 (Act 56)). It provides expressly that proprietors of parcels
have the same rights in respect to their parcels as a land proprietor has over his or her land (See Section 5(2) of Strata Titles Act 1985 (Act 318)). All the incidents of ownership of immovable property conferred on the registered proprietors of alienated or registered land are conferred on the parcel proprietor of a subdivided building and in principle a parcel proprietor can deal with his parcel as he or she deems fit (See Section 34(1)(a) of Strata Titles Act 1985 (Act 318)).

The incidents of ownership of immovable property will include the proprietor right to sell, transfer or devise the parcel together with the accessory parcel (See Section 214 to Section 220 of National Land Code 1965 (Act 56)); to charge the parcel as security for a loan (See Section 241 to Section 280 of National Land Code 1965 (Act 56)); to create a lease or a tenancy exempt over the parcel (See Section 214 to Section 220 of National Land Code 1965 (Act 56)); or to create an easement of support (See Section 35 of National Land Code 1965 (Act 56)) and shelter over his parcel. A parcel proprietor may, like his counterpart holding alienated land, create a beneficiary interest by entering a trust caveat over his strata parcel in favour or a member of his or her family (See Section 332 of National Land Code 1965 (Act 56)).

The most important legal transaction involving a parcel is the original transfer thereof from the developer to a purchaser and its subsequent transfer to successor in title. A transfer can arise from various causes, from a sale, a donation, an exchange, and a will or on intestacy. Whatever the causes of the transfer, the requirements for the transfer are substantially the same. A transfer is one of the dealings capable of being effected under National Land Code 1965 (Act 56) with respect to alienated lands and an interest therein (See Section 205 of National Land Code 1965 (Act 56)).

In addition, the parcel proprietor may divide his or her parcel into two or more new parcels, each to be held under separate strata title. Where he or she holds two or more contiguous parcels, he or she may amalgamate them to form one parcel to be held by him or her under a single title (See Section 25(1)(a) and Section 25(1)(b) of Strata Titles Act 1985 (Act 318)). It may be pertinent to note that no by-laws is allowed to prohibit or restrict the transmission, transfer, lease or change of, or any other dealing with, any parcel in a subdivided building or, to destroy or modify any
easement expressly or impliedly created by or under the Act (See Section 44(5)(a) of Strata Titles Act 1985 (Act 318)).

Apart from these wide powers of disposition expressly dealt with in the Act, the proprietor has wide powers of use and enjoyment in respect of the parcel. This can be implied from the mere fact that he is called proprietor (See Section 4 of Strata Titles Act 1985 (Act 318)) and other sections that allude to his or her ownership of the parcel (See Section 34(1) of Strata Titles Act 1985 (Act 318)). This implies that in principle a parcel proprietor has full range of entitlements usually ascribed to owners as indicated above. These include inter alia the right of occupation, the right to prevent someone from entering the parcel and the right to make the fullest use of the parcel (See Section 44(1)(a) of National Land Code 1965 (Act 56)).

The crucial question is whether a parcel proprietor really acquires the same extensive power of use and enjoyment over his parcel as a landowner has over his house. In this regard, the question can be posed whether a parcel proprietor can genuinely occupy, use and enjoy his or her parcel at his or her discretion, prohibit other persons from encroaching on his or her rights and freely dispose of and alienated his or her parcel. More practically, one can enquire whether the fact that the proprietor obtains ownership of the parcel entitles him to dispose of the parcel to anyone he likes, remove inside walls and doors, redecorate the parcel and equips it with a new bathroom or kitchen. One may also ask whether he is allowed to drive nails into the walls to hang pictures and repaint, retile and fit the parcel out with wooden panels at his direction. One has to concede that the owner of a house on a separate plat of land is entitled to do most of these things. The crucial question is whether the proprietor of a parcel in a multi-unit building acquires the same rights in respect of his parcel and, if the rights do not match the same standard, whether it would be correct to state that the proprietor of the parcel acquires genuine ownership of the parcel.

**General restriction on ownership**
In Malaysia, a parcel proprietor’s right with regard to the parcel is restricted in various ways. The right of disposal and transfer of a parcel are subject to restriction. The right of use and enjoyment is restricted by the general law of nuisance, which prohibits an owner to cause intolerable nuisance to his or her neighbours. Parcel
proprietorship is further limited by existing easements, other rights and restrictive conditions endorsed or filed with the strata plan. Again, the Strata Titles Act 1985 (Act 318) provides for a number of reciprocal easements of support, thoroughfare and service, which for instance inhibit the proprietor from making alterations inside the parcel. Finally, the Act and the schedules to the Act contain quite a few provisions and by-laws, which restrict a proprietor in the exercise of his or her rights of use and enjoyment of the parcel.

Limitations on transfer

A parcel proprietor’s powers of transfer are exercisable subject to any prohibition or limitation imposed by the National Land Code 1965 (Act 56) itself or by any other written law for the time being in force. Examples of such prohibition or limitation imposed by the National Land Code 1965 (Act 56) relate to the categories of persons and bodies in whose favour such transfers may be effected (See Section 43 and Section 205(2) of National Land Code 1965 (Act 56)). Another form of restriction is in a form of restriction of ownership to foreign interest (See Section 433A to Section 433H of National Land Code 1965 (Act 56)). In essence non-citizens or foreign companies may acquire or deal in, inter alia, residential or commercial properties or an interest therein only with the prior written approval of the state authority effected (See Section 5 of National Land Code 1965 (Act 56)). The restrictions imposed therein also apply to such properties currently owned by a non-citizen or foreign company in that such properties cannot be dealt with in favour of another non-citizen or foreign company, unless prior written approval is obtained. This restriction is also applied to a strata development scheme (See Section 5(1) and Section 5(2) of Strata Titles Act 1985 (Act 318)).

The powers of transfer conferred by the National Land Code 1965 (Act 56) are also subject to any restriction in interest to which the land is for the time being subject (See Section 214(2)(b) of National Land Code 1965 (Act 56)), such as a prohibition on the transfer of land in question without the prior written approval of the state authority.
Limitations under the general law of nuisance

A parcel proprietor’s rights of use and enjoyment of his or her parcel is curtailed first by the general rule of the law of tort for the use of property in such a manner as not to injure the lawful right of others. The basis of judicial recognition of tortuous nuisance lies in the fact of unreasonable interference with a judicially recognised interest of the claimant. In terms of the above maxim the proprietor can use and enjoy his parcel freely as he does not infringe upon the rights of other parcel proprietors. In the interest of good neighbourliness, a parcel proprietor may not exercise his rights in a manner that constitutes an abuse of his rights.

Restriction by existing easement and restrictive conditions on the strata plan

The Strata Titles Act 1985 (Act 318) provides expressly that the ownership in a parcel is limited by existing easement, other rights and restrictive conditions endorsed or filed with the strata plan. Examples of existing easement may be a right of use or the right of access of a neighbour across the balcony to the roof. Examples of restrictive conditions may be the categories of use the building is subjected to or limitations on the height of the building. These restrictions are imposed according to the will of the proprietor or his predecessor in title and therefore cannot be considered inherent in the notion of ownership of a parcel. It may be noted here that the proprietorship of land also may be subjected to various restrictive conditions pertaining to environmental and planning law (See Section 103 to Section 129 of National Land Code 1965 (Act 56)).

Reciprocal easement of support, service and shelter

The Strata Titles Act 1985 (Act 318) specifically makes provision for implied reciprocal easements of support and service in favour of and against each other (See Section 35(1) of The Strata Titles Act 1985 (Act 318)). Each parcel proprietor shall be entitled to have his parcel sheltered by all such parts of the subdivided buildings or lands are capable of affording shelter and may, for the purpose of replacing, renewing or restoring any such shelter, enter upon the common property or any other parcel (See Section 35(2) of The Strata Titles Act 1985 (Act 318)). Rights of support encompass subjacent and lateral support by the common property and by every other parcel capable of affording support. Rights of service pertain to the passage or provision of water, sewage, drainage, gas, electricity, garbage, artificially cooled or
heated air and other telecommunication services through or by means of pipes, wires, cables or ducts (See Section 35(4) of The Strata Titles Act 1985 (Act 318)). The rights and obligations mentioned above are implied. This means that they are effective without memorial or notification in the strata register, and that there shall be implied in respect of them such ancillary rights and obligations as are reasonably necessary to make them effective (See Section 35(3) of The Strata Titles Act 1985 (Act 318)).

Duties imposed by the Act with regard to parcel
Ownership of strata title is further curtailed by the following duties expressly imposed on a parcel proprietor by the Act. The proprietor is obliged to allow the management corporation and its agent’s at all reasonable times to enter his parcel for the purpose of inspecting the parcel and for effecting repairs. The management corporation must give reasonable notice of its intention to enter the parcel. The only exception is in the case of an emergency when the management corporation can still enter the parcel even without reasonable notice of its intention having been given (See Section 2(1)(a) of Third Schedule, By-laws for the regulation of subdivided buildings of Strata Titles Act 1985 (Act 318)). The maintenance envisaged includes maintaining, repairing or renewing pipes, wires, cables and ducts used or capable of being used in connection with the enjoyment of any other parcel or common property, and maintaining, repairing or renewing the common property. Once the agent of the management corporation has entered the parcel, he or she is entitled to execute any work or to do any act reasonably necessary for or in connection with the performance of the duties of the management corporation or the enforcement of the by-laws affecting the duties (See Section 2(1)(a)(i) to 2(1)(a)(iv) of Third Schedule, By-laws for the regulation of subdivided buildings of Strata Titles Act 1985 (Act 318)).

The above provision restricts the exclusive rights of use and enjoyment of a parcel proprietor in that he is obliged to grant access to outsiders. The Act however, compels him to grant access only to a person authorised by the management corporation (See Section 5 and Section 6 of Second Schedule, Provision for Management Corporation of Strata Titles Act 1985 (Act 318)). This is usually done at a general meeting, where as a parcel proprietor he is member of the management
corporation with a right to vote. He therefore has some control over the number and type of persons who can obtain written authorisation from the management council to enter his parcel. Entry need only be allowed at reasonable hours except in case of an emergency. In instances where a water pipes has burst, it is to the advantages of the whole development that immediate entry without any notice should be allowed (See Section 2(1)(a)(i) to 2(1)(a)(iv) of Third Schedule, By-laws for the regulation of subdivided buildings of Strata Titles Act 1985 (Act 318)). It should finally be noted that the limitation imposed on a parcel proprietor’s rights by the right of entry of certain outsiders in reinforced by the implied reciprocal easement of the passage in favour of each parcel (See Section 35 of The Strata Titles Act 1985 (Act 318)).

The second duty imposed on the proprietor of a parcel is to carry out immediately all the work ordered by any competent public or statutory authority in respect of his parcel. This does not include work ordered for the benefit of the building generally. The proprietor is further obliged to discharge all assessments, charges and outgoings which are payable in respect of his parcel (See Section 2(1)(b) of Third Schedule, By-laws for the regulation of subdivided buildings of Strata Titles Act 1985 (Act 318)). Should the proprietor fail to do so, the management corporation may, inter alia, apply to the court for an order to enforce performance of this obligation imposed under the relevant by-laws (See Section 44(7)(a) of Strata Titles Act 1985 (Act 318)). The second duty imposed on a parcel proprietor, namely to carry out all work ordered by a local authority and to pay all charges and expenses with regard to his parcel, is analogous to that applying to conventional ownership of land. Statutes such as the Local Government Act 1976 (Act 171) and Street, Drainage and Building Act 1974 (Act 133) are applicable to both the land and the parcel.

The third duty imposed on the proprietor of a parcel is to maintain and keep the parcel in a state of good repair. The proprietor is required to maintain his parcel including all sanitary fittings, water, gas, electrical and air-conditioning pipes and apparatus thereof in a good condition so as not to cause annoyance to the other proprietor (See Section 2(1)(b) of Third Schedule, By-laws for the regulation of subdivided buildings of Strata Titles Act 1985 (Act 318)). This duty extends to carrying out the necessary repair works in the parcel concerned so as to stop any water seepage or leakage arising there from affecting the enjoyment of other parcels.
in the building. This duty may at first glance seem an excessive curtailment of a parcel owner’s proprietorship. The proprietor of a building may in principle demolish it or allow it to go to rack and ruin and he is the only one who will suffer if it depreciates in value. However, in the case of strata title development, the various parcels are part of an interrelated and interdependent complex. The states of repair of each parcel inevitably affect the tone and value of the building. Permitting a proprietor to demolish his parcel or even allowing him to let it fall into disrepair would immediately affect the solidity and security of adjoining parcels and common property and diminish the value of every unit in the scheme.

The fourth duty imposed on the proprietor is to use or to permit his or her parcel to be used in such a manner or for such a purpose as not to cause a nuisance or danger to any other proprietor or their families. This obligation is normal feature in leases (See Section 231 of National Land Code 1965 (Act 56)). It is to be noted that the additional duty should be imposed also on a parcel proprietor to ensure that members of his family, visitors and other occupants of his parcel, for instance lessees, comply with this obligation. This should be considered as a natural extension of the principle of neighbour law based on the principle that one should use one’s own property without prejudicing others (See Section 2(1)(e) of Third Schedule, By-laws for the regulation of subdivided buildings of Strata Titles Act 1985 (Act 318)).

The final restriction imposed on parcel proprietors is that a parcel should be used for the purpose for which it was intended. Some indication of the intended use of some or all the parcels in a development scheme can be obtained from the strata plan. From the plan one should at least be able to discover whether the parcels in the building are intended for residential, commercial or mixed development purposes. A parcel intended for residential purposes should not be turned into commercial premises and vice versa. In a building destined for commercial purposes, rules can exclude certain types of business or permit certain types of business to be conducted only on the ground floor and not on any the higher floors. Examples of such rules could be that a restaurant can only be operated on the ground floor. In cases where the intended use of parcels is expressly or by implication on the registered strata plan, their use for a different purpose is not permissible except with the written consent of all the proprietors or a formal amendment of the strata plan.
General power as regard to the common property

In Malaysia, the common property belongs to the management corporation (See Section 42 of Strata Titles Act 1985 (Act 318)). Nevertheless, a parcel proprietor is given the right of user as if he and the other proprietor was co-proprietor. The extent to which a parcel proprietor may use and enjoy the common parts of the development, technically depends on the size of his share units proportionate to other proprietors (See Section 34 and Section 36 of Strata Titles Act 1985 (Act 318)). However, because of the practical difficulties involved in dividing the use and enjoyment of land and the common parts of the buildings or lands according to a quota system, a general principle has been incorporated in the Act whereby a parcel proprietor must use and enjoy the common property in such a manner as not to interfere unreasonably with the use and enjoyment thereof by other proprietors or their families or visitors (See Section 2(2) of Third Schedule, By-laws for the regulation of subdivided buildings of Strata Titles Act 1985 (Act 318)). Apart from special rules and resolutions of the management corporation, each parcel proprietor is thus entitled to substantially the same rights of use and enjoyment of the common property, irrespective of whether his respective undivided share is of equal size or not where a higher share unit as such cannot confer special or greater rights of user.

No rights in common property may be disposed of by a proprietor except as rights appurtenant to a parcel and any disposition of a parcel by a proprietor shall without express reference include a like disposition of the rights in the common property which are appurtenant to the parcel (See Section 34(3) of Strata Titles Act 1985 (Act 318)).

General restrictions of such power

Basically, a parcel proprietor may freely use and enjoy the common property as long as his use and enjoyment does not interfere with the concurrent rights of other parcel proprietors and occupants. As with the parcel’s proprietor right to use his parcel, the doctrine of abuse of rights and the rules of neighbour law also play a role in determining the content of a parcel proprietor’s power to use and enjoy the common property.
Firstly, no proprietor has the rights to exclude others as against another proprietor or lawful occupant. He or she cannot prohibit or prevent another owner or occupier from using any part of the common property. Thus he cannot prevent another owner from making over the grass, from using the lift or from using the common barbeque facilities or the communal swimming pool. He cannot for instance prohibit his neighbour’s children from using the swimming pool on the pretext that they make too much noise.

Secondly, no proprietor may decide unilaterally on work to be done on common property. He may not on his own account paint the walls red or equip the recreation room according to his own taste or decide without consulting the others what plants should be planted in the garden area. He must get authorisation from the management council or the general meeting for all the work to be done on the common property, especially that relating to the exterior of the building.

Thirdly, no proprietor may appropriate for himself the exclusive use of any part of the common property. He cannot isolate part of the corridor as his storage space, or use part of the garden area to erect his barbeque facilities or a doll’s house for his daughter or a kennel for his dog. However, right of exclusive use of specific parts of the common property may initially be granted by agreement between that particular parcel proprietor and management corporation. The grant of the exclusive use and enjoyment of the common property can be in the form of enjoyment of part of the common property or special privileges in respect of the common property or part of it (See Third Schedule, By-laws for the regulation of subdivided buildings of Strata Titles Act 1985 (Act 318)). The exclusive part of the common property granted to be used and enjoyed by the parcel proprietor is normally not in the form of parking spaces or garden because there kinds of spaces usually are added to parcels as accessory parcels.

Finally, no proprietor may use the common property for an abnormal purpose or in an unusual way. He cannot for instance use the lawn for athletic contests or rugby matches or allow his children to use the staircases as slides or corridors for playing ball games or use the communal meeting room for a political gathering.
Apart from the restriction imposed by the general principle discussed above, a parcel proprietor’s power with regard to the common property are further curtailed by easements, other real rights and restriction conditions registered on the strata plan as a burden on the common property.

As in the case of ownership of a parcel, the content of a parcel’s right of use and enjoyment of the common property can also be curtailed by the provisions of the rules of the scheme (See Section 6 of Third Schedule, By-laws for the regulation of subdivided buildings of Strata Titles Act 1985 (Act 318)).

Firstly, a parcel proprietor shall not throw or allow to fall, any refuse or rubbish of any description on the common property or any part thereof except in refuse bins maintained by him or in refuse chutes provided in the building (See Section 6(c) of Third Schedule, By-laws for the regulation of subdivided buildings of Strata Titles Act 1985 (Act 318)). Where a building is provided with chutes for the disposal of refuse, the parcel proprietor or occupier concerned is required to ensure that before any refuse is thrown into the chutes, it is securely wrapped in plastic bags or other similar materials. He is prohibited from disposing any large objects into the chutes, which may obstruct the free fall of refuse therein. Where no chute for the disposal of refuse is provided in respect of a lot, the parcel proprietor or occupier concerned is required to maintain within his parcel, or on such part of the common property as may be authorised by the management corporation, in clean and dry condition, an adequately covered receptacle for the disposal of refuse. Before refuse is placed in the receptacle, the proprietor or occupier must ensure that it is securely wrapped or, in the case of tins or other containers, completely drained.

Secondly, a parcel proprietor shall not keep any animal on the common property, which may cause annoyance to any other proprietor (See Section 6(d) of Third Schedule, By-laws for the regulation of subdivided buildings of Strata Titles Act 1985 (Act 318)). While the Strata Titles Act 1985 (Act 318) makes provision for additional by-laws to be made by the management corporation for regulating the control, management, administration, use and enjoyment of the strata titled building or land and common property, there is no necessity that every rule lain down by the management corporation must be made by way of by-laws.
Evaluation

In terms of the traditional definition of ownership, an owner is allowed absolute powers to deal with his property as he pleases but subject to the restrictions imposed by the state authority and the law (See Section 76(e) of National Land Code 1965 (Act 56)). However, one finds that the proprietorship of especially land can be subjected to various very burdensome restriction conditions pertaining to environmental and planning law. This is done to such an extent that the rights embodied in the ownership of land have been transforms to a large extent to a sacred obligation to conserve land and its attributes for generations to come.

Furthermore, the basic features of strata ownership not only warrant stricter limitations on the ownership of a strata parcel but also limitations of a different kind than those imposed on the ownership of land. The characteristic features of strata ownership are the following. First, the object of strata ownership is not indestructible building. Secondly, the parcels of a strata title building are not structurally individualised but structurally interdependent. Third, the community life in a strata building is much more intensified than the community life of a group of neighbouring landowners. Fourth, the community of strata proprietors is more or less permanent, and is only terminated on dissolution of the strata ownership scheme. Therefore, these peculiar features of strata ownership justify more intensive limitations and restrictions on the powers and entitlements of a parcel proprietor with regard to his or her parcel.

Thus, the fact that a parcel is physically part of a destructible building justifies the positive obligation placed on a proprietor to maintain his parcel in a state of good repair. His legal right in the parcel is so closely connected with the physical existence of the parcel that it will disappear if the building collapses on account of lack of maintenance of any parcel in the building. Again, the feature of structural interdependence makes sense of the reciprocal easements of lateral and subjacent support. Without such support, the physical entities, and with them the legal object of the proprietor will disappear. Finally, the intensified community in which proprietors live justifies a stricter application of the rules of nuisance and the prohibition of the most harmful categories of nuisance in the by-laws of the scheme.
Consequently, although these features imply a special type of ownership, it still remains genuine ownership. Strata ownership should therefore not be degraded to a lesser limited real right or a nebulous legal tenure but should be placed on the same footing as the ownership of land.

As far the use and enjoyment of common property, it is clear that a parcel proprietor’s powers of use and enjoyment of the common property are more restricted than his or her powers of use and enjoyment of his or her parcel. This is understandable since a proprietor does not have the same exclusive individualistic powers inherent in the ownership of a parcel with regard to the common property. He is a common user of the common property and must share the common property with all the other proprietors. It is therefore clear that none of the individualistic characteristics of traditional co-ownership are present in the concept of common ownership in terms of the Strata Titles Act 1985 (Act 318).

The Act does not provide a clear provision on the legal position of the common property. The Act expressly states that the common property belongs to the management corporation and not to a proprietor in an undivided share (See Section 34(1)(b) of Strata Titles Act 1985 (Act 318)) but then the Act gives to the proprietors, the right of use and enjoyment with regard to the common property as if they were co-proprietors. Although the proprietors have no rights over the common property, the Act states that, no rights in the common property shall be disposed of by a proprietor except as rights appurtenant to a parcel (See Section 34(3) of Strata Titles Act 1985 (Act 318)). Consequently, when share units are discussed, the Act treats proprietor as if they have share in the common property. What the Act seems to have done is to make the management corporation the proprietor of the common property (See Section 42(1) of Strata Titles Act 1985 (Act 318)).

9.17 The Settlement of Disputes

Parcel proprietors in strata schemes frequently interact with each other as they enter the building’s lobby, elevator, parking lot or common recreational facilities. The
closer the proximity and the frequent the interaction, the greater the opportunity for personality clashes to arise.

Practical experience has shown that the management council or managing agents frequently lack of the required toughness or mediating skill to resolve disputes. Furthermore, their impartiality is often under suspicion on account of conflict of interest or inconsistency in their application of the rules. The doors of the civil courts are naturally open to hear these disputes. However, because of excessive delays, the costliness and technicalities of the adversarial litigation system and the ill will and hatred it generates between the combating litigants, or courts are often perceived to be an inappropriate forum for the settlement of disputes in strata title schemes.

It is indeed true that the modern world has neither the time nor inclination for the excessive delays and costliness that litigation entails. Everyone likes disputes to be resolved through a process which is speedy, to avoid unnecessary absence from day-to-day work. The cost of settling disputes must also not be unpredictably high or disproportionate to the importance of the claim. Furthermore, the person sitting in judgement must not be ignorant of the realities of the disputed situation.

Accordingly, the question which arises is whether there is a need for a simple and inexpensive system for the settlement of disputes in strata schemes as an alternative to the commencement of legal proceedings in the courts. Such an alternative system would cover cases where the circumstances do not justify the expense of court proceedings. By allowing the courts to devote their attention to more important cases, time and unnecessary expenses would be saved.

In Malaysian strata scheme, the management corporation previously had to take the initiative in addressing conflicts. However, management corporations were not able to handle complex conflicts. Occasionally during this time, corporations called upon the State Director of Lands and Mines for advice, but since this official does not play an active role in supervising management corporations and is preoccupied with his other functions his advisory service was very limited in practice. As a last resort, the matters had to be brought before the court. To avoid a costly and time consuming
court procedure the Malaysian legislation amended the Strata Titles Act 1985 (Act 318) in 2001 to provide for the establishment of the Strata Titles Board.

**Strata Titles Board**

The Malaysian Strata Titles Board was set up as a mechanism to settle disputes amongst the parcel proprietors and the management corporation and to enforce strata title legislation more effectively. Each board will come under the jurisdiction of the state government. The Strata Titles Board is an independent statutory tribunal which is quasi judicial in nature. The adjudicative powers of the board are conferred by an Act of Parliament; namely Part Ixa of the Strata Titles Act 1985 (Act 318). The board can only perform within the limits of its statutory jurisdiction and from time to time makes decisions to determine the legal rights of particular parcel proprietors.

**Composition**

The board is composed of a President and one or more Deputy Presidents, a Registrar and a panel of twenty members, all of whom are appointed by the state authority (See Section 67A(6) of Strata Titles Act 1985 (Act 318)). The President and Deputy Presidents must be qualified persons within the meaning of the Legal Profession Act 1976 (See Section 67A(3) of Strata Titles Act 1985 (Act 318)). The names of the President, Deputy Presidents and members appointed must be announced in the State Gazette (See Section 67A(5) of Strata Titles Act 1985 (Act 318)). A separate board is composed for the purpose of hearing and determining each dispute of which the board has cognisance or any other matter in respect of which the board has jurisdiction. In each hearing the board shall consist of the President or the Deputy President and two other persons selected from amongst the members of the board. The President or Deputy President must act as the chairperson.

**Initiation of proceedings**

An application to the board must be made on the prescribed forms contained in the Forms A of Second Schedule of Strata Titles Act 1985 (Act 318) and must be accompanied by the prescribed fees, a copy of the issue documents of title of the relevant parcel and any other relevant documents. Four copies of the documents together with the fees must be filed in the Registrar’s office. The application to the board may be made by the registered proprietor, the management corporation, the
registered lessee, and the tenant of the parcel. An application made by an application other than those stated above will only be accepted with the prior written consent of the President.

Procedure
In terms of the Act, each board, one appointed, shall follow the procedure applicable to the hearing. The Chairman shall begin the hearing by explaining in brief the application, the matter in dispute and the remedy or settlement applied for to the parties involved. An application may appear before the board in person or may be represented by counsel or any other person (See Section 67S(1) of Strata Titles Act 1985 (Act 318)). The council may examine witnesses and address the board on behalf of the applicant. A management corporation appearing before the board may be represented by counsel or a member of the council of the management corporation (See Section 67S(2) of Strata Titles Act 1985 (Act 318)).

The board is empowered to summon any person attend a hearing of the board at the time and place specified in the summons to give evidence and to produce books, documents or writings in his custody or control. However, a person shall not be bound to produce books, documents or writings that are not specified or otherwise sufficiently described or which he would not be bound to produce upon a subpoena (See Section 67T(3) of Strata Titles Act 1985 (Act 318)). A person served with summons who without reasonable excuse disobeys the summons shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding six months or to both.

The board may administer an oath or affirmation to a person appearing as a witness before the board whether or not he has appeared in answer to a summons and may examine the witness upon oath or affirmation (See Section 67U(1) of Strata Titles Act 1985 (Act 318)). A witness appearing before the board must be shown in as a witness or make an affirmation; must answer to any question relevant to the proceedings which are put to him either by the board or any person entitled to appear before the board in those proceedings; and must not in deliberation give false testimony in any evidence given by him to the board (See Section 67U(2)(a), (b) and (c) of Strata Titles Act 1985 (Act 318)). A witness before a board shall have the
same protection and, in addition to the penalties provides by this Act, the same liabilities as he would have had if he had been a witness before a court (See Section 67U(3)(a), (b) and (c) of Strata Titles Act 1985 (Act 318)).

The hearing begins by the Chairman directing the applicant to present his or her case by adducing evidence concerning the matter in dispute. After the applicant completes adducing evidence, the chairman then instructs the defendant to adduce evidence. The parties involved can only refer to the bundle of documents prepared by the Registrar. Any written statement or documents referred to by any of the parties must be recorded. The proceedings of the board are open to the public. The President must keep the minutes of the board, including a note of any oral evidence given before the board.

Jurisdiction
The Strata Titles Board jurisdiction is set out in Sections 67H to 67R of the Strata Titles Act 1985 (Act 318). By virtue of these provisions, a board is allowed to issue ten different types of order.

Enforcement
The board may make an order include such ancillary or consequential provisions as the board thinks fit, including costs to be paid by the applicant, a management corporation or any person against whom the order is made or costs to be paid by a party for making a frivolous application to the board (See Section 67R of Strata Titles Act 1985 (Act 318)). The board may order a management corporation, its chairman, secretary, treasurer or its council, a managing agent or a proprietor or other person having an estate or interest in a parcel or an occupier of a parcel to do or refrain from doing a specified act with respect to a subdivided building, land or the common property.

The Courts
Under Strata Titles Act 1985 (Act 318), the courts are also empowered to resolve disputes in a strata scheme. The Act (See Section 44(7) of Strata Titles Act 1985 (Act 318)) empowers the court, upon application by the specified person, to grant an order to enforce the performance of any by-laws. In addition, the court may issue a
restraining order to the person to restrain him from breaching any of the by-laws. Damages can be awarded for any loss or injury suffered by any persons or property arising out of the breach of any by-law to any proprietor, the management corporation or the administrator. However, if the court thinks fit it may also make such order against such persons, the management corporation or the members of its council or the administrator.

Alternative dispute resolution in Malaysia

The usual mode of dispute resolution, namely, legal adjudication by courts, is now proving to be more and more incapable of delivering the expected results. Because of the lack of protraction of the court procedure and the high costs of litigation, courts are only approached as a matter of last resort. Moreover, the courts almost everywhere in the world are struggling to cope with the ever increasing number of cases coming up before them. And so the search is on for some other non-litigations, non-adversarial, and more cost effective way of disputes resolution such as arbitration mediation or conciliation.

The same applies for disputes involving strata titled proprietors. When the Strata Titles Board was established it was hoped that most of the complaints received by the House Buyer Association could be solved through it. However, experience in neighbouring countries has shown that a better mechanism for non-adversarial and more cost effective adjudication is urgently needed.

It is obvious that the Strata Titles Act 1985 (Act 318) does not provide for any alternative dispute resolution mechanisms as an alternative to taking proceedings in court or before a board, as the case may be. It is strongly suggested that apart from extending the jurisdiction of the boards, mediation be introduced formally so that the parties concerned would, in cases where mediation could resolve the dispute, be compelled to subject their dispute to mediation before proceeding with an action before the Strata Titles Board. As mediation is likely to resolve a fair number of the disputes that arise, it makes more sense not to proceed first before a board. Not only will such procedure effect savings in terms of time and cost, but also the number of cases to be dealt with by the boards, will be reduced. Additionally, having the services of a mediator to help resolve disputes within the strata scheme often
displaces the personal animosity that might otherwise between participants in the scheme.

Generally, it seems as if the future of Alternative Dispute Resolution in Malaysia is bright. The recent establishment of the Malaysian Mediation Centre by the Bar Council of Malaysia, the Insurance Mediation and the Banking Mediation Bureau, is very encouraging.

Evaluation
The strata schemes in Malaysia are now fortunate to have board functioning as an adjudicatory mechanism outside the courts to take care their disputes. Its cheapness, accessibility, expedition, expertise, freedom from technically, flexibility of approach should be appreciated and supported by the people concerned. The inclusion of qualified lawyers would infuse confidence in the public’s mind as to the fairness of the board’s decision. It experts are chosen to serve on the boards the disputes would be adjudicated by persons equipped with the unique capacity to see things in their context.

The Act provides that the board shall have complete discretion in deciding a case and that a decision should be reached with an upward limit of six months from the acceptance of an application by the board. This is clearly one of the advantages over the ordinary courts. Resort to the board is preferred when prompt action is needed. Hearing before the board is public hearing. Publicity of proceedings confers more confidence in the parties concerned, in the impartially of the proceedings, especially when they know that the press and the public have the right to find out what is going o. From the point of view of the board itself, publicity may enable their point of view to become generally known to the public and possibly avoid the need for further hearings especially if written reasons for decisions by the board are required and are published.

The board is unencumbered by a plethora of technical and elaborate rules of procedure and evidence. This is one of the advantages often claimed for tribunals over courts. This is vital to the ordinary person who finds any kind of public appearance before the court somewhat intimidating. An informal atmosphere puts
the disputes at their ease so that they can present their cases in the best possible manner. The adoption of the inquisitorial system as opposed to the adversarial procedure for proceedings of the board has broken down the formal barriers between the parties and the adjudicators of the board.

The board is easily accessible to the applicant to start an action himself, especially where the method of lodging an application is made as simple as possible by the use of standard statutory forms. The numerous issues that arise from day-to-day, affecting the interest of people in the strata scheme, can now be disposed of much more cheaply than can be done in the formal, overworked and costly courts of law. The speed and informality mentioned above also contribute to the relative cheapness of board proceedings.

Obviously, the board can help to enforce the legislation in the course of settlement of disputes. Private interests are also safeguarded against the mismanagement of property. Even though the Act has given management corporations more power to run their schemes, the board can act as a watching mechanism to provide checks and balances. However, the board is not without its limitation. Each case presented before the board is decided on its own merit and surrounding circumstances. The board is not bound by its decisions in other sittings. It may therefore reach a different conclusion from that reached in other cases given the same set of circumstances. This is undesirable as inconsistency and unpredictability become inevitable. Appeals to High Court are clearly more restricted, in that the court is concerned only with questions of law, its interpretation and application. A person’s legal standing or status is closely controlled if he cannot prove that the board had erred on the application of a legal principle of the primary facts. In practice, it is also difficult to draw the thin line between question of law and question of facts.

Although the board has jurisdiction to adjudicate an extensive range of issues, it is the general consensus of the industry that additional powers could be conferred on the board to enforce compliance with the by-laws, to restrain the breach of the by-laws, and to compound offences on recalcitrant defaulters for non-payments of contribution funds. These critics seem to forget that the primary function of the board is to settle disputes amongst parcel proprietor themselves. In the case where
the amount of contribution owed can be proved beyond doubt, there is simply no
dispute to be settled and the board cannot be used to enforce the financial obligation
of the defaulting proprietor. In years to come, more problematic issues could emerge
requiring the board’s attention, especially with the proliferation of new laws
following the amendments.

9.18 Practical Problems

The Strata Titles Act 1985 (Act 318) has been enacted in Malaysia for almost twenty
five years now. However, the delay in the issuance of strata title remains the most
common complaint received by the National House Buyer Association. The second
problem faced by the developers, the management corporation and even managing
agents concerns the lack of efficiently in the management of strata title buildings.
Third problem is in the area of disputes settlement. Before the formation of the
Strata Titles Board, disputes between the management corporation and proprietors
were settled by court proceedings. Another problem is lack of understanding the
allocation of share units adopted by the developer. Another problem area concerns
the distinction of the object of strata ownership. It is necessary to determine at what
point the common property ends and the individual parcel begins. A number of cases
have illustrated the ambiguity that has been caused by the lack of understanding of
the object of strata ownership. This difficulty has led to another problematic area,
namely, the content of the rights and obligations of a parcel proprietor over a parcel
where he has exclusive ownership and towards the common property where he only
has a collective right of user with other parcel proprietor.

Problems in classifying the objects of the strata ownership

The distinction between a parcel, common property and accessory parcel is vitally
important since it demarcates which area of the scheme is for the exclusive use of a
particular proprietor and which area is for the collective use of the parcels
proprietors. In addition, it determines who is responsible for the management and
maintenance of particular areas in the scheme. Unfortunately, the Strata Titles Act
1985 (Act 318) contains deficiencies with regard to all three aspects mentioned
above.
The allocation of certain parts of the scheme to either parcel or common property has not been entirely practical. Thus, the structural components of the strata building, shifts between common property and part of a parcel depending on which side of the median line it is located, instead of being clearly defined as common property with a maintenance liability on all the proprietors instead of on a single proprietor in whose parcel it is situated. The same applies to service items such as wires and down pipes that supply individual units with electricity and water. Thus, a clear allocation to either a parcel or common property is needed in order to determine the maintenance responsibility with regard to each item. The well being of the strata scheme will very much depend on the good management and maintenance system that can only be achieved if the responsibility for maintenance is fairly allocated amongst the various parcel proprietors in the Act itself.

Problems with regard to a proprietor’s right to a parcel and common property
The right of use and enjoyment of a parcel is qualified by the corresponding rights of use and enjoyment of other parcel proprietors. The question is how far ownership of the parcel differs from ownership of land. The basic features of strata ownership in Malaysia warrant not only stricter limitations on the ownership of a strata parcel but also limitations of a different kind than those imposed on the ownership of land. Therefore, the peculiar features of strata ownership justify more intensive limitations and restrictions on powers and entitlements of a parcel proprietor with regard to his or her parcel. Thus, the fact that a parcel on a proprietor to maintain his parcel in a state of good repair. His legal right in the parcel is so closely connected with the physical existence of the parcel that it will disappear if the building collapses on account of lack of maintenance of any parcel in the building. Again, the feature of structural interdependence makes sense of the reciprocal easement of lateral and subjacent support. Finally, the intensified community in which proprietors live, justifies a stricter application of the rules of nuisance and the prohibition of the most harmful categories of nuisance in the by-laws of the scheme.

However, the Act does not contain a clear provision on the legal position of the common property. The Act expressly states that the common property belongs to the management corporation and not to a proprietor in an undivided share (See Section 34(1)(b) of Strata Title Act 1985 (Act 318)) but then the Act gives to the proprietors
the right of use and enjoyment with regard to the common property as if they were co-proprietors. Although the proprietors have no rights over the common property, the Act states that no rights in the common property shall be disposed of by a proprietor except as rights appurtenant to a parcel (See Section 34(3) of Strata Title Act 1985 (Act 318)). Consequently, when share units are discussed, the Act treats proprietors as if they have a share in the common property. What it seems to have done is to make the management corporation the proprietor of the common property.

Problems in settling disputes
Strata scheme in Malaysia are now fortunate to have a board functioning as an adjudicatory mechanism outside the courts to take care of disputes. The board has complete discretion in deciding a case and the fact that a decision should be reached within an upward limit of six months from the acceptance of an application by the board is definitely one of the advantages over the ordinary court procedure. Resort to the board is preferred when prompt action is needed. The fact that the proceedings of the board are public creates confidence in the parties concerned, that the proceedings will be conducted impartially, especially when they know that the press and public have the right to find out what is going on. But the board is only in its infancy and it is difficult to assess its effectiveness at this stage.

Although the board has jurisdiction to adjudicate an extensive range of issues, it must be remembered that these provision only cover the disputes which arise between proprietors and the management corporation, and not disputes that arise between occupiers. The limitation to just ten orders seems also unnecessarily restrictive.

Problems encountered in the management of the strata scheme
The problems of people living or working in strata titled properties like apartments, condominiums, offices and shopping centres where the retail lots are sold on a strata title basis are well known. Only a few parcel proprietors are fortunate enough to live in well managed apartments. Many condominiums and apartments in the country are badly managed, resulting in the residents having to put up with deplorable and even downright hazardous conditions. Facilities like swimming pools, saunas, indoor badminton courts, tennis courts and playgrounds are in a state of disrepair in many of these buildings. The problem is found to be more acute in older buildings.
In terms of management, the Strata Titles Act 1985 (Act 318) fails to extend the benefits of strata titles to all the occupiers of strata title scheme. The Act recognises only registered proprietors and as a matter of strict exception registered charges as members of the corporation and thus as participants in the management of a strata title scheme without due regard to other interested parties such as tenants.

9.19 Recommendations for Solving the Problems

Strata titles ownership has proved to have many benefits although the system has not yet been implemented successfully. The problems seem to be so acute that it cannot be solved without the appropriate legislative and administrative changes. The whole structure of the delivery system in the housing industry in Malaysia has got to change. The interest of purchasers of strata title parcel should be more important than the interest of the developer. The appropriate authorities should take prompt and drastic action to solve this problem. In order for the changes to take effect, legislative or administrative action must be taken and Strata Titles Act 1985 (Act 318) and other related status have to be amended.

Recommendations concerning the object of the strata scheme in the strata building

The distinction between what parts of the strata scheme is comprised in a parcel, the common property and an accessory parcel should be clarified on order to give a purchaser of strata title parcel exact information of what he is buying. The definition of parcel is defined sufficiently as long as the common boundary of a parcel with another parcel or common property as provided by the Act is interpreted clearly. However, with regard to the common property, it is suggested that the definition of common property should specify clearly. It is also submitted that all land should be classified as common property without exception. The position of service items such as wires and down pipes that supply individual units with electricity and water also lack clarity in the Malaysia status.

The concept of accessory parcel should be replaced by the concept of exclusive use area. Exclusive use areas can be created in two ways, namely as independent real rights registered in the strata title register, or as mere personal rights included in the
rules of the scheme. As independent real rights, exclusive use areas can either be reserved as such by the developer on registration of the strata plan and then transferred by unilateral cession to some or all individual proprietor, or by unanimous consent of the management and allocated to some or all the strata proprietor. Exclusive use areas may be transferred from one strata proprietor to another proprietor in the scheme.

**Recommendations concerning the rights and obligations of the parcel proprietor with regard to the parcel and common property**

There is nothing that suggests that a parcel proprietor’s right with regard to a parcel is less than the right of an owner with regard to land. However, since such a right is invariably qualified by the corresponding right of other parcel proprietors, the ownership of strata parcels is less attractive than the ownership of land. To make ownership of strata parcel more attractive, it is suggested that other attributes of a strata parcel should be highlighted, for example the sharing of more facilities, the guaranteed security of apartment complexes and the greater companionship between apartment dwellers in a strata title building. The fact that a parcel is always combined with a right to use the common property should encourage parcel proprietor to invest in a strata title scheme.

**Recommendations concerning the settlement of disputes**

The Strata Titles Board should have an extended jurisdiction to cover enforcement of by-laws governing the subdivided building or land. Such a move would result in cost and time savings and in convenience to the affected parties. Moreover, the legal safeguards that come with court proceedings are not compromised. As noted, a legally qualified person is required to sit as President or Deputy President in every board. An appeal may also be made to the High Court on points of law. All these factors serve to emphasise that a board is suitably placed to undertake the extended role of enforcing by-laws governing a strata title scheme.

The Strata Title Act 1985 (Act 318) does not provide for mediation as an alternative to taking proceeding in court or before a board. It is strongly recommended that, apart from extending the jurisdiction of the board as discussed above, mediation be introduced formally so that the parties concerned should not be allowed to take
proceedings to have the matter heard before the board unless their attempt at mediation has failed. As mediation is likely to resolve most of the disputes, it makes more sense not to proceed first before a board. Not only will there be savings in terms of time and costs, but also a reduction in the number of cases going before the boards because most of the cases would be more appropriately dealt with by mediation. Additionally, having the services of a mediator to help resolve disputes within the strata scheme often displaces the personal animosity that might otherwise arise between participants in the scheme.

Recommendations concerning management of the strata scheme

There should be some provision in the Act compelling owners to appoint tenants as their proxies when the owners themselves cannot attend the annual or extraordinary general meeting. Alternatively, tenants should at least be allowed to attend meetings in order to keep abreast of the affairs of the scheme. And, if one goes so far, tenants should be allowed to vote on certain matters, which closely affect their personal lives like the keeping of pets and hours when noise should be kept at a minimum. Giving them a say in these matters would surely make them feel that they are treasured in the community and would promote harmony and peace in the strata title community. A good management system will make living in the intensified community just like a whole new experience.

Although the appointment of a managing agent by the management corporation is not mandatory under the Strata Title Act 1985 (Act 318) (See Section 50 of Strata Title Act 1985 (Act 318)), it may, nevertheless, be desirable to do so in certain circumstances. Problems in the management of a strata scheme could result from the proprietors’ inability to organise the scheme on a business-like basis. This may arise not from any lack of goodwill on the part of those involved but from their lack of time, knowledge and management skills to participate in the day-to-day control, management and administration of the strata scheme. However, a hot debate about who should manage these high-rise buildings in Malaysia has been reported recently in Malaysian newspapers. The choice is between the professionals such as architects, engineers, land administrator, valuer, real estate manager or building contractors. However, the main concern here is merely to find the better and qualified person to manage this kind of property. In view of the increasing
complexities of the Act, the various procedures that need to be followed and the onerous duties imposed by the Act on a management corporation, it is suggested that the management of the managing agent would relieve the corporation from most of the duties, as well as its day-to-day administration of the scheme. A managing agent could also perform the role of a mediator to help resolve disputes within the scheme, thus removing any possible animosity between participants in the scheme.

The concept of accessory parcel should be substituted by exclusive use area or limited common property

The concept of accessory parcel has been introduced to enable any area in the scheme, whether situated within or outside a strata title building, to be used in conjunction with a parcel. Such area is shown as an accessory parcel on the strata plan and a separate document of strata title is issued. An exclusive use area indicates a part or parts of the common property for the exclusive use by the parcel proprietor or proprietors of one or more parcels in the strata scheme. The concept of limited common property is distinguished from accessory parcels or exclusive use areas and general common property in that it is reserved for the use and enjoyment of two or more of the parcel proprietors only. It is not for the exclusive use by one proprietor, nor is it open for unencumbered use by all the parcel proprietors. Examples of such limited common property are special corridors, stairways and lifts common to the apartments of a particular storey. The concept of limited common property could be quite useful in Malaysia to help with the distribution of expenses amongst parcel proprietors. The basic idea that the expenses of maintenance and repair related to certain common property should be borne solely by the proprietors who benefit from it is very useful in the Malaysia context. These two concepts are much more suitable in terms of practicability than the accessory parcel concept.

9.20 Conclusion