



JOURNAL OF VALUATION AND PROPERTY SERVICES

Vol. 1 No. 1

1998

ISSN:1511 - 3345

Features:

- ***The Role of Credit Regulation in Ensuring a Sustainable Property Industry
– A Commentary***
Rahah Ismail
- ***Foreign Ownership in Malaysia - A Look at Issues***
Tan Pek Voon
- ***A Critique of Current Research Methods in Corporate Property Literature***
Iskandar Ismail
- ***Managing the Development of the Property Sector in the 1990s***
Bank Negara Malaysia
- ***Isu 'Betterment' - Antara Perundangan dan Amalan***
Hj. Nordin Daharom
- ***Examining the Role of GIS in Valuation***
Md. Nasir Daud & David Parker
- ***Practice Notes***

Publication Board

Valuation and Property Services Department
Ministry of Finance Malaysia

Chairman

Datuk Hj. Sahari Hj. Mahadi
Director General
Valuation and Property Services Department

Editor-in-Chief

Dr. Iskandar Ismail

Editors

Dr. Rahah Ismail
Faridah Mohammed
Lau Wai Seang

Managing Editor

Dr. Rahah Ismail

Editorial Operations

Property Research Programme
National Institute of Valuation (INSPEN)
Valuation and Property Services Department

Executive Secretary

Tan Pek Voon

Production Executives

Kamarudin Yusof
Yang Redzuan Din

Subscriptions

All orders and enquiries regarding subscriptions, sample copy requests, reprint services and further information, should be addressed to:

Director
National Institute of Valuation (Inspen)
No 5 Persiaran Institusi Bangi
43000 Kajang
Selangor Darul Ehsan
Malaysia

Subscription rate:

RM50 plus postage RM5

Aims and Scope

The Journal of Valuation and Property Services is a publication specially intended for property professionals to keep abreast with developments in the property industry as well as the real estate profession.

This journal serves as a platform for the exchange of information and ideas on property issues. It seeks to:

- address areas of major interest and practical relevance to the real estate profession
- create awareness of new theories, techniques and applications as well as related concepts relevant to the real estate profession
- discuss policy issues and regulations and their implications on the property market

We therefore welcome articles with theoretical and practical relevance to the real estate industry and profession, property valuation, property management, property investment and property market.

Copyrights Reserved 1998

Copyright of this journal is held by the Valuation and Property Services Department, Ministry of Finance Malaysia.

No part of this journal may be reproduced, stored in a retrieval system, transmitted in any form or by any means electronic, mechanical, photocopying, recording or otherwise without the prior written permission of the publisher. No responsibility is accepted for the accuracy of information contained in the text or illustrations. The opinions expressed in the articles are not necessarily those of the Editors or the publisher.

REFERENCE PANEL

Mani Usilappan
Deputy Director General (Technical)
Valuation and Property Services Department

Professor Dato' Dr. Nik Zain Nik Yusof
Chief Secretary
Ministry of Lands and Mines Malaysia

Professor Dr. Abdul Aziz Abd Rahman
Centre for Policy Studies
Universiti Putra Malaysia (UPM)

Professor Madya Dr. Muhammad Muda
Faculty of Business Management
Universiti Kebangsaan Malaysia (UKM)

Associate Professor Dr. Taher Buyong
Faculty of Geoinformation Science and
Engineering
Universiti Teknologi Malaysia (UTM)

Abdullah Thalith Md. Thani
Director
National Institute of Valuation
Valuation and Property Services Department

Dr. Mohd. Megat Ghazalli bin Megat Abd
Rahman
Faculty of Geoinformation Science and
Engineering
Universiti Teknologi Malaysia (UTM)

Lim Kim Hoe
Director
Valuation and Property Services Department
Federal Territory

Nasaruddin Arshad
Director
Economic Division
Public Bank



JOURNAL OF VALUATION AND PROPERTY SERVICES

Volume One Number One

December 1998

CONTENTS

The Role of Credit Regulation in Ensuring a Sustainable Property Industry - A Commentary <i>Rahah Ismail</i>	1
Foreign Ownership in Malaysia - A Look at Issues <i>Tan Pek Voon</i>	19
A Critique of Current Research Methods in Corporate Property Literature <i>Iskandar Ismail</i>	33
Managing the Development of the Property Sector in the 1990s <i>Bank Negara Malaysia</i>	45
Isu 'Betterment' - Antara Perundangan dan Amalan <i>Hj. Nordin Daharom</i>	53
Examining the Role of GIS in Valuation <i>Md. Nasir Daud & David Parker</i>	61
Practice Notes	
• Brief Notes on Land Acquisition Practice <i>Mani Usilappan</i>	71
• Compulsary Acquisition of Land in Malaysia <i>Grace Xavier</i>	77
• Review of the Malaysian Property Market 1998 <i>Iskandar Ismail</i>	85

The Role of Credit Regulation in Ensuring a Sustainable Property Industry: A Commentary

Rahah Ismail, Ph.D.
Research Programme, INSPEN
Valuation and Property Services Department

Received: June 1998

Revised: October 1998

Abstract

The property sector is an important sector of the economy. It has strong linkages to more than 130 local industries. A sustainable property industry is, therefore, of great importance to the economy. However, sustainability in the property industry requires some degree of price stability. Most of the 1990s were characterised by excessive lending by financial institution to the property sector. Such a large exposure not only causes distortion in property prices but also poses a threat to its own sustainability. This paper discusses the need for credit regulation in ensuring a sustainable property market.

Keywords: Credit regulation, asset inflation, sustainable property industry, non-performing loan, price stability

Introduction

Credit growth and property prices are somewhat linked. In a study by Bank of Japan (Bank of Japan, 1990, cited in Hutchinson, 1994, pp.62), which investigated the rise of land prices in the 1980s it was concluded that, "a higher growth in money supply under relaxed monetary conditions has usually been a source of land price increase". Bank of International Settlement (The Banks for International Settlement, 1993 cited in Hutchinson, 1994, pp.62) draws a connection between monetary policy and asset price movement through credit channels. It established that "easy monetary policy played a crucial part in the rapid credit

growth during the asset upswing, particularly in some of the countries experiencing the largest price cycles". The excess liquidity is vented through asset inflation. Asset inflation, however, is not supportable and a crash is inevitable. When this happens, it has a far-reaching impact on the rest of the economy. In particular, if the banking sector is over exposed to the property sector, it will cause instability to the financial system.

In Malaysia, most of the 1990s were characterised by excessive lending by financial institutions to the property sector. This was against the background of rapid

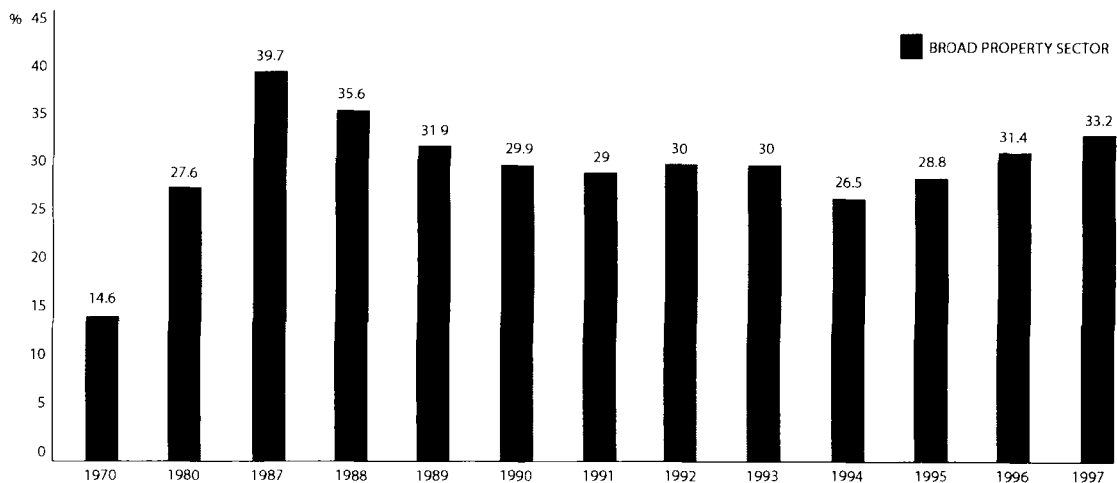
economic growth and rising levels of income, which translated into greater spending power for most people and property were much sought after. Banks driven by the profitability factor were only too willing to give credit to the lucrative property sector as returns were good. Supported by the borrowing from banks, there were vigorous investments in properties. As at the end of 1997, loans to the broad property sector made up more than a third of their total loans. Such large exposure to property, not only causes distortion in the flow of funds in the economy but also distortion in property prices.

Asset inflation during this period raises concern about affordability, as property prices, especially the residential properties, have moved to unrealistic levels. It has become unaffordable for most, as the upward movements in property prices do not match the movement in the level of income. It reduces the prospect for home ownership and is disruptive to the general economy.

Speculative activities supported by readily available credit facility are known to fuel the inflationary trend. This has led Bank Negara to take regulatory measures to curb asset inflation. As early as 1995, measures were introduced to curb exposure to this volatile sector of the economy. This was reinforced in March 1997 when Bank Negara introduced lending curbs to certain categories of the property sector and the share market. In 1998 the monetary restraints continue.

This paper attempts to give commentary on the credit regulation and its role in ensuring a sustainable property market. The first part of the paper highlights the extent of credit expansion into the property sector. The second part discusses how credit expansion in the property sector promotes the acquisition of properties and its impact on property values. The third and final part discuss the lending policies to the broad property sector and its implications.

Figure 1: Credit Growth in the Property Sector 1970 – 1997



Source: Bank Negara Malaysia, Annual Report 1970 – 1997

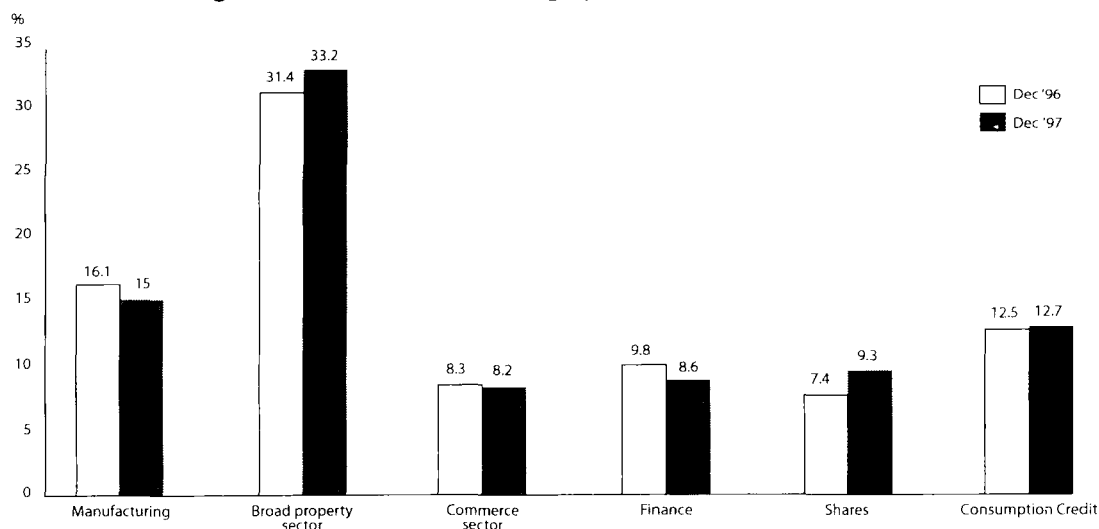
Credit Expansion in the Property Sector

From 1957 to 1996, except for the brief recession in the mid-1980s, Malaysia experienced relatively uninterrupted growth. Between 1960 to 1984, the real GDP grew at an average rate of over 6 per cent. After the recession of the mid 1980s, the economy rebounded, with a strong growth of an average rate of over 8 per cent. In 1996, the real GDP growth was 8.5 per cent. However, in 1997, in the wake of the regional economic crisis, the real GDP moderated to 7.8 per cent.

In line with the remarkable economic growth is the strong in money supply reflected in the high credit growth. In April 1996 the credit growth peak to 31.6 per cent. At end of March 1997 in spite of signs of overheating in the economy, the credit growth was still high at 30.5 per cent exceeding the credit plan target of 25 per cent (Bank Negara Malaysia, 1997). In terms of credit distribution, the broad property sector consumes the most share of the credit.

The credit expansion in the broad property sector is phenomenal. Prior to 1970, loans extended to the broad property sector (real estate, construction and housing projects) by the commercial banks were scarce. The World Bank (1989) described loans to this sector by the commercial banking sector as non-existent at that time. It was only after the introduction of the New Economic Policy (in line with the Government's objectives of promoting home ownership) that loans to property sector, in particular housing loans, began to expand. The expansion also coincided with the rapid industrialization and urbanization of the country and the growth of new households (Bank Negara Malaysia, 1989). As owning a property is every man's dream, with improved economic performance, banks see real estate as having good prospects to the bank's lending business. Banks readily channelled funds into this sector and were enthusiastic in lending to this sector. In less than three decades, loans to the property sector by commercial banks had expanded to more than 30 per cent in 1997.

Figure 2: Direction of Lending by Commercial Banks in 1997



Source: Bank Negara Malaysia, Annual Report 1990 - 1997

As mentioned above, loans to the broad property sector comprise the largest slice of the commercial bank's advances. As shown in Figure 2, in 1997, other sectors like manufacturing and services that propel the economy were not allocated as much funds as the property sector. This raised the question of whether the funds were properly allocated and channelled for macroeconomic growth and stability. Growth in such sectors contributes to job creation and ensures that the standard of living, employment and wages do not stagnate.

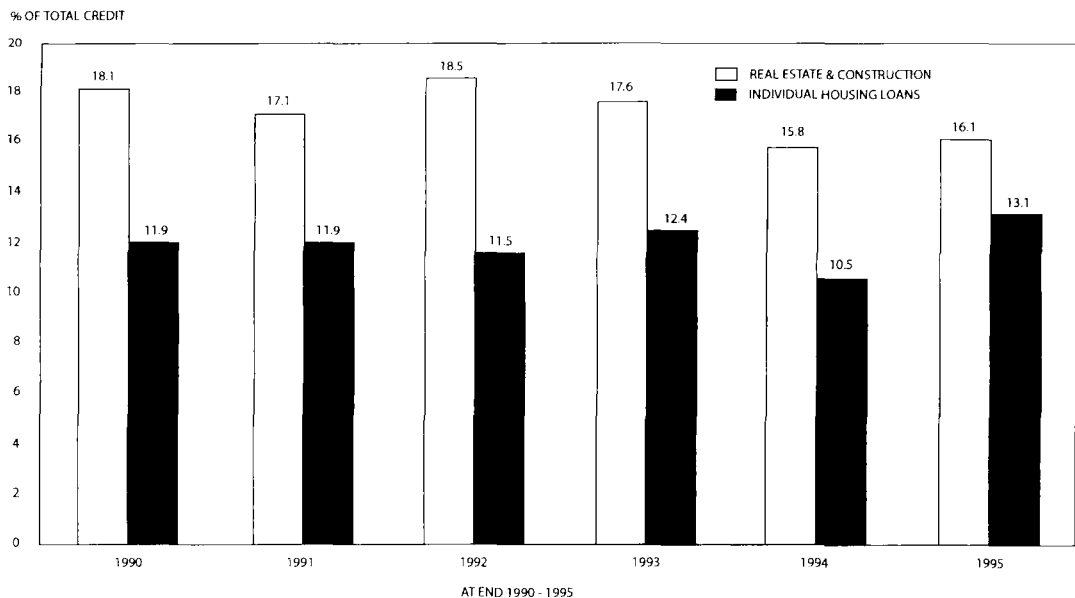
In the broad property sector, housing consumes the most credit. As shown in Figure 3, the housing loan sub-sector absorbs a significant proportion of loans to the broad property sector. This is in line with the government's home ownership objectives. In addition to credit supplied by the commercial banks, the Government also provides its own

housing loan, thereby adding the supply of credit for house purchases. Although the main objective is to encourage home ownership, there is no way to determine whether the purchase is purely for owner occupation or for speculative purposes.

Supply of Property Finance and Property Values

In line with the remarkable economic growth in Malaysia, the property industry and in particular, the housing industry flourished. The growing population and the increasing disposable income coupled with easy access to finance have led to a high demand for housing. Residential development has taken place at a rapid pace in response to demand. In Klang Valley, for example, the total supply of new housing for the period 1990-1993 was 151,966 units with an average increase of 145 per cent.

Figure 3: Distribution of Credit in the Property Sector



Source: Bank Negara Malaysia, Annual Report, Various Years

Development lands were very much sought after there were increasing amounts of plantation land being converted for mixed development (VPSD, 1994).

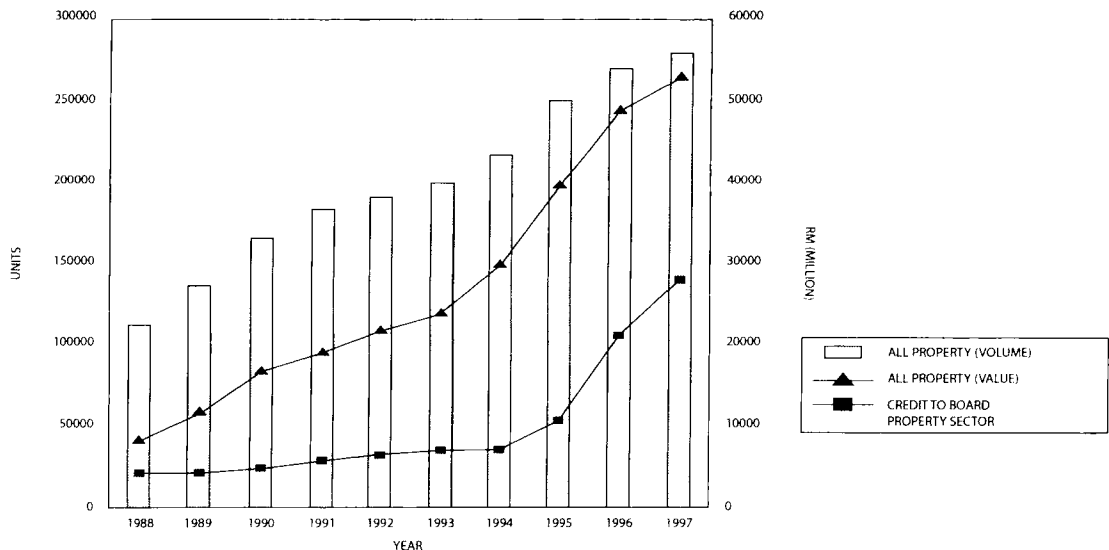
Encourage by the thriving growth of the property industry, many public-listed companies ventured into property development. In 1970s there were only about four public-listed companies involved in property development (Johnstone, 1982) In early 1990s the number grew to almost 40 (Ismail, 1997).

By virtue of being public-listed companies, these companies are required by the Securities Commission to hold sufficient land banks at strategic locations in growth areas to support development for a period exceeding five years^{1,2}. Supported by loan syndication from financial institutions, most public companies

expanded their land acquisition to meet this requirement. Thus, these corporations have vast land banks. For example, between 1990-1994, Dynamic Management Sdn Bhd, subsidiary of IOI and Lam Soon Huat had a 1000-acre site in Puchong to be developed as Bandar Puchong with 13,500 units of mixed development. Austral Enterprise, a subsidiary of Island and Peninsular Berhad, owns 1,990 acres of rubber land in Puchong. It has been given approval for supply of 20,000 units. Shah Alam Properties Berhad has a 1,000-acre site to be developed into Bandar Baru Selayang (Ismail, 1997). Land dealings in major towns became more active and land prices rose dramatically.

The quantitative expansion of credit into the property sector further stimulated demand for land and encouraged price speculation. Figure 4 illustrates the influence of credit

Figure 4: Property Finance, Volume and Value of Transactions



Source: 1. Valuation and Property Services Department, Property Market Report, Various Years
 2. Bank Negara Malaysia, Annual Report, Various Years

expansion on the volume and value of property transactions.

As more funds were allocated for the property sector, the volume and value of transactions increased.

Ironically, with the escalation of property prices, property transactions do not contract in response to the sharp increase in prices, but instead the volume of transactions increases. First, this may be due to the general perception of the people that if property is not bought now, the price is going to increase further. Second, it

is driven by speculative criteria rather than in investment fundamentals. This can be easily proven as price has little or no relationship to the rental income. For examples, in the case of a residential property, taking into account of the acquisition price and the holding costs, i.e. mortgage rates and annual outgoings, rental income certainly does not appear to be the investment consideration. As illustrated in Table 1, the total annual costs far exceeded the annual rental income. Property is bought not for rental income but the anticipation of capital growth.

Table 1: Income and Costs Analyses of A Double Storey Terraced Houses in Kuala Lumpur

Average Price (RM)	Annual Rental Income (RM)	Yearly Sum of Mortgage Instalment at 70% of Purchase Price (RM)	Annual Costs		
			Annual Equivalent of Balance of 30% of Purchase Price (RM)	Annual Outgoings (RM)	Total Annual Costs (RM)
1	2	3	4	5	6
455,000	24,000	43,452.24	11,978	2,400	57,830.24

(1) Average Price of Double Storey Terraced House in Taman Bangsar Baru in 1997 (Valuation and Property Services Department, 1997)

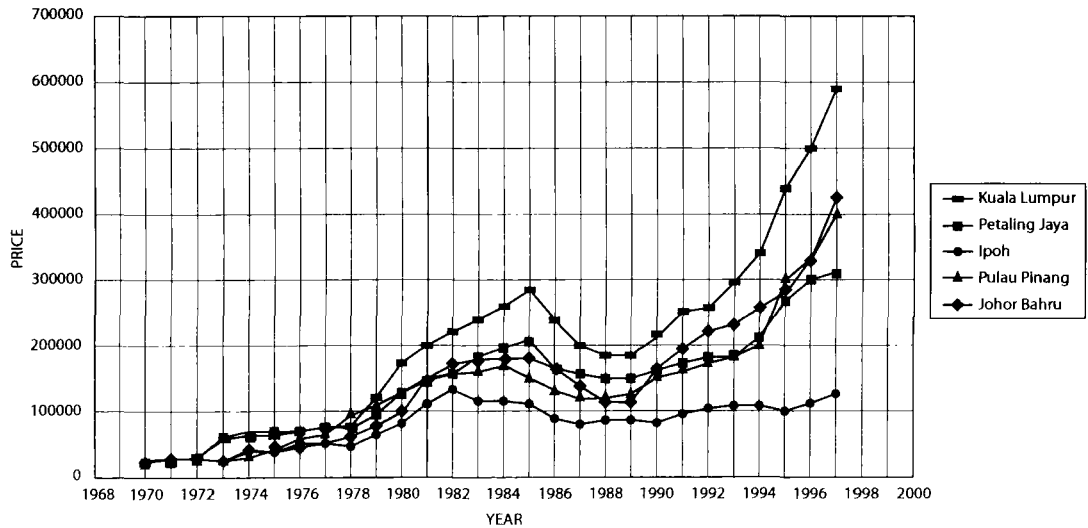
(2) Average Annual Rental Income for Double Storey House in Taman Bangsar Baru in 1997 (Valuation and Property Services Department, 1997)

(3) Interest Rate is taken at 13 per cent and repayment period is taken to be 25 years.

(4) The opportunity cost is calculated on the assumption that the balance of 30 per cent of purchase price can earn an average interest of 7.25 per cent from fixed deposit

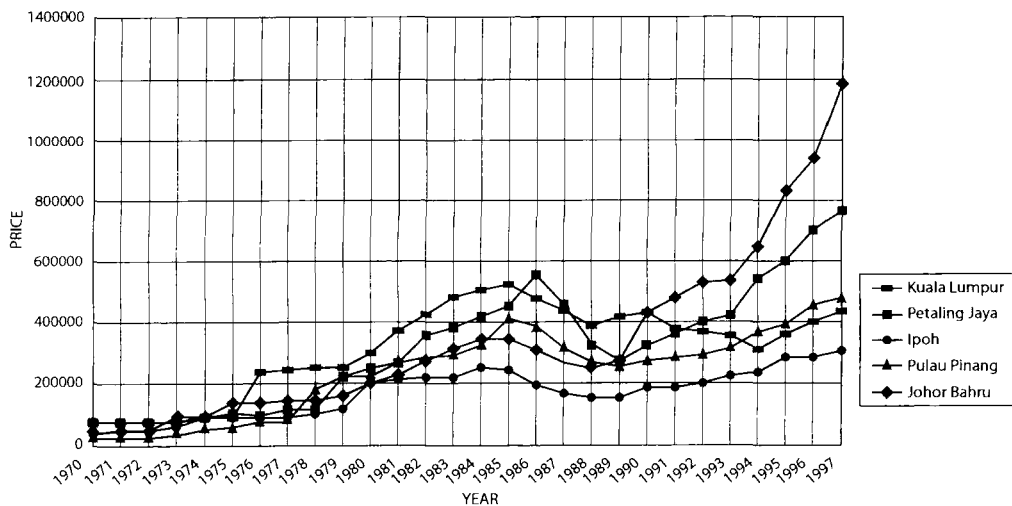
(5) Annual outgoings are estimated to be at 10 per cent of rental income. These include rates, quit rent and maintenance.

Figure 5: Price Movements of Double Storey Terraced House in Selected Housing Estates in Five Major Towns



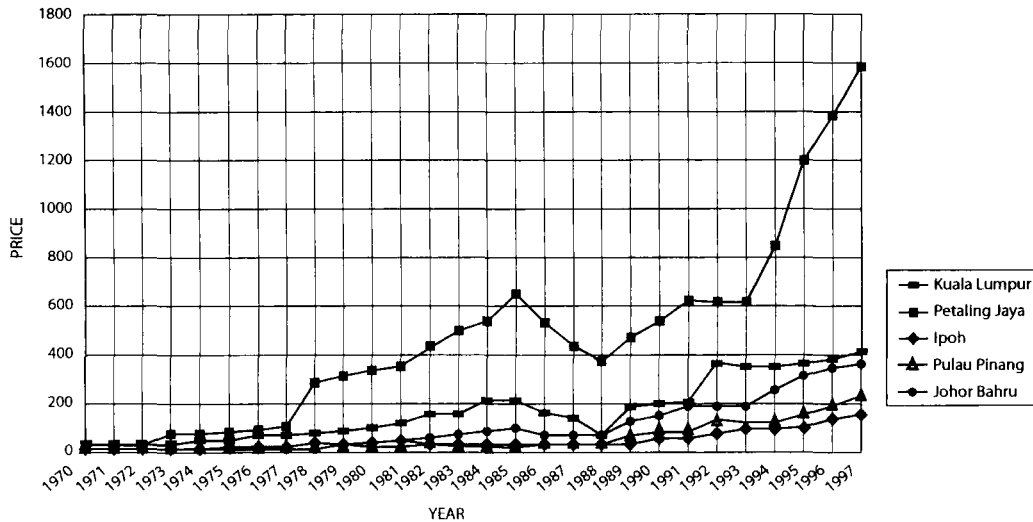
Source: Valuation and Property Services Department, Property Market Report - Various Years

Figure 6: Price Movements of Double Storey Shophouse in Selected Areas in Five Major Towns



Source: Valuation and Property Services Department, Property Market Report - Various Years

Figure 7: Price Movements of Industrial Plots in Selected Estates in Five Major Towns



Source: Valuation and Property Services Department, Property Market Report - Various Years

Thus, as the rush for houses continues, so does the upward movement in prices. Property acquisitions are made possible through bank borrowing. Unfortunately, this has contributed to the escalation of property prices. Figures 5, 6 and 7 show property prices have escalated in recent years in major towns. As mentioned earlier, all this took place against a background of high economic growth and prosperity.

The Danger of Over-Expansion of Credit to the Property Sector

The skewing of available funds to finance the property sector and share market can derail economic growth. This is because; first, financial institutions play a significant role in funding economic development. Inadequate channeling of funds to other productive sectors would impede economic growth, thus slowing the process of moving towards achieving a fully-developed nation status.

Second, it would impact the asset and general price level. Gan and Soh (1996) observe that a time lag, the impact of asset inflation will creep its way into goods and wage inflation. Wages and land prices increase are detrimental to the country, as it would impact on the international competitiveness of the country. Furthermore, asset inflation normally cannot sustain itself. When it happens, the rest of the economy will be affected and economic recession will prevail.

While it is generally postulated that banks play a crucial role in the growth of a sector, excessive credit to the property sector poses a danger to the banking system itself. It is a potential source of instability to the financial system. This is evident from lessons from other countries that during an economic downturn, overexposure to the property sector caused banks to be badly hit (Bangkok Bank PCL, 1997). As the property prices plunged, so did the value of the collateral. During this time,

the ability to pay back the loan by borrowers was also reduced. Borrowers cannot easily trade off their properties to pay off the loan because, first, banks will tighten up their lending policy and potential buyers will have difficulty in financing the purchase. Second, due to the falling property prices, borrowers may find that they are in negative equity, i.e. their value of the loan is greater than the value of their property. Incidence of arrears and non-performing loans increases. Loans made to real estate ventures cannot be covered in full. Recovery of capital in cases of non-performing loans is difficult. Overexposure to the property sector, therefore, can cripple the financial sector. This held back the economy and stagnated a large part of the real estate market (Cargill *et al*, 1996).

At the end of 1997 the total non-performing loans (NPLs) of commercial banks were close to RM 13 billion (Bank Negara, 1998). This represented about per cent of the total loans. Of this, the NPLs in the broad property sector alone were RM4.8 billion or 40 per cent of

the NPLs. Table 2 shows the level of NPLs in broad property sector, by the quarter, over a one year period, from March 1997 to March 1998, which is consistently high. The table shows that the residential property sub-sector has the highest level of non-performing loans, averaging at 33 per cent. In March 1998, the total NPLs have increased to RM22.3 billion and the NPLs in the broad property sector have increased to RM8.2 billion, which is almost double the figure in December 1997. The non-performing loans by the broad property sector are expected to increase by the end of 1998. The level of non-performing loans attributable to the broad property sector is indeed high in relation to its proportion to total loans. As argued above, the recovery of loans in the case of loans default can be difficult and this can be treated as bad debt. This situation if not controlled can undermine the financial system. For example, in Japan, Korea and Thailand, over exposure to the property sector by the financial institutions caused them to experience financial instability.

Table 2: Non-Performing Loans in the Broad Property Sector

ALL COMMERCIAL BANKS

TOTAL NPL NPL in BPS	31 Mar 97		30 Jun 97		30 Sep 97		31 Dec 97		31 Mar 98	
	7,846,624 NPL in sub-sector RM '000 %		9,233,226		8,926,310		12,953,781		22,227,618	
Residential property	1,112,530	35.37	1,092,429	29.20	1,114,059	33.72	1,628,409	34.00	2,454,709	29.85
Non-residential property	497,361	15.81	654,250	17.49	450,267	13.63	904,032	18.88	1,328,897	16.16
Construction	941,076	29.92	1,063,454	28.43	876,615	26.53	1,324,466	27.66	3,002,077	36.51
Real Estate	594,723	18.91	930,818	24.88	863,391	26.13	932,281	19.47	1,437,488	17.48
Total NPL in BPS	3,145,690	100	3,740,951	100	3,304,332	100	4,789,188	100	8,223,171	100
Share of NPL in BPS (%)	40.09		40.52		37.02		36.97		37.00	

Source: Bank Negara Malaysia, 1998

NPL - non performing loans

BPS - broad property sector

Another repercussion on the oversupply of property finance is that it tends to create an oversupply situation or glut in the property market. With easy access to finance, property developers in their eagerness to reap profits tend to overbuild, ignoring the supply situation. For example in 1997, the supply of retail space in shopping complexes in the Klang Valley over the next three years would almost be one and a half times more than the existing space (VPSD, 1997). Glut often results in poor take-up rate and poor occupancy rates. Such a situation affects the return of a property and hence the demand for it. In the event of an economic downturn the problem of oversupply worsens. Developers would face cash flow problems and this would affect the banks. Further deterioration of the situation will result in non-performing loans. This will undermine the confidence in the industry.

The escalation of property prices caused by excessive supply of property finance can retard the attainment of the various government's social objectives viz. promoting home ownership, encouraging the growth of small-medium industries as well as the growth of Bumiputera business community. When the escalation of prices does not match the income levels, the prospect of ownership would be remote for most people as the property have become unaffordable.

The Need for Credit Regulation

The property sector is an important sector of the economy. In 1997, the construction sub-sector alone contributed about 11 per cent to the GDP. In addition this sector has strong linkages to more than 130 related local industries. A sustainable property industry is, therefore, of great importance to the economy. However, sustainability

in the property industry requires some degree of price stability. Price stability means that it does not undergo a series of chronic fluctuations of price levels. It is also generally accepted that the term price stability is consistent with at least some positive rate of inflation measures (Kenny, 1997). It is often compared to a consumer price index. The Malaysian Consumer Price Index has remained relatively low and stable. Quite commonly, speculative criteria surpass investment fundamentals in the decision making of investors. Eager to capitalism on the flourishing property market, banks tend to overland to the property sector. This drives up to the prices to an unrealistic level. Price stability, however, may be achieved by monetary policy through money supply via credit control and manipulation of interest rates as well as through fiscal measures.

Banks have a duty to protect the interest of investors and depositors. Often, financial institutions, in their pursuit of rapid expansion of their credit business, tend to lower their guard, relax their lending criteria and give high debt to price rations. Profitability factors have driven banks to be engaged in the riskier activities. The danger of overexposure to the property sector must not be under estimated. Lending to property is in itself a high risk. It is risky because the value of the collateral is affected by the state of the market and full capital recovery in the event of foreclosure is unlikely. Property is also illiquid, i.e. cannot be turned into cash readily because it is expensive. In addition, the market is imperfect and the process of getting a buyer with adequate means to buy takes time. Furthermore, over-enthusiastic lending to the property sector can create an oversupply situation which may in turn affect the property prices hence the price of the collateral. As property investment is capital

intensive, in the event of high incidences of non-performing loans it can be crippling to the financial institutions and affect its stability. It is, therefore, in the interest of the public that financial institutions need to be regulated from over lending to the property sector.

From Figure 2, it is evident that the expansion of bank credit to the property sector is disproportionate. Loans to the property sector doubled the loans to the manufacturing sector. Funds, therefore, need to be redirected to the productive sectors like manufacturing and services sectors which have been earmarked as vital growth sectors of the economy.

Policy Measures

Excessive credit growth in the property sector means high potential risks which have adverse effects on the property market, financial stability and rest of the economy. Therefore, the strong credit growth in the property sector must be moderated. As early as 1995, Bank Negara began to tighten its monetary policy aimed at breaking the inflationary trend and stabilizing the property market. In this case the monetary or credit policy has to work through the banking institutions. The measures taken included "lowering the margin of financing to 60 per cent of the purchase price of houses and apartments costing above RM150,000 and of shop house costing above RM300,000." (Bank Negara Malaysia, 1996). This measure, however, was not applicable where the property was for owner occupation or for the conduct of own business (ibid).

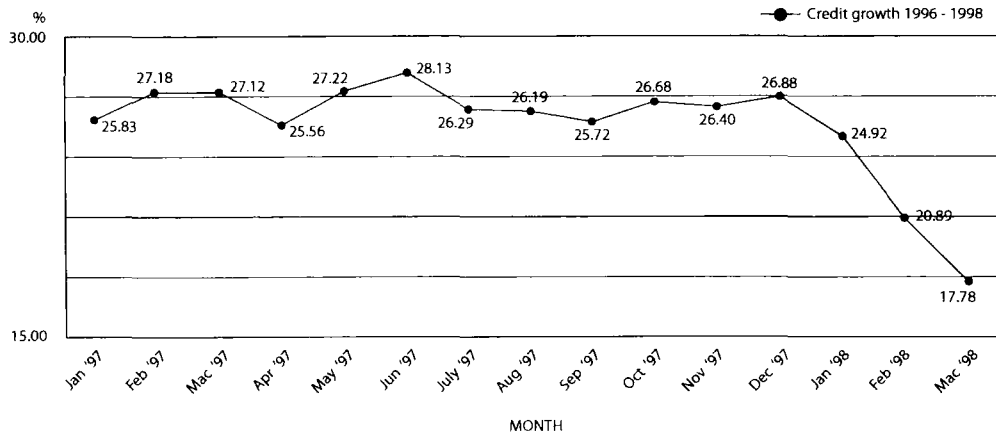
In early 1997, measures to curb the banking system's exposure to the property market and restrain asset inflation were reinforced. The property sector was classified as a 'less productive' sector. Hence, new guidelines

were introduced to restrict banks' lending to the broad property sector not to exceed 20 per cent of the total loans of the banking institutions. The guidelines, however, exempted loans to houses costing below RM 150,000 as well as for infrastructure projects. The guidelines also prevented excessive lending to finance purchases of stocks and shares. The guidelines were aimed at containing asset inflation and over-speculation in the stock market. The property and the share market are somewhat related. Those who make money from the stock market tend to buy properties which they subsequently charge to financial institutions to obtain more credit to enter the stock market again. The new guidelines are aimed at reducing the exposure of financial institutions to a possible bubble-like economy. The final objective is to steer away funds being channelled into areas that are less productive.

In December 1997 further guidelines were issued by Bank Negara to the banking institutions regarding loans to the property sector. First, project financing should not be provided where construction has not started. This includes the construction of low and medium-cost residential properties costing RM150,000 and below. Second, in cases where construction had started, banking institutions should assess the viability of such projects under the changing economic conditions. The loans towards construction and the purchase of residential properties costing RM150,000 can only be extended under strict criteria.

In March 1998, the measures introduced remained tight, consistent with the objectives of restraining asset inflation and reducing the speculative activities and stabilising the property prices. Initially, Bank Negara had directed credit growth in the country to

Figure 8: Credit Contraction



be checked at 15 per cent from a growth of 25 per cent in 1997. However, by the third quarter of 1998, loan growth has deteriorated sharply, that the target is reset at an annual minimum loan growth of only 8 per cent (The Star, 1998).

Policy Implications

As a result of the tight monetary policy, annual monetary supply growth and annual credit growth declined rapidly. At the end of March 1998, credit growth moderated to 17.8 per cent from a high of 28.1 per cent in June 1997. As shown in Figure 8, the rate of contraction was rather rapid within a few months. In fact it contracted at much faster rate than expected and had hit hard on the property sector.

With the introduction of the monetary measures, a noticeable slowdown in new loan approvals was reported. Bridging finance for construction became scarce. In spite of the fact that banks were free to provide financing for the construction and purchase of residential houses and apartments costing up to

RM150,000 per unit, subject to the business assessment of the viability of the projects, banks were very selective in giving out loans. There were complaints and allegations made by the Housing Developers Association that banks were reluctant even to provide finance for the construction and purchase of houses below RM150,000 (New Straits Time, 1998). The hardest hits were those developers who have started their projects and found that there were not enough buyers or those who need subsequent financing for their projects. Banks became overly cautious in their lending to the property sector. Lending policies were more stringent.

As a result of the reduced financing, construction activities were reduced. It was also reported that financing for the manufacturing or constructions related products like tiles was subsequently reduced. Job losses were inevitable. In the constructions sector, the housing sub-sector supports 500,000 workers who were directly involved in construction works (The Sun, 1998). The number employed by the broad property industry is certainly higher. Thus,

the number of unemployment generated by this sector can be substantial.

The Malaysian property market has hit a slowdown. The volume of property transactions has declined close to 30 per cent during the first half of 1998 as compared to the previous period (VPSD, 1998). Properties were difficult to dispose off due to difficulty in financing the purchase. There are instances where individuals put a deposit on a house but end forfeiting it because it is becoming harder to get loans. There were reports that those banks that do provide loans, normally put a lower than market price for a property and approve loans of 60 per cent of the assessed value. Commercial, retail and luxury condominiums had been worst hit. The signs show the property industry is heading for a difficult time.

Prior to 1978, Malaysia adopted a flexible administered interest rate regime whereby the minimum lending rate and the ceiling on deposits rate fixed by Bank Negara after consultation with commercial banks. In 1978, this practice was abolished and banks were allowed to fix their own interest rate on deposits and the minimum lending rate charged to their prime customers. This move appeared to be disadvantageous to the borrowers. This led Bank Negara to step in, and in 1983 it required that the interest rates to be pegged to base lending rates (BLR). BLR is calculated based on banks' cost of funds. In 1991, Bank Negara adopted a free interest rate regime and BLR of banking institutions was completely free from the administrative control. However, in order to ensure that borrowers are not exposed to high interest rates, the margin between BLR and lending rates was allowed to be fixed at a maximum of 4 per cent (See, 1994; Bank Negara Malaysia, 1994).

With the recent measures to mop up the excess liquidity, money supply was reduced, the costs of funds increased and interest rates went up. At the end of May 1998, the three month Kuala Lumpur Inter Bank Offered Rates (Klibor) was pegged at 11 per cent, which translated into BLR ceiling of about 12 to 13 per cent. This means that the effective rate charged by commercial banks would be 14 to 15 per cent (The Sun, 1998; New Straits Time, 1998). The cost of borrowing has become very costly to borrowers and thus hinders development. The high interest rates hurt the Malaysian economy and proved to be damaging to the economy.

The measures to curb the banking system's overexposure to property almost resulted in a credit crunch and the industry came close to a standstill. However, immediate actions were taken to increase liquidity in order to revitalize the property sector. First, an initiative to provide a Housing Developer's Credit Facility amounting to RM2 billion to ensure housing projects continue to receive financing was introduced. Under this scheme the interest rate to be imposed shall not exceed 10 per cent annually and the fund is to be allocated to areas where there is high demand for houses (Bank Negara Malaysia, April, June, 1998). Second, Pengurusan Danaharta Bhd., an asset management company, was set up to buy over banks' property-based NPLs. This is expected to provide more money to banks for their lending business and at the same time it is expected to ease pressure on the soft property market by avoiding the auction process, which is the remedy for NPLs (The Star, 1998; The Sun, 1998). However, Danaharta is only recently fully operational on 1 October 1998. Third,

Bank Negara has moved to reduce the cost of funds. This included the move to reduce the statutory requirement (SRR) by 2 per cent in June 1998 as an effort to increase liquidity (The Sun, 1998). With the reduction of SRR, about RM8 billion were injected into the banking system. However, the banks were slow to respond to this. This led Bank Negara to move away from the free interest rate regime and the BLR is instead calculated based on Bank Negara intervention rate while the administrative margin is fixed at 2.25 per cent (The Star, 1998). A low intervention rate would result in a low BLR. To further impact on the interest rate, in September the SRR was further reduced by 2 per cent releasing another RM8 billion into the system (The Star, 1998; Bank Negara Malaysia, 1998). The intervention rate is reduced to 8 per cent and the impact can be seen when it brings down the interest rate (Star, 1998).

Regardless of the measures taken, the credit situation remains tight in the property sector and there is a threat of stagnant economy. Banks are further urged to lend to the property sector. The 20 per cent cap on lending limit to residential properties costing below RM250,000 was lifted and there were calls for the banking sector to relax the conditions for extension of credit to this sector (Bank Negara Malaysia, 1998). Realising the importance of a robust property sector to revitalise the economy, a National Economic Recovery Plan (NERP), which was launched on 26 July 1998 has reclassified the property sector as a priority sector, as the property industry has strong linkages to with the other economic sectors. Banks were also urged to relax the conditions for the extension of credit for construction and property development. The prices for affordable housing in the Klang Valley, Johor Bahru and Pulau Pinang, were recommended

to be in the range of RM200,000. Such efforts were deemed necessary to prevent the economy from suffering a growth seizure (Prime Ministers Department, 1998).

Conclusion

Undoubtedly, immediate measures need to be taken to prop up the property industry. The National Economic Action Council (NEAC) move to upgrade the status of the property sector from non-productive to priority sector may be viewed as a logical effort to revive the property industry as well as the economy. The property sector has linkages with more than 130 related industries locally. By reclassifying property as a priority sector, banks are urged to lend to this sector. Further, the move to lift the 20 per cent cap on lending limit to residential properties costing RM250,000 and below and the call for the relaxation of conditions for extension of credit to this sector would mean reactivating the related industries hence inducing the generation of productive workforce. It is also anticipated that this move can bring about significant income and employment multiplier effects in the economy. The argument, while theoretically sound, casts a shadow of doubt. Under normal circumstances, property development and construction activities may produce the desired results. However, under the present depressed circumstances given the inflation factor, the rising costs of living due currency crisis, the pay cuts, jobs losses which translate into lower disposable income for households and lower credit worthiness of the prospective borrowers, such moves may not produce the desired multiplier effects. Instead the loans extended may turn into NPLs. As shown in Table 7, the NPLs in the residential sector are the second highest after construction. Such action to resuscitate the economy will only

further overexpose the banking system to the property sector thus endangering the stability of the financial sector.

The Housing Developers' Credit Facility is the government's direct involvement in the provision of finance to affordable housing projects. It not only provides cheaper costs of funds to developers but also reduces banks' risks. In time like this what developers need is some form of concession to reduce their risks and cost of funds. At the same time such measures would not burden the banking sector which is floundering. Perhaps other initiatives similar to the Housing Developers' Facility provided by the Government. Would prove useful to jump-start the industry. In the past, the Government has also played a more direct role by setting up a revolving fund to provide concessionary bridging finance to developers at an interest rate of two per cent for the construction of low-cost houses (Bank Negara Malaysia, 1994). This fund was channeled by Bank Negara to the participating banks and developers obtained loan from these banks. Such move did not only reduce the costs of funds to developers but also reduced banks' risks.

Perhaps the move to raise the ceiling price of affordable houses to RM200,000 in areas like Penang, Johor Bahru and the Klang Valley requires some consideration. The redefinition is critical in view of the institutional responses that it may generate. For the banks, it draws the line for loan priority. For the developers, it means being able to shift the focus from concentrating on projects costing below RM150,000 to those houses costing RM200,000. Is there a need for the price of affordable houses to be redefined in these areas? In fact, the total number of transactions showed a drop of 27.7 per cent in the first six months of the years as compared to the previous' period. The house price index for those growth

regions also shows a drop in the range of 12.1 per cent to 21.7 per cent (VPSP, 1998). While developers may be happy with the new price definition, it is equally important that when directives of the Bank Negara are implemented it must be viable for both developers and banks. One must not permit a situation where when loan is extended, there would be arrears in repayment, or projects abandoned due to poor sales.

The move from a free interest rate regime and reduction of SRR to 4 per cent, which released RM16 billion into the banking system, has managed to bring down the interest rate, thus reducing the cost of capital to the firms, a prerequisite for the economy to rebound. While such measures are necessary to revitalise the economy, it may also threaten the economy with further inflation. Bank Negara would have a tough battle to control price stability. The move has raised concerns from banks for Bank Negara to ensure that intervention rates adopted are realistic and reflect the administrative costs (The Star, 1998). While such measures have increased liquidity in the banking system, bankers are wary of the property sector. Credit for this sector is still very tight. In fact, the current contraction in credit is so fast that there are fears that it might be turning into a growth seizure.

As evident from lessons from other countries as well as from past experiences, banks, over exposure to the property industry caused instability. Therefore, precautionary measures to prevent this must always be incorporated in the banking system. The so-called pre-emptive measures taken by Bank Negara to prevent asset inflation are more of a corrective measure in response to the spiralling up of property prices since the early 1990s. Control should not only be taken when there are signs of overheating.

Perhaps, as a precautionary measure, Bank Negara should impose a fix ratio for loans to be channelled to the property sector. There must be close supervision to ensure that the guidelines are followed thus preventing banks from over lending to this sector during the goods times. The present experience is certainly a lesson to be learned. Regulations on property finance and strict supervision are necessary at all times to prevent over lending to this sector, thus ensuring a sustainable property industry.

Endnote

1. Policy and Guidelines on Issue/Offer of Securities, December, 1995.
2. Securities Commission was formerly known as Capital Issues Committee (CIC). CIC guidelines require property development companies to hold 1,000 acres land as their asset.

References:

- Bangkok Bank PCL, (1997), *Financial Institution Crisis: From Japan, Korea to Thailand*, http://www.bbl.co_th/research/jun_prl.htm
- Bank Negara Malaysia, (1989), *Money and Banking in Malaysia*, 30th Anniversary Edition.
- _____ (1994), *Money and Banking in Malaysia*, 35th Anniversary Edition.
- _____ (1995), *Annual Report 1994*, Kuala Lumpur: Bank Negara.
- _____ (1996), *Annual Report 1995*, Kuala Lumpur: Bank Negara.
- _____ (1997), *Annual Report 1996*, Kuala Lumpur: Bank Negara.
- _____ (1998), *Annual Report 1997*, Kuala Lumpur: Bank Negara.
- _____ (1998), *Press Release: Housing Developer's Facility*, www.Bnm.gov.my. 27 April.
- _____ (1998), Letter to Institut Penilaian Negara dated 18 June 1998.
- _____ (1998), *Press Release: Interest-Rate Policy*, www.bnm.gov.my. June 1.
- _____ (1998), *Press Release: Statutory Reserve Requirements of Banking Institutions*, www.bnm.gov.my. 7 September.
- _____ (1998), *Press Release: Lending to the Construction and Property Sectors*, September 7.
- Cargill T., Hutchinson M. Takatoshi, I. (1997), *Japanese Deregulation You Should know*, JIAP, <http://www.nmjc.org/jiap/dereg/papers/deregcon/hutchison.html>
- Gan, W. B and Soh, C.C. (1996), *Asset Market Inflation in Malaysia*, paper presented at MIER 1996 National Outlook Conference, Kuala Lumpur 3-4 December 1996.
- Hutchinson, M. (1994), "Asset Price Fluctuations in Japan: What Role for Monetary Policy?" *BOJ Monetary and Economic Studies*, Vol. 12 No. 2, Dec pp 61-83.

- Ismail, R. (1997), A Comparative Study of Private Sector Housing Finance and Development in Britain and Malaysia, Unpublished Doctoral Thesis, University of the West of England, U.K.
- Johnstone, M. (1982), "Residential Construction and Financial Institution in the Periphery: A case Study from Malaysia" in Ismail Ahmad and Jamaludin Jani (eds.) *Geography and the Third World*, Bangi: Universiti Kebangsaan Malaysia, pp 156-176.
- Kenny, G. "Low Inflation or Price Stability? A look at the issues" *Irish Banking Review*, winter (1997), pp 3-16.
- Prime Minister's Department, (1998), *National Economic Recovery Plan*, Kuala Lumpur: Percetakan Nasional Berhad.
- New Straits Time*, (1998), Bank 'still lending to property Developers', 19 February.
- New Straits Time*, (1998), Analysts back Daim's views on tight credit, 30 May.
- See, Y.L. (1994), "The current state of the Malaysian financial system, with special reference to capital market developments", in *Pacific-Basin Finance Journal* Vol. 2 pp. 113-118.
- The Star*, (1998), New Measures to ease liquidity unveiled, August 28.
- The Star*, (1998), Banking Institutions must have minimum annual loan growth of 8 per cent, September 10.
- The Star*, (1998), Danaharta will ease property market, says HDA, July 18.
- The Star*, (1998), Interest rates down sharply in two months, 12 September.
- The Sun*, (1998), Analysts echo Daim's views on interest rates, tight credit, 30 May.
- The Sun*, (1998), Bank Reserve Requirement Cut by 2 per cent, June 27.
- The Sun*, (1998), Builders want non-performing loans acquired, July 18.
- Valuation and property Services Department (VPSD), (1994), *Property Market Report 1993*.
- _____ (1998), *Property Market Report 1997*.
- _____ (1998), *Indeks Harga Rumah Malaysia, January-June*.
- World Bank, (1989), *The Housing Sector Getting the Incentives Right*, World Bank Regional Centre, Report no. 7279-MA

Foreign Ownership in Malaysia - A Look at Issues

Tan Pek Voon

Research Programme, INSPEN

Valuation and Property Services Department

Received: July 1998

Revised: October 1998

Abstract

The development of policy on foreign acquisition of Malaysian properties seems to be inconsistent. On one hand, it aims to protect Malaysian interests by restricting foreign ownership in landed properties, and on the other hand the foreign acquisitions of Malaysian properties are welcomed during the economic downturn to stimulate the economy. How significant is foreign ownership to the property market and the Malaysian economy? This paper discusses the contribution of foreign ownership to the property market and the Malaysian economy. It also discusses the potential harm of policy inconsistency to FDI and the economy.

Keywords: foreign direct investment, foreign acquisition, foreign investment committee, foreign acquisition guidelines and foreign ownership

Introduction

Foreign Direct Investment (FDI)¹ has been an important element in the Malaysian economy and is partly responsible for transforming the agriculture based economy to one of manufacturing. In the 1970s FDI played a significant role in the growth of the industrial sector. Its contribution to the economy can be seen in terms of job creation and employment opportunities, skill and manpower training, development of supporting industries, transfer of technologies and providing access to export markets as well as research and development facilities (Sulong, 1990). As such FDI is always welcomed in Malaysia. In 1970 about 60 per cent of the share capital of limited companies were owned by foreigners (Hoffman and Tan, 1980). This has raised concern about the

dominant control of the Malaysian economy by foreign enterprises. As a result, the Foreign Investment Committee (FIC) was established in 1974 with the objective of ensuring a balanced ownership and control between foreign and local investors.

Recognising the significant role of FDI to the economy, prior to 1984, foreign ownership of real property was not regulated on the belief that it lent support to FDI. However, out of concern for the high volume of foreign purchases of land and houses in Johor Bahru, (which pushed up the house prices beyond the affordability level of most people), a legislative measure was taken to control such activity. This was reflected in 1984 with the amendment to the National

Land Code (NLC). The main objective of the legislation was to protect Malaysian interest by restricting foreign ownership on registered land or alienated land in West Malaysia. However, the recession of the mid-1980s necessitated the policy to be relaxed, as foreign acquisition was needed to stimulate the Malaysian economy. In 1987, sections in the NLC relating to foreign acquisition were repealed. Since then, there has been a series of tightening and relaxation of the foreign acquisition policy, frequently influenced by the state of the economy.

In the wake of the regional economic crisis and the slowdown in the property industry, the government has relaxed the policy on foreign acquisition of residential properties and lifted the levy imposed on such acquisition (Business Times, 1997). The development of policy on foreign acquisition of Malaysian properties seems to be inconsistent. On one hand, it aims to protect Malaysian interest by restricting foreign ownership in landed properties; whilst on the other hand, the foreign acquisitions of Malaysian properties are encouraged to help stimulate the economy. The questions at issue are first, whether FDI contribution to the growth of the property industry is in proportion to their economic influence derived from their majority command over the country's production capital and second, if it has, whether this should override the original objectives of FIC of ensuring a balanced ownership and control between foreign and local interests.

This paper attempts to provide a discourse on policy issues pertaining to foreign acquisition of residential properties in Malaysia. This paper is divided into four parts. The first part discusses the contribution of FDI to the economy. The second part discusses the role of FIC as a watchdog to the Malaysian interests.

The third part traces the developments of foreign acquisition policy and the final part discusses the policy implications.

FDI and the Economy

Malaysia has a long history of foreign involvement in its economy, dating from the pre-independence period. The period of British colonialism was characterised by the dominance of foreign investors, the majority of whom were British. Foreign investments were mainly in the primary sector, trade, transport and utilities (Hoffman and Tan, 1980). After independence, foreign investment in Malaysia continued to be welcomed. This was partly due to the understanding contained in the Independence Agreement between Malaysia and the United Kingdom which stated that “*foreign capital must continue to play an important part in the economic and social development of Malaya*” (Hua, 1983, cited in Edwards, 1994, p 688).

Following independence, in the 1960s, foreign investors were welcomed to develop import substitution industries. Industries that grew rapidly were food and beverages, tobacco, printing and publishing, construction material, chemicals and plastic industries (Sulong, 1990). However, the domestic market was rather limited and reached saturation rather quickly. In the 1970s, the government changed its emphasis to export-oriented and labour intensive industries. In addition to tax concessions which were given to pioneer industries since the late 1950s, the new Investment Incentives Act of 1968, and the Free Trade Zone Act of 1971 were introduced to promote rapid development of Export Processing Zones (EPZs) which were almost dominated by FDI. Consequently, this sector expanded rapidly (Edwards, 1994).

However, by the mid-1980s the Malaysian economy was in recession. The appreciation in the exchange rate and the drop in competitiveness resulted in a fall in the net inflow of foreign investment (Edwards, 1994). In 1985, FDI contributed only 0.64 per cent of Gross Domestic Product (GDP). Various measures were introduced to help boost foreign investment. This included, first, the devaluation of the exchange rate of more than 30 per cent in the second half of the 1980s. This dramatically increased the competitiveness and profitability of Malaysian exports (Edwards, 1994). Second, was the relaxation of the restrictions on foreign equity holdings. In July 1985, new guidelines on foreign equity were announced, under which

highly export-oriented companies could be wholly foreign-owned (Edwards, 1994). In September 1986, as the recession continued, further concessions were introduced to foreign investors. Companies could be wholly foreign-owned if they export more than half of their products or even if they sell their products in the domestic market as long as they met certain employment conditions (Jesudason, 1989, cited in Edwards, 1994 p 691). As shown in Table 1, the various incentives given to attract FDI proved to be fruitful with the growth in FDI picking up. The share of foreign investment to total investment increased threefold and fourfold in 1986 and 1987 respectively compared to 1985. In 1987 the net inflow totalled

Table 1: Trend of Foreign Direct Investment

Year	Foreign Direct Investment (RM million)	Total Proposed Capital Investment (RM million)	Percentage Contribution of FDI (a/b*100)	Number of Project by Foreign Direct Investment	Total Number of Project	Percentage Contribution of FDI (d/e*100)
	a	b	c	d	e	f
1982	951.70	6,020.10	15.80	65	481	13.50
1983	363.70	2,987.30	12.20	69	498	13.80
1984	390.20	3,801.10	10.30	85	749	11.30
1985	368.75	5,686.90	6.50	78	625	12.50
1986	1,492.40	5,163.20	28.90	99	447	22.10
1987	1,930.70	3,933.90	49.10	131	333	39.30
1988	4,878.00	9,093.90	53.60	301	732	41.10
1989	8,652.70	12,215.40	70.80	439	792	53.40
1990	17,629.10	28,168.10	62.60	533	906	58.80
1991	17,055.30	30,818.40	55.30	561	973	57.60
1992	17,772.10	27,775.10	63.90	425	874	48.60
1993	6,287.20	13,752.70	45.70	328	686	47.80
1994	11,339.10	22,951.30	49.40	433	870	49.80
1995	9,143.60	20,869.10	43.80	403	898	44.90
1996	20,411.80	34,257.60	59.60	374	782	47.80
1997	11,246.95	25,763.40	43.60	255	754	33.80

Source: Malaysian Industrial Development Authority (1998)

RM1.9 billion and rose to an annual average of over RM6 billion in 1988 and 1989. This turnaround in foreign investment was dramatic; FDI had thus played a vital role in revitalising the economy.

In order to accelerate the growth of the manufacturing sector, the Industrial Master Plan (IMP) was formulated in 1985. Its objective was to provide a blueprint for the development of the manufacturing sector over a 10-year period, i.e. from 1986-1995. To develop the manufacturing sector, an outward-oriented industrialisation strategy supported by technology and manpower development, improved inventive systems and the modernisation and industrialisation of the industrial sector was recommended (Sulong, 1990). FDI played a significant role in the IMP. A one-stop centre on investments was established under the Malaysian Industrial Development Authority (MIDA) in October 1988 in an attempt to cut down on red tape (Zainal, 1990, cited in Edwards, 1994 p 692). As a result, the number of approved projects owned by foreigners reached its peak in 1990 where a total of 533 projects were approved, constituting 58.8 per cent of the total number of projects which included local projects. The value of investments, on the other hand, peaked in 1990 with a total of RM17.629 billion injected into the country, contributing 62.5 per cent of total approved investments.

However, FDI showed a downward trend after having reached its peak during 1990-1992 where an average of RM17 billion worth of investments was brought into this country. Subsequently in 1997, as shown in Table 1, the share of foreign investment dropped to 43.6 per cent when compared to its peak period in 1990 when it contributed 62.6 per cent of the total value of investments. Although the FDI contribution has reduced significantly,

the contribution of the manufacturing sector to the economy is still strong. Indirectly this development trend also indicated that domestic or local investment is strengthening its contribution to the overall investments in the country and is moving towards achieving a balanced participation in the economic growth. Nevertheless, the government has maintained that foreign investment is still important and will continue to be encouraged to spur the growth of the manufacturing sector (New Straits Times, 1997). Under the Seventh Malaysia Plan 1996-2000, the government has set a target of RM 110 billion in investments in the manufacturing sector, of which domestic investments are targeted to account for 60 per cent of total investments, while foreign investments, 40 per cent. In addition, growth for the manufacturing sector is targeted at an average annual rate of 10.7 per cent, while the sector's share of GDP is forecasted to increase from 33.1 per cent in 1995 to 37.5 per cent in the year 2000.

The contribution of FDI to the manufacturing sector and to the economy is indeed great. It contributes significantly to the development of high technology industries and provides access to international markets with their brand names. It has large resources to compete in the international market through technological advancement and marketing capabilities. In this way Malaysia has gained access to the international market for its made-in-Malaysia goods. Malaysia needs FDI to make its leap towards industrialisation.

The Role of FIC

It was only in the 1970s with the introduction of the New Economic Policy (NEP), that some form of control on FDI was introduced. In the late 1960s and early 1970s the

Malaysian economy was dominated by foreign enterprises. In 1970, about 60 per cent of the share capital of limited companies were owned by foreigners (Hoffman and Tan, 1980). In agriculture and fisheries, the foreign ownership was as high as 75 per cent with about 72 per cent in mining and quarrying. For commerce and manufacturing, foreign ownership amounted to about 63 per cent and 59 per cent of the total share respectively. There was a marked imbalance in ownership between Malaysians and foreigners. This dominance of foreign ownership and control of the economy is a direct by-product of Malaysia's historical past (FIC Guidelines, 1974).

In order to ensure a better distribution of wealth, it is therefore necessary to regulate such acquisitions, mergers and take-overs. In line with the objectives of NEP (1981-1990), i.e. of eradicating poverty and restructuring the economy, in 1974 the FIC was established to ensure balanced Malaysian participation in ownership and control. Due to the Bumiputera's lagging economic position and their special rights, most attention were focused on the advancement of the Bumiputera. In terms of capital ownership in the corporate sector, the ultimate aim was to achieve a distribution of ownership of 40 per cent by the Bumiputera, 30 per cent by the non-Bumiputera and 30 per cent foreigners by the year 1990 (FIC Guidelines, 1974).

After 1990, as the achievements were falling short of the objectives of NEP, the objectives were still maintained in the National Development Plan (NDP) 1991-2000 (Malaysia, 1991, cited in Jomo, 1994 p 58). The government maintains that at least 30 per cent should be reserved for

Bumiputera participation in the management levels in all the commercial and industrial activities, irrespective of categories and scales of operation (FIC Guidelines, 1974). Thus, the FIC is responsible for influencing the structure of the foreign interest in any acquisition of assets or any interests, mergers and take-overs of companies and businesses by foreign investors.

In order to encourage local investment, specifically to promote Bumiputera interest and to ensure that they will be able to compete with the foreign investors, the Industrial Coordination Act was passed in 1975. This legislation requires all manufacturing projects with shareholders' fund of RM250,000 and above or engaging 25 or more full-time workers to apply for manufacturing licences. As a step to boost local participation, projects on a joint-venture basis were encouraged. The level of foreign equity in a project was spelled out (Sulong, 1990). The licensing was backed up by the work of two high-level Committees, namely the Capital Issues Committee (CIC) and the FIC. The CIC is responsible for supervising the capital market and influencing the price at which shares were offered to the Bumiputera whilst the FIC's role is to monitor foreign investments and to ensure companies restructure their capital (Edwards, 1994).

Although there is a marked imbalance in ownership between Malaysians and foreigners, foreign investment with a balanced structure of ownership and control are very much encouraged. Private investments, including foreign investment will be welcomed as long as it is consistent with the NEP (FIC Guidelines 1974).

Foreign Acquisition of Malaysian Properties - Policy Development

As mentioned earlier, prior to 1984, foreign ownership of real property was not regulated on the belief that it lends support to FDI. This is a reasonable assumption, as foreign investment would certainly require premises for their operations. Foreign investment involved in manufacturing would require industrial sites, while those involved in services would require office space. In addition, accommodation was required to house their personnel. A study on investment packages by MIDA revealed that a foreign investment of RM5.4 million entails the placement of five expatriates (Star, 1993). In view of the government's industrialisation policy and the role of FDI, acquisitions of industrial property by foreign interests were not restricted.

With the exception of industrial property, foreign ownership of other landed properties or interest in land or properties is only permitted with the approval granted by the State Authority. The housing sector in particular received special protection due to the government's home ideology. In the past, an influx of foreign purchasers of residential properties in certain towns like Johor Bahru had pushed up property prices. Without proper control this will result in houses becoming unaffordable to most locals and retard the government's house owning objectives. Hence, the first legislation that governed and controlled foreign ownership of registered or alienated land was introduced in 1985. The main objective was to restrict foreign ownership of registered land or alienated land in West Malaysia. Another objective was to curb purchases of land and houses in Johor Bahru by foreigners. This statutory restraint on foreign ownership was intended to curb

property speculation to a certain extent and to lower prices (Kok, 1997).

In January 1987, the restriction on foreign ownership provisions was lifted in the wake of the worldwide recession, which had affected the economy, and the property market of Malaysia. This repeal which allowed foreigners to invest in property, was aimed at stimulating the economy. As a result the economy began to pick up in 1988/1989.

However, with the re-emergence of speculative activity in the property sector, the restriction on foreign acquisition of property was reintroduced in 1993 together with additional provisions to restrict foreign ownership of landed property. This provision provides that:

'A non-citizen or a foreign company shall not be entitled to bid at the sale where the land is subject to the category of 'agriculture' or 'building' or to any condition requiring its use for any agricultural or building purpose without the approval of the State Authority.'
(Section 433B(4) National Land Code (Amendment) Act 1992)

This provision, however, does not apply to land under the 'industry' category or to any condition requiring its use for industrial purposes. The first set of guidelines for the acquisition of residential properties by foreign interests was issued by the FIC in December 1992. It received a lot of objections from housing developers on the grounds that it might deter foreign buyers and dampen the property market, especially the demand for residential property. It was contended that with the imposition of the restrictions, about 21 up-market property development projects worth RM3.5 billion were at the risk of being abandoned (Business Times, 1993). In

addition, it was argued that the enforcement would indirectly affect the development of low-cost houses due to the inability of developers to cross subsidise² such developments from profit reaped from high cost housing units (Business Times, 1993). The construction of low-cost housing would, therefore, fall short of targets. It further contended that changing investment rules would cause fear and uncertainties and could drive foreign investors away from Malaysia. It would, therefore, be unwise to impede foreign investments in any form, as it would lead to the country losing its competitive edge to their neighbouring countries.

Despite all the arguments, the Government further restricted foreign acquisition of properties and in August 1995 foreigners were only allowed to purchase houses exceeding RM250,000 per unit. This measure came about as a result of increasing prices of real estate due to the significant acquisition of properties by foreigners. In addition, all properties acquired by foreign interests were not permitted to be disposed within three years from the date of FIC's approval.

To further contain foreign acquisition, the 1995 Malaysian Budget introduced an additional measure where a levy of RM100,000 would be imposed on foreigners purchasing houses more than RM250,000 per unit. Furthermore, the disposal of any property by non-citizen individuals will be subjected to a 30 per cent flat rate of Real Property Gains Tax irrespective of the holding period. The objective of this measure was to curtail excessive speculation in the property market.

The regional economic crisis which affected Malaysia in July 1997 coupled with the March 28 Central Bank guidelines which curbed banks' lending to the property sector prompted the government to reconsider restrictions imposed on foreigners. Finally, the levy of RM100,000 imposed on foreign purchasers was lifted on 27 August 1997 when the government realised that supply of up-market properties priced more than RM250,000 was ample (FIC Guidelines, 1 November 1995).

Due to the continuing weakening of Malaysia's economy, the restrictions imposed on foreigners were further relaxed. The 1998 Malaysian Budget (pp 35-36) announced additional measures to stimulate property growth in view of the excessive supply of high-priced properties. The conditions imposed on foreign acquisition of residential properties were further relaxed as follows:

- i. the 30 per cent quota on sale of condominiums at prices of more than RM250,000 per unit to foreign interests be increased to 50 per cent for projects which have commenced construction on 17 October 1997;
- ii. each foreign interest be allowed to acquire 2 units of condominiums and any further acquisition will be subjected to the condition of having to incorporate a company;
- iii. a permanent resident will be allowed to acquire dwellings priced at below RM250,000 but above RM60,000 on

condition that the spouse is a Malaysian citizen or has applied for the status of Malaysian Citizen.

In addition, the Real Property Gains Tax on non-residents is reduced to a rate of 5 per cent if the disposal takes place after the fifth year.

Although the relaxation of foreign acquisition policy was regarded as positive move by property developers, they were not certain whether foreigners would come back to our shores as many of them had turned their eyes to countries with depressed economies after the levy was imposed (The Sun, 1997). Moreover, it would take between six months to a year for potential investors to make an impact. At the moment, potential buyers would rather adopt a wait-and-see attitude to analyse whether the market still has the fundamentals to support property purchases.

To further stimulate property growth, FIC announced another relaxation in April 1998 (FIC Guidelines effective from 22nd April 1998) based on the proposal made by the National Economic Action Council (NEAC). The relaxation stipulates that:

- i. foreign interests will be allowed to purchase all type of residential units, shop-houses, commercial and office space as long as the purchase price is above RM250,000 per unit. This relaxation is only applicable to projects that are newly completed or projects where construction is at least 50 per cent in progress.
- ii. the financing must be obtained from overseas financial institutions outside Malaysia.

- iii. all acquisitions under this guideline must obtain FIC's approval to ensure that the purchase price is more than RM250,000 and that it will be financed through a financial institution outside Malaysia. Approval will be granted automatically when the purchaser fulfills these conditions.

From the development of the FIC guidelines above, it is evident that its role has slowly shifted from its original role of ensuring balanced participation of local and foreign investment to stimulating the economy via foreign acquisitions. The question to ask is, what are the policy directions?

Policy Implications

Discussions on policy implications would entail the examination of foreign share in the property market and the impact of foreign acquisition policy on foreign direct investment. As residential property transactions represent the biggest share of the property market, capturing nearly two-thirds of the total property transactions (Valuation and Property Services Department, 1989-1997) and it has been the objective of the government to provide affordable houses to all Malaysians (Seventh Malaysia Plan 1996-2000), the discussion here is therefore focused on the foreign acquisition of residential property. To examine foreign share in the property market, analysis is based on FIC approval given to foreigners for the acquisition of residential properties dated from 1994. In order to determine the impact of foreign acquisition policy on foreign direct investment, the trend of FDI after policy changes is examined.

Table 2 below shows the foreign share in the residential property market by volume and by value in the period between 1994-1997. The value of residential property transactions by the foreigners in 1994 and 1995 made up 11 per cent and 13 per cent of the total value of residential property transactions respectively while the volume of transactions was close to 4 per cent. However, after the imposition of the levy on residential property in 1995, the foreign share by value in the residential property market in 1996 reduced to 7.8 per cent, which was a reduction of about 40 per cent while its share by volume has reduced to 1 per cent. In 1997 share of foreign acquisitions by value further reduced to 7.1 per cent and in terms of value it constituted less than 1 per cent. This reduction in foreign share suggests that policy changes, such as imposition of levy, have an influence on volume and value of the foreign acquisition. However, this has to be put in context. The residential property sector dominates the property market, where the residential property transactions accounted for more than two thirds of the property transactions and made up more than 40 per cent of the total value of property transactions (Valuation and Property Services Department, 1989-1997). In this context, the

overall impact of the foreign share in the property market is not significant enough to contribute to asset inflation. However, this analysis is on a national basis, the analysis on a regional basis perhaps present a different picture. While the overall impact of foreign acquisition is not significant to the property market, most of the foreign purchases are located in major towns like, Johor Bahru and Georgetown, where the competition arising from their presence has pushed up property prices in these places.

The impact of policy changes has to be examined against wider perspectives, i.e. its impact on the foreign investments. To what extent would the restrictions deter foreign investors? Table 3 shows that between 1994-1996 Malaysian properties were most favoured by the Singaporeans. While in terms of FDI, the top three countries that have invested actively in Malaysia are United States, Japan and Taiwan which constituted 20.3 per cent, 18.5 per cent and 11.9 per cent respectively (See Table 4). However, their share in the foreign acquisition of Malaysian properties only constituted an average of 0.9 per cent, 2.3 per cent and 3.2 per cent respectively.

Table 2: Foreign Share in the Residential Property Market by Volume and Value

Year	Total Property Transactions	Total Residential Property Transactions	Total Residential Property Acquisitions by Foreigners	Foreign Share in Residential Property Market by Volume	Total Value of Property Transactions	Total Value of Residential Property	Total Value of Residential Property Acquisitions by Foreigners	Foreign Share in Residential Property Market by Value
	(Units)	(Units)	(Units)	(RM'000)	(RM'000)	(RM'000)	(RM'000)	%
1994	217,546	140,350	5,503	3.9	29,730,730	12,648,360	1,385,543	11.0
1995	251,891	156,913	5,687	3.6	39,857,440	15,813,670	2,113,612	13.4
1996	270,548	170,016	1,770	1.0	48,993,440	18,753,020	1,468,024	7.8
1997	280,384	175,682	753	0.4	53,128,404	21,610,485	1,542,420	7.1

Source: 1. Valuation and Property Services Department, Property Market Report, various years 1994-1997
2. Foreign Investment Committee, Economic Planning Unit, Prime Minister's Department (1998)

Table 3: Countries of Origin for Foreign Acquisitions 1994 - 1997

Country	1994		1995		1996		1997	
	Unit	%	Unit	%	Unit	%	Unit	%
Singapore	4,527	82.7	4,484	82.1	1,240	81.5	350	73.0
Hong Kong	184	3.3	158	2.9	28	1.9	7	1.5
United Kingdom	107	1.9	127	2.3	38	2.5	16	3.3
Japan	111	2.0	85	1.5	35	2.3	17	3.5
Taiwan	133	2.4	161	2.9	54	3.5	19	4.0
Indonesia	70	1.3	102	1.9	26	1.7	11	2.3
USA	27	0.5	32	0.6	12	0.8	9	1.9
Others	344	6.3	313	5.8	88	5.8	50	10.5
Total	5,503	100.0	5,462	100.0	1,521	100.0	479	100.0

Source: Foreign Investment Committee, Economic Planning Unit, Prime Minister's Department (1998).

Table 4: Countries of Origin for FDI 1994 - 1997

Country	1994		1995		1996		1997	
	RM Million	%	RM Million	%	RM Million	%	RM Million	%
United Kingdom	94.11	0.83	189.86	2.07	380.66	1.86	206.67	1.82
Hong Kong	873.87	7.70	175.15	1.91	13.85	0.06	23.19	0.20
Japan	1,765.24	15.56	2,096.32	22.90	4,607.27	22.57	2,096.80	18.55
Singapore	1,635.50	9.37	1,008.65	11.03	4,765.48	23.34	1,279.39	11.31
USA	1,253.22	11.05	1,801.63	19.70	2,893.21	14.17	2,296.50	20.31
Taiwan	2,874.26	25.34	1,442.21	15.77	775.70	3.80	1,345.06	11.89
Others	3,414.80	30.15	2,430.20	26.62	6,975.83	34.20	3,999.39	35.61
Total	11,339.0	100.0	9,144.0	100.0	20,412.0	100.0	11,247.0	100.0

Source: Malaysian Industrial Development Authority (1998)

In this context, Singapore is not the leading foreign investor in terms of FDI as it only contributed an average of 11.0 per cent to total FDI. This suggests that foreign purchases of real properties are not directly linked to foreign investments. Hence, foreign acquisitions of Malaysian properties are not necessarily a product of FDI. Possibly, the foreign purchasers are attracted to this country by other factors. Observations made suggest that among some of the possible factors could be close proximity to the country of origin, especially the Singaporeans, where

land is scarce in their country; and also due to high property prices in their home land like Singapore and Hong Kong.

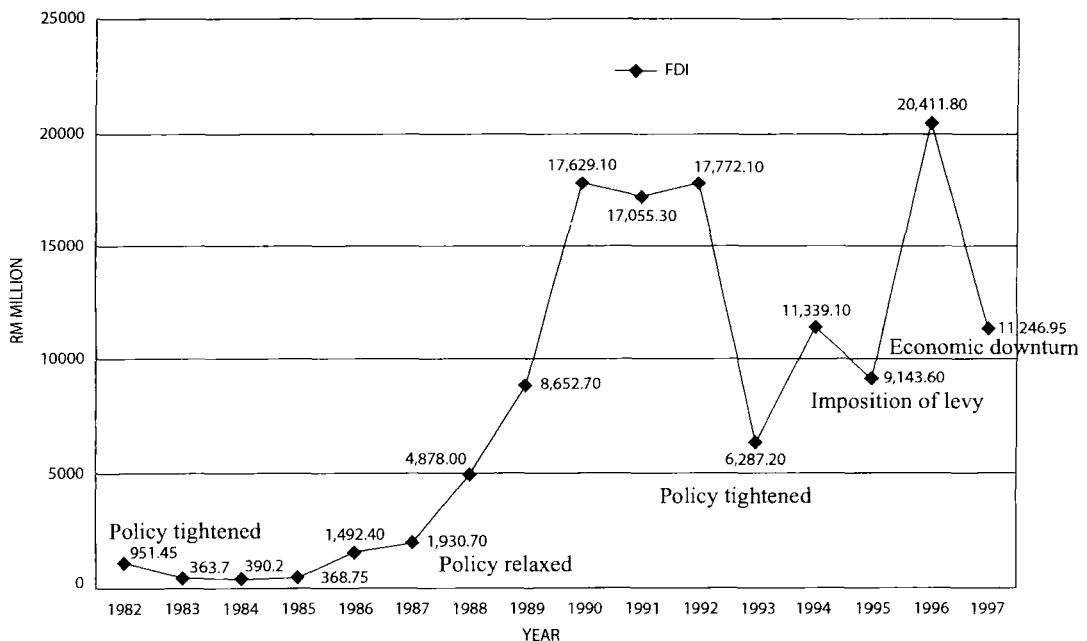
While it has been established that the overall contribution of foreign acquisition to the property market is not significant and that the majority of the foreigners who bought property in Malaysia are individual purchasers, the impact has to be measured against the total value of new FDI. As shown in Figure 1 below, any tightening of foreign acquisition policy appears to influence FDI.

However, the effects were only temporary in nature and FDI picked up in the subsequent years. In 1987 when the foreign acquisition policy was relaxed due to the recession, the impact on foreign investment can be seen in terms of total value of new investment in the country where it increased to RM4,878 million in 1988 from RM1,930 million in 1987, an increase of 60 per cent. It continued to increase in 1990 to RM17,629 million and stabilised at this level until 1992. In 1993 when the foreign acquisition policy was tightened, the total value of new investments dropped to RM6,287.20. Similarly in 1995 when the levy was imposed, the value of total investments dropped. However, the situation improved in 1996. Despite the fact that the regulation of foreign acquisition was imposed only on selected properties and did not include industrial property, and that the foreign purchasers were individuals, it still affected the FDI. This is understandable as

any policy changes always translate as risk and uncertainty to the foreign investors. Possibly, it may have created a fear that other types of property may be regulated. The foreign acquisition policy swings have occurred so frequently that to some extent it may deter potential investors from investing in the country.

With the regional economic crisis, the present policies are certainly encouraging foreign acquisition. As mentioned earlier, it has increased the quota of foreign interest to purchase condominiums costing RM250,000 from 30 per cent to 50 per cent. However, such a move may tempt the housing developers to maximise their profits by concentrating on condominiums or up-market property. There is also a danger in that the properties may be bought for speculative purposes as the Real Property Gains Tax is now reduced to 5 per cent after 5 years of holding. The Malaysian

Figure 1: Impact of Foreign Acquisition Policy



Source: Malaysian Industrial Development Authority (1998)

currency has devalued by almost 50 per cent. To the foreigners the properties have become even cheaper. While this may create an influx of foreigners in the property market now, this may also lead to possible capital flights to the countries of origin in another five years time.

Conclusion

Malaysia aspires to become an industrialised country by the year 2020 and FDI is expected to play a significant role in achieving this aspiration. FDI will, therefore, remain a feature of Malaysia's development path as the country raises itself to a higher level of industrial development. As such the confidence of FDI in this country must not be undermined. Of utmost importance is the provision of a healthy and conducive climate for foreign investors. It has been established that foreign share in the residential property market is small. In this sense the contribution to the property industry is not significant but the impact would be more in their mind, the satisfaction from the knowledge that property ownership would be possible in Malaysia and the confidence it instils in foreign investors in Malaysia. Although foreign ownership of real property is not a direct by-product of FDI, any changes in the foreign acquisition policy appeared to affect the level of FDI. Frequent policy changes can create uneasiness among foreign investors. Therefore, consistency and clarity in the policy are essential. The policy directions and the underlying intentions must be spelled out clearly in order to facilitate the understanding of the foreign investors. Such understanding is vital in instilling the confidence of the foreign investors towards this country.

While foreign funds are important for the economy, and measures are being taken to

attract these funds, the government should not overlook possible consequences, first the over-dependence of the economy on foreign funds. Many writers raise the concern of the potential danger of over-dependence on foreign funds. Jomo (1994), for example, argued that the trans-nationals are unreliable and if Malaysia were to rank among the newly industrialising economies, it would be better to rely on local participation. Hoffman and Tan (1980) raised the issue of potential danger of capital flight as all profits of foreign investments are transferred to the home country. In addition, foreign funds are sensitive to policy changes. As established earlier policy changes send shocks to FDI and affects the economy.

Second, consideration should also be given to the possible consequences on the residential property market. One possibility would be that property development companies would try to cash on the policy relaxation on up-market properties by concentrating on high cost developments and thereby neglecting the lower cost developments. Capital flight may occur if the purpose of property acquisition is for speculative reasons, especially now that the rate for Real Property Gains Tax is reduced to a low level after five years of holding. While measures are made to welcome funds, there must also be some measures to reduce capital flight and encourage reinvestment in the country.

Endnote

1. FDI is defined as an investment where a foreign person or corporation not resident in Malaysia has an equity or voting share in the investment and therefore some element of managerial control over the investment (Edwards, 1994).

2. The constructions of low cost houses are usually cross-subsidised by the higher cost houses (World Bank,1989).

References

- Business Times*, (1993), HDA : 21 Property projects in jeopardy, January 21.
- Business Times*, (1997), RM100,000 Levy abolished : Anwar, August 28.
- Edwards, C. (1994), "The role of foreign Investment" in *Malaysian Development Experience, Changes and Challenges*, National Institute of Public Administration, Kuala Lumpur, Malaysia.
- Foreign Investment Committee, *Guidelines for the Regulation of Acquisition of Assets, Mergers and Take-overs*, various editions.
- Hoffman, Lutz, and Tan, S.E. (1980), *Industrial Growth, Employment and Foreign Investment in Peninsular Malaysia*. Kuala Lumpur : Oxford Press.
- Jomo K.S. (1994), *U-Turn? Malaysian Economic Development Policy After 1990*, Centre for East and Southeast Asian Studies, James Cook University of North Queensland Townsville, Queensland, Australia.
- Kok S.Y. (1997), Restrictions on foreign ownership in registered or alienated land and levy of RM100,000 (Pt 1 & 2) *The Malayan Law Journal* (1997) 3 MLJ 5 September and 12 September.
- Malaysia, (1991), *Sixth Malaysia Plan (1991-1995)*, National Printing Department.
- Malaysia, (1996), *Seventh Malaysia Plan (1996-2000)*, National Printing Department.
- Malaysian Industrial Development Authority (MIDA), *Annual Report*, 1982-1997.
- Ministry of Finance Malaysia, *The Budget*, 1995.
- Ministry of Finance Malaysia, *The Budget*, 1998.
- New Straits Times*, (1997), The pros and cons of foreign direct investment, March 22
- New Straits Times*, (1997), Foreign investment drops 24 pc, April 29
- New Straits Times*, (1998), FDI Key to Malaysia's Road to Development, October 1998.
- Sulong, Z.A. (1990), "The past, present and future role of foreign direct investment in Malaysia" in Buang, A (ed) *The Malaysian Economy in Transition*, National Institute of Public Administration, Kuala Lumpur.
- The Star*, (1993), Association : 21 Projects nearly abandoned, January 22 .
- The Sun*, (1997), Foreign fixations, July 29.
- Valuation and Property Services Department, (1989-1997), *Property Market Report*.
- World Bank, (1989), *The Housing Sector, Getting The Incentives Right*, World Bank Regional Centre, Report No.7279 MA.

A Critique of Current Research Methods in Corporate Property Literature

Iskandar Ismail, Ph.D.
Property Information Programme
INSPEN
Valuation and Property Services Department

Received: July 1998

Revised: October 1998

Abstract

By reviewing the research designs used in 15 studies on private sector operational property management, this paper proposes a methodological framework for property management research within large, non-property organisations. The dichotomy between the explicitly statistical approach and the non-rigorous qualitative methods used in the reviewed studies are discarded. Instead, this paper argues in favour of an eclectic approach, by adopting a qualitative research design, which employs certain elements of the quantitative approach to add rigour to the qualitative studies.

Keywords: operational property, property management, research methods, research design, qualitative analysis

Introduction

A review of the research methods used in corporate property research has shown that there is a clear dichotomy of approaches. On the one hand, there is the explicitly statistical approach, where corporate property issues are given the quantitative treatment, even when the phenomena under investigation would not lend itself to quantitative analysis. In the other approach, corporate property issues are analysed qualitatively without rigour, where research methodology do not seem central to the research findings.

The formulation of an explicit research design, which draws the data collection and

analysis methods from both the organisational and real property paradigm, should secure a sound methodological framework for corporate property research. This would incorporate both quantitative and qualitative methods of data collection and analysis, sound sampling and statistical techniques with an acknowledgement of their limitations, and a justification of all techniques employed in the research.

Similarly, corporate property research should incorporate the explicit analysis of qualitative data within large non-property organisations (LNPOs). Such contextual data is critical for

a more correct interpretation of quantitative property data, since it provides the critical organisational perspective to operational property issues, when applied in a rigorous, holistic and triangulated manner.

The objective of this paper is to review the research methods in current corporate property literature and propose a methodological framework for property management research within LNPOs. As corporate property is an organisational resource, this paper proposes a rigorous framework for corporate property studies, by merging the investigative traditions of the organisational and real property paradigm.

The Genesis of Corporate Property Research

The management of corporate property within LNPOs is an emerging area of academic specialisation, but comprehensive studies on property related themes are not new. Much has been written on the economics of real property such as the lease or buy decision, and site selection (Nourse, 1989). What is new is the current emphasis on the management of corporate property as a strategic asset.

Historically, property was identified in classical economic theory as one of the three key factors of production, alongside capital and labour. Early writings on the role of property within industrial companies were from the economic perspective and tends towards the anecdotal rather than academic. Many have been Marxist in orientation and are of limited value for the present purposes.

Abrahamson (1993, p 28) stated that in neo-classical economics, the market model was the dominant paradigm. For the economists at least, it would seem that the natural state of

the market is based on the study of individuals as opposed to the study of organisations. It is only much later that attempts to understand collective actions appeared in economic theory. These attempts were such notable departures from prevailing economic theory that they were given their own names, such as the Theory of the Firm.

The Theory of the Firm thus pervaded into the economics approach to research. Both had a central role in the early development of management literature, with its assumptions of profit maximisation, perfect markets and complete and certain information. In the late 1960s, management techniques tried to accommodate uncertainty through probability distributions. These led to increasingly complex management techniques which were criticised for disregarding the costs of information.

Although not unified by a single rationale, the *“logical, rational and orderly approach”* prevailed because of its research convenience, despite doubts as to its applicability to the real world (Metcalf and Richards, 1987). Their appeal was also largely based on the effectiveness of the studies rather than their logical consistency (Whitley, 1984), translating managerial issues into complicated technical analysis without resolving them (Toda, 1990).

In the 1970's, researchers explored the implications of relaxing assumptions pertaining to profit maximisation, complete information and the use of simpler but more rational responses to the benefits and costs of information. As the decision-makers' attitudes towards risk were assumed to be expressed in their utility functions, uncertainty and incomplete information were introduced into utility-maximising decision models.

The shift to utility maximisation altered the character of organisational research in the recognition that simpler models could be quite rational. It was the precursor to more explanatory approaches to management behaviour in the 1980s, after the complex quantitative models of the previous decade. This led to the convergence of quantitative and qualitative models of management behaviour. By the late 1980s, both schools were more concerned with explaining the nature of existing management practice, rather than formulating "improved techniques". Strategic management approaches also gained favour with researchers. Unlike conventional management modelling, it does not ignore the existence of the external environment of the organisation and the interaction among the various elements of the organisation.

Early corporate property literature, being, as it were, part of the organisational paradigm, was influenced by the rational and prescriptive approaches favoured at that time in management literature. The LNPO was seen as a closed system where technical efficiency was all important, and as apolitical and rationalistic, believing the economic model is a valid description of corporate behaviour. Thus, in the 1960s, property research was largely approached from a rational economic perspective, focused on a rigorous statistical analysis of issues.

Until relatively recently, the empirical property literature have thus largely ignored the strategic management problems of the business firm, because the micro-economic theory of the firm on which it was initially based, was incapable of analysing it. Bon (1991), drawing from the Austrian school (Carl Menger, 1840-1921 and Von Mises,

1881-1973, *inter alia*) argued that the focus should shift from investment decisions to decisions concerning the use of land and buildings, to wit, the property management rather than the property investment issues.

Due largely to the above reasons, published interest in corporate property management began to develop only in the late seventies. In the 1980s, a number of large-scale studies into the management of properties by large organisations were commissioned. They were followed by smaller surveys into the same phenomenon by a number of researchers. From 1978 to October 1994, there were 10 studies on public sector and 14 on private sector operational property management. Except for one, all the studies pertain to organisations from the US and the UK.

Research Methodology

According to Krippendorf (1980, p 11), the purposes of research methodology are:

- a. to describe the logic of the composition of research methods
- b. to reveal their powers and limitations
- c. to find domains of appropriate application and predict possible contributions to knowledge.

Krippendorf (*ibid*, p 49) defined a research design as the procedural network of analytical steps through which information is processed. The research design provides to other researchers an account of what data were collected, why they were collected and how they were analysed. It serves as a technical plan, which ensures that the evidence to be collected is pertinent to the research objectives.

Miller (1991) suggested the core elements of research design for a descriptive study would include the following:

- a. Statement of the research objectives
- b. Selection of the most appropriate type of investigation
- c. Identification of the type of information needed to explain the phenomena under study
- d. Description of the methods of data collection
- e. Identification of the target population
- f. Description of the sampling procedure
- g. Description of the methods of data analysis

Review of Research Designs in Empirical Property Literature

Sources of literature for this review include unpublished academic or empirical work, doctoral theses, referred journals, commissioned studies, conference papers, surveys by universities, reports and government publications up to October 1994. Although not all the studies were so structured (for example, the Avis *et al* (1989) study dealt with both sectors), for purposes of review, the studies may be usefully grouped into the public and private sector studies, since the critical issues affecting the two sectors can be set apart.

Public sector studies tended to be in the form of reports focused on a particular organisation or homogenous group of organisations, whilst private sector studies tended to be large-scale empirical surveys. Given the specific objectives of this paper, only the research designs from the private sector studies are analysed here (see Ismail (1996) for a fuller treatment).

The list of studies on private sector operational property management and their areas of inquiry are as follows (see Table 1 below):

- a) Hubbard (1976)
- b) Zeckhauser and Silverman (1981)
- c) Veale (1987)
- d) Avis *et al* (1989)
- e) Gale and Case (1989)
- f) Rutherford and Stone (1989)
- g) Pittman and Parker (1989)
- h) Redman and Tanner (1989)
- i) Glascock *et al* (1989)
- j) Noah (1990)
- k) St. Quintin (1991)
- l) Debenham Tewson Research (1992)
- m) Teoh (1993)
- n) Kimbler and Rutherford (1993)
- o) Hillier Parker (1994)

Using the format based on the elements of research design discussed earlier, an analysis of the empirical work on corporate property management in the private sector from 1976 to 1994 revealed the following (see Table 2).

Most of the studies surveyed large companies, identified either by their high ranking on various lists or their listings on the Stock Exchange. Almost half of the studies focused on evaluating the current state of operational property management practice. Other objectives included studies on the performance, organisational structure and the use of operational property in different environments.

Most of the studies used either the descriptive or the hypothesis testing method. They either did not analyse the strategic development of the organisation or did so through secondary data. Almost all studies collected both quantitative and qualitative data, and used convenience or purposive sampling, which

are both types of non-random sampling. Convenience sampling uses as the sample whatever happens to be available. Purposive sampling involves the researcher using his judgement to select specific elements of the population that are expected to provide the required information. The most common were questionnaire surveys of property executives from the organisations. A small number used the personal interview method and the rest used secondary data. The descriptive studies tended to use questionnaire surveys and personal interviews, whilst those using the hypothesis testing approach tended to use secondary data.

Most of the descriptive studies used basic descriptive statistics to analyse their data. Those using the hypothesis testing method used quantitative techniques such as ordinary least squares regression, chi-squared tests of independence and two-way contingency tables. Virtually all studies used organisations as their unit of analysis. The only exception was one that used property acquisition and disposition transactions.

Criticisms of Current Research Designs in Empirical Property Literature

The full technical information on the sampling procedures used in the studies have not been obtained, other than those stated in the technical supplement to the respective papers. Based on this premise, several comments can be made.

There seems to be a significant degree of uniformity in the research designs adopted in the empirical operational property research area. Analysis of the above studies revealed certain weaknesses in the procedures applied, since all the studies were ostensibly based on random probabilistic sampling.

Firstly, the population was not defined, which suggests an arbitrary population frame. A defined population has at least one characteristic that differentiates it from other groups (Gay and Diehl, 1992, p 127). Secondly, sampling was mainly purposive, curtailing generalisability. This is justifiable for descriptive studies that do not claim generalisability but not for large-scale surveys that do. Although carrying out random sampling across a representative section of the whole population may be costly and probably impossible to undertake, the issue of statistical generalisability was not always explicitly spelt out.

Thirdly, sample size is dictated by the extent of precision required, but generally, a sample size of between 30 and 500 fits most needs, at the 95 percent confidence level (Roscoe, 1975). For descriptive research, the required sample size is at least 10 percent of the identified population, correlational studies at least 30 percent, and causal comparative studies at least 30 subjects per group (Gay and Diehl, 1992, p 140).

Evaluating the investigative methods, some of the studies, which purported to be causal-comparative or correlational studies, did not conform to the conventional minimum statistical standards for their conclusions to be valid. Most of the studies have only managed much smaller sample sizes, bringing into question the validity of their results (see Appendix, Veale, 1989, for a fuller discussion).

Most of the empirical studies did not satisfy the basic tests as outlined above and are thus not generalisable. This finding was conceded by some of the major empirical studies at the outset. Zeckhauser and Silverman (p 114, 1981) stated that the random nature of their

Table 1: Areas of Inquiry of Studies on Private Sector Corporate Property Management

Empirical Research														
Areas of Inquiry	Hubbard	Zeckhauser	Veale	Avis <i>et al</i>	Rutherford & Stone	Pittman & Parker	Redman & Tanner	Glascock <i>et al</i>	Gale & Case	St. Quentin	DTR	Kimble & Rutherford	Teoh	Hillier Parker
Property Info & Reporting		*	*	*		*			*	*	*		*	*
Space Acc. & Management	*	*	*	*	*		*	*	*	*	*		*	
Corporate Strategy			*	*		*			*	*	*			
Organisational Structure	*	*	*	*	*			*	*		*			
Property Performance		*	*	*		*			*				*	
Decision Making			*	*			*				*		*	*
Property Mgmt Activities	*	*	*						*	*		*		
Attitude Towards Property	*		*	*		*			*	*	*		*	*
Corporate Property Function	*	*	*	*	*	*		*	*	*	*		*	
Property Investment Analysis							*	*	*		*		*	
Choice of Tenure							*		*		*			
Maintenance Condition														
Property Running Costs														*
Property Objectives	*	*	*	*		*					*			*
Property Budgeting														
Opportunity Costs of Property				*										
Incentives														
Year of Publication	1976	1981	1987	1989	1989	1989	1989	1989	1989	1991	1992	1993	1993	1994

Table 2: Summary of Research Design of Studies on Private Sector Management

Research Design	Hubbard	Zeckhauser & Silverman	Veale	Avis <i>et al</i>	Rutherford & Stone	Pittman & Parker	Pedman & Tanner
Objectives of Study	objectives of corporate property management	state of current property management practice	state of property management practice since the HRE survey	state of operational property management in LNPOs	relationship between type, industry & reasons for forming a CPF	factor influencing corporate property performance	decision rules used in the acquisition & disposition of assets
Type of Investigation	descriptive study	descriptive study	descriptive study	descriptive study	hypothesis-testing	hypothesis-testing	descriptive study
Type of Information Collected	qualitative & quantitative	qualitative & quantitative	qualitative & quantitative	qualitative & quantitative	qualitative & quantitative	qualitative & quantitative	qualitative & quantitative
Method(s) of Data Collection	questionnaire survey	questionnaire survey	questionnaire survey	questionnaire survey & personal interviews	questionnaire survey	secondary data from IDRC survey	questionnaire survey
Method(s) of Data Analysis	descriptive statistics	descriptive statistics	descriptive statistics	descriptive statistics	chi-squared tests & contingency tables	ordinary least squares regression	descriptive statistics
Unit of Analysis	organisation	organisation	organisation	organisation	organisation	organisation	organisation
Target Population	US companies from Fortune 500 list	US companies from Fortune 500 list	US companies from Fortune 500 list	public & private sector LNPOs	members of NACORE	companies from 27 different industries	members of NACORE
No. of Questionnaires Mailed	500	1377	1898	800	794	430	500
Numbers Returned	111	300	284	230	82	105	92
Percentage Response	22%	22%	15%	28%	10.33%	24%	18.4%
Numbers Interviewed	-	-	-	51	-	-	-
Sampling Procedure	purposive	purposive	purposive	purposive	purposive	purposive	purposive
Main Findings	corporate property is not managed for profits	corporate property is not managed as independent assets	corporate property is still undermanaged	operational property in LNPOs is largely reactively managed	no significant relationship between industry & corporate structure	centralised CPF & working relationships are most influential factors	most common decision rule for disposition of assets is cash flow generated by assets

Research Design	Glascocock et al	Gale & Case	St. Quentin	DTR	Kimbler & Rutherford	Teoh	Hillier Parker
Objectives of Study	analysis of acquisition & disposition of assets	state of current property management practice	use of property in different environments	importance of property to LNPOs	issues in outsourcing the cpf	state of current property management practice	finance directors' views of property
Type of Investigation	analytical	descriptive study	descriptive study	descriptive study	descriptive study	descriptive study	descriptive study
Type of Information Collected	quantitative quantitative	qualitative & qualitative	quantitative & quantitative	qualitative & qualitative	quantitative & quantitative	qualitative & qualitative	qualitative & quantitative
Method(s) of Data Collection	secondary data	personal interviews	questionnaire survey	personal interviews	questionnaire survey	questionnaire survey	personal interviews, postal surveys & document analysis
Method(s) of Data Analysis	ordinary least squares regression	descriptive statistics	descriptive statistics	descriptive statistics	descriptive statistics	chi-squared tests	descriptive statistics
Unit of Analysis	transactions	organisation	organisation	organisation	organisation	organisation	organisation
Target Population	-	large firms from 15 industries	Times Top 1000 companies hosp. trusts & privatised businesses	non-property companies from UK Times Top 1000 companies	members of the IDRC	non-property companies listed on the NZ Stock Exchange	LNPOs from the industrial, financial & commercial sector
No. of Questionnaires Mailed	-	-	94 overall	-	164 overall	88	500
Numbers Returned	-	-	69 overall	-	100 overall	-	111
Percentage Response	-	-	73% overall	-	61% overall	75%	22%
Numbers Interviewed	-	30	-	100	-	-	-
Sampling Procedure	70 acquisitions & 9 dispositions	convenience	purposive	purposive	purposive	purposive	purposive
Main Findings	corporate property offers no unique opportunity to earn excess return	significant growth in numbers & influence of corporate property units	no great differences in property management practice in different business environments	core business efficiency determines operational property management objectives	companies are outsourcing more of their real requirements	CPF success is related to a separate cpf, REIR and attitude towards property	LNPOs can further reduce property costs and improve returns

sampling cannot be assured. Gale and Case (1989) admitted that their sample was not chosen on a random sampling basis. They also accepted that their sample size of 30 was rather small and statistical analysis would be of limited use (*ibid.*, p 33). Glascock et al (1989, p 138) noted that their sample of only nine acquisition transactions lend only limited confidence to their findings on expected returns from property acquisitions, despite their paper having a lot of technical analysis.

Random sampling requires the specification of a population of subjects and then the assurance that each member of the population has an equal chance of being selected for the studies. In social science research, it is normally difficult to procure a 100 percent enumeration of the population, due mainly to lack of information and the expenses of compiling the population frame. Secondly, the possibility of getting equal access to all the elements of the identified population is normally nil. The randomisation procedures in assigning the time for the interview sessions and the subjects for the interviews are also difficult to secure. If the chance of selecting the subjects and the time are not equal, then a systematic bias has occurred which damages the generalisability of the results.

This suggests a non-random sample for social science research, which requires the explicit disclaimer of statistical generalisability of the results beyond the bounds of the study itself. This is however, a statistical restriction and does not restrict a non-statistical generalisation. This point is well established in research design theory - see for example, Cornfield and Tukey (1956, pp 912-913) or Edgington (1966).

Rutherford and Stone (1989) surveyed 850 major companies. Using a hypothesis-testing approach, they concluded that there was no significant relationship between the type of industry and the type of corporate structure.

They, however, admitted that their hypothesis testing approach was invalid. This was due to an insufficient number of expected observations in the cells of the contingency tables to allow the test statistic to be appropriately approximated by a chi-square distribution.

Some of the studies also seemed not to recognise the assumptions of certain statistical techniques. For example, Pittman and Parker (1989) utilised subjective variables in their property effectiveness model. The variables were then inappropriately used for hypothesis-testing and regression analysis to arrive at a seemingly objective correlation of variables. Teoh's (1993) study, although using a hypothesis-testing approach, was based on the assumption that property management performance was dependent on six performance indicators. The indicators were indirect measures of performance. The findings of the study should be taken in that context. Direct measures of performance should be used if a hypothesis testing approach is to be used (see Ackrill et al, 1993, for a fuller discussion).

A clear bias towards quantitative analysis of data was evident, to the extent that the positivist approach was used even for qualitative data. This showed in the tendency for a number of studies to analyse both quantitative and qualitative data using quantitative analysis, which required a conversion of the qualitative data into quantitative dimensions.

This was usually done by operationalising the variables into categorical, perceptual and attitudinal dimensions. The epistemological pitfalls of converting the researcher's qualitative understanding into quantitative data by using proxy indicators are discussed in detail in Ismail (1996).

To summarise, the above weaknesses in recent research on the management of corporate property within LNPOs were consistent with weaknesses identified decades earlier in organisational research. Bain (1966) found that some data used in organisational research in the US and the UK were based on empirically unsound research methods. They include low rate of responses for questionnaires and careless processing of questionnaire data.

Closing Remarks

This paper has reviewed the data collection and analysis methods used in organisational studies and corporate property research. On the premise that an empirical study of social phenomena should not disregard the need to adopt scientific procedures in arriving at its findings, the paper found several common weaknesses in the reviewed studies.

The other finding of this paper is the need for corporate property research to more explicitly acknowledge the influence of the organisational paradigm on the research, in terms of methodology and research phenomena. Issues such as organisational conflict and decision making processes need to be recognised as having a crucial influence on corporate property management practice within LNPOs and not just to test the significance of ratios between two variables.

A common weakness was the sample size and the sampling procedures used. The selection of sample size must be influenced by the information, time and the resources available to a researcher. Even in quantitative studies, the number of sampling units in the population frame conveys no information with regard to the precision or usefulness of the samples. Nevertheless, the sample size must still be chosen with maximum care.

Most of the reviewed studies tended to be broad-based surveys or tested statistical relationships between certain variables. There is a need to move to the next research step, to allow a greater emphasis on studies that carry out an in-depth analysis of corporate property issues from the organisational perspective, in acknowledgement of the organisational context in which corporate property management issues are tackled in practice. It would allow for a greater appreciation of the strategic issues involved.

In closing, it is not useful to argue whether a certain research design in the social sciences is completely scientific. More pertinent is the explicit justification of why the study could not implement the elements of a rigorous research design *in toto*, since all research designs in the social sciences must represent the researcher's compromise, dictated by the many practical considerations in the field. A more useful discussion is whether the research design was effective in achieving the objectives of the research (Keppel, 1991.). The purpose of the formulation of a research design is not to serve as a rigid plan to be followed in every detail, but serves as a series of signposts to keep the research headed on the right track.

References

- Abrahamson, B. (1993), *Why organisation? How and why people organise*, London: Sage Publications, p 28.
- Ackrill, A., Barkham, R., Baum, A.(1993), *Property company performance: A report for Boots Properties PLC*, Department of Land Management and Development, University of Reading.
- Avis, M., Gibson, V., Watts, V. (1989), *Managing operational property assets*, University of Reading, Department of Land Management and Development.
- Bain, J.S. (1966), *International differences in industrial structure*, New Haven, Conn: Yale University Press.
- Bon, R. (1991), Real property portfolio management, or what the client of building services needs to do to ensure satisfactory building performance, In: Bezelga, A. and Brandon, P., (eds) *Management, quality and economics in buildings*, London: E & FN Spons, pp 101-10.
- Cornfield, J., and Tukey, J.W. (1956), Average values of mean squares in factorials, *Annals of Mathematical Statistics*, Vol. 27, 907-949
- Debenham Tewson Research (1992), *The role of property: Managing cost and releasing value*, London: Debenham, Tewson & Chinook. June.
- Edgington, E.S. (1966), Statistical inference and non-random samples, *Psychological Bulletin*, Vol. 66 pp 485-487.
- Gale, J., Case, F. (1989), "A study of corporate real estate resource management", *Journal of Real Estate Research*, Vol. 4 No. 3, pp 23-24.
- Gay, L.R., Diehl, P.L. (1992), *Research methods for business and management*, New York: Macmillan, p 127.
- Glascok, J.L., Davidson, W.N., Sirmans, C.F.(1989), An analysis of the acquisition and disposition of real estate assets, *The Journal of Real Estate Research*, Vol. 4 No. 3, p 138.
- Parker, H. (1994), *Property In The Boardroom*, London.
- Hubbard, E.W. (1976), Real estate ownership and management by large businesses, *Real Estate Review*, Vol. 6, pp 112-114.
- Ismail, I. (1996), The Operational Property Management Process In Large Non property Organisations In Malaysia: An Organisational Perspective, Unpublished Ph.D. Thesis, University of Reading.
- Keppel, G (1991), *Design and analysis : A researcher's hand book*. Third edition Englewood Cliffs, N.J: Prentice Hall.
- Kimble, L.B., Rutherford, R.C. (1993), Corporate real estate outsourcing: A summary of the issues, *Journal of Real Estate Research*, American Real Estate Society, Vol. 8 No.4, Fall, p 525.
- Krippendorff , K. (1980), *Content analysis - An introduction to its methodology* London: Sage Publications, p 11

- Metcalf, L., Richards, S. (1987), *Improving public management*, London: Sage Publications.
- Miller, D. C. (1991), *Handbook of research design and social measurement*, 5th ed. Newbury Park, Calif: Sage.
- Nourse, H.O. (1989), Corporate real estate asset management: Introduction, *The Journal of Real Estate Research*, Vol. 4 No. 3.
- Noah, J.C. (1990), Property management practice and industrial change – case studies from companies based in the northwest of England, Unpublished PhD thesis. University of Manchester.
- Pittman, R.H., Parker, J.R. (1989), A survey of corporate real estate executives on factors influencing corporate real estate performance, *Journal of Real Estate Research*, September 1989.
- Redman, A.L., Tanner, J.R. (1989), The acquisition and disposition of real estate by corporate executives: A survey, *The Journal of Real Estate Research*, Vol. 4 No.3, August.
- Roscoe, J.T. (1975), *Fundamental research statistics for the behavioural sciences*, 2nd ed, New York: Holt, Rinehart and Winston.
- Rutherford, R.C., Stone, R.W. (1989), Corporate real estate unit formation: Rationale, industry and type of unit, *Journal of Real Estate Research*, October 1989.
- St.Quintin (1991), *Operational Property Research*, December.
- Teoh, W.K. (1993), Corporate real asset management: The New Zealand evidence, *Journal of Real Estate Research*, American Real Estate Society, Vol. 8 No. 4, Fall, p 607.
- Toda, N. (1990), The value for money audit by the National Audit Office. Unpublished M.Phil. thesis, University of Bath.
- Veale, P.R. *Managing corporate real estate assets: A survey of US real estate executives*, Cambridge, Mass: MIT Laboratory of Architecture and Planning, 1987.
- Whitley, R. (1984), The scientific status of management research as a practically oriented social science, *Journal of Management Studies*, Vol. 21 No. 4, pp 369-390.
- Zeckhauser, S., Silverman, R. (1981), *Corporate real estate asset management in the United States* (Report by Harvard Real Estate Inc), Cambridge, Mass: Harvard College.

Managing the Development of the Property Sector in the 1990s

Bank Negara Malaysia

Received: June 1998

Abstract

The developments in the property market in recent years have caused some concern on the impact of high bank lending to the property sector. As measures were taken to correct the exposure of the banking system to broad property sector, the country is faced with yet another challenge. Malaysia suffered contagion effects from the financial crisis in South East Asia which affected both the stock and property markets. This paper highlights the measures taken by Bank Negara to ensure a healthy growth of the property sector and a sound financial system.

Keywords: affordability, credit growth, asset inflation, bank soundness.

Introduction

Since the mid-1990s, the strong demand for office and retail space and residential properties has fuelled significant increases in prices of these properties. During this period, lending by the banking system to the broad property sector, comprising residential, non-residential, real estate and construction expanded significantly, raising concerns that this would increase the vulnerability of the banking system to the property cycle. This prompted Bank Negara Malaysia (BNM) to implement a series of measures during the period 1995-97 to curb property lending to prevent the formation of an asset bubble and to ensure stability and soundness of the banking system. Fiscal measures introduced in the 1996 and 1998 Budgets also reinforced these measures. Following the measures and the impact of the regional crisis, the construction sector underwent a sharp adjustment and growth is estimated to have contracted by

10% in the first quarter of 1998. To minimise the adverse effects of the adjustments in the construction sector to the lower income group, the Government has made available funds to finance construction of low and medium-cost houses. This measure forms part of a package of measures that were introduced in May 1998 to assist economic recovery.

Contribution of the Property Industry

The construction sector comprises three sub-sectors, namely, residential, non-residential and civil engineering. The property market, on the other hand, comprises properties in the residential and non-residential sub-sectors. Spurred by the strong economic growth in the last nine years, the construction sector expanded rapidly at an average rate of 14.5 per cent per annum during the period 1990-96 before moderating to 10.6 per cent in 1997.

Although its direct contribution to GDP in terms of value added is relatively small at below 5 per cent, the construction sector has strong linkages with other economic sectors, especially the manufacturing and services sectors. In particular, the construction sector has contributed to the rapid growth of the domestic manufacturing industries involved in producing sawn logs, sawn timber, wood products, petroleum products, construction-related materials, transportation equipment and machinery. Many service industries such as design, consultancy, finance, insurance and business and distributive trade are also dependent on the construction sector. During the period of the Sixth Malaysia Plan (1990-95), employment in the sector grew at an average rate of 9.2 per cent per annum to account for 19 per cent of total job creation. By the end of 1997, the sector accounted for 9.1 per cent of total employment. It also employed the highest number of foreign workers (Table 1).

Developments in the Property Sector in the 1990s

Developments in the early 1990s were characterised by sustained world economic activity, strong private investment, the rapid pace of the Government's privatisation programme, a vibrant export sector and strong expansion in credit growth. The prolonged period of rapid growth had enabled many companies across all sectors to expand and contributed to higher employment and income, thus raising demand for property. This encouraged a boom in construction activities. During the period 1991-97, office space in the Klang Valley increased significantly by 1.7 million square metres or 55.1 per cent of the stock at end-1991 and was absorbed by the market with an average occupancy rate of 97.5 per cent. Retail space, on the other hand, increased by 1.1 million square metres or 198 per cent of the stock in the Klang Valley at end-1991 with an average occupancy rate

Table 1: Construction Sector – Related Statistics

	1994	1995	1996	1997e/
Value added (% share of GDP)	4.2	4.5	4.7	4.8
- Civil engineering (weight, %)	46.1	46.4	46.9	47.7
- Residential (weight, %)	29.3	29.2	29.0	28.8
- Non-residential (weight, %)	24.6	24.4	24.1	23.5
Employment (% of total employment)	7.8	8.3	8.9	9.1
Production of construction-related materials (% change)	13.9	11.7	21.2	11.4
Imports of construction-related materials (% of total imports)	2.8	2.3	2.7	2.4
Imports of iron and steel (% of total imports)	3.2	3.8	3.7	3.9
Imports of machinery for construction and mining (% of total imports)	0.9	1.4	1.7	1.3

Source: Department of Statistics, Bank Negara Malaysia e/ : Estimate

Table 2: Shortfall in Housing for 1994-97 (Units)

Category	1994	1995	1996	1997
Low-cost	14,919	20,575	19,680	8,274
Medium-cost	4,061	17,369	22,835	18,647
High-cost	1,160	-5,533	-3,575	-9,017
Total	20,140	32,411	38,940	17,904

Table 3: Banking System - Loans to the Broad Property Sector

	Outstanding			
	1990	1995	1996	1997
	RM billion			
BROAD PROPERTY	36.0	73.6	104.7	139.7
· Construction	8.2	20.2	27.8	42.5
" Civil engineering	n.a	n.a	3.0	6.1
" Industrial building & factories	0.4	2.0	2.6	3.1
" Infrastructure	1.2	5.5	6.7	10.4
" Commercial complexes	1.6	2.9	3.5	6.3
" Residential	2.2	3.4	4.2	6.6
" Others	2.8	6.4	7.8	10.0

of 90.2 per cent as at end-1997. However, recognising the potential for excess supply, developers had rescheduled the completion of projects according to demand. Nevertheless, another 549 thousand square metres of retail space are expected to come on-stream in 1998. Thus rentals and occupancy rates are now expected to decline, although the correction may not be very severe.

Emergence of Asset Inflation

As shelter represents a basic need and the Government has shown strong support for a house-owning democracy, the residential sub-sector has been the most active segment of the property market in terms of the number of transactions. More importantly, the number of residential transactions for the country grew at a much slower rate (9 per cent per annum)

than the increase in the value of transactions (20 per cent per annum) for the period 1994-96, reflecting higher prices for all types of residential property. Prices had escalated, particularly for properties in the four major towns (Kuala Lumpur, Petaling Jaya, Penang and Johor Bahru). During the period 1994-96, residential property prices in the four major towns rose by 20-25 per cent per annum, compared with the rise in the national house price index of 8-18.4 per cent per annum in 1994-96 and 4.9-25.5 per cent per annum during the preceding period 1991-93. The shortage in the supply of low and medium-cost houses further aggravated the situation. Generally, property prices had increased to a level that was beyond the reach of a majority of households.

Several factors had contributed to the escalation in property prices. The main factors were:

■ Increased affordability

The wealth effect of the high returns from investments in the share market as well as the high premiums earned on Initial Public Offerings were channelled into the property market, thus increasing the demand for property. As demand was too strong, available resources in terms of access to land and labour were inadequate to facilitate a corresponding increase in the supply of housing, as indicated in the BNM findings (Table 2). The limited supply of landed housing units in the major towns had resulted in a sharp price appreciation in the property market. This subsequently fuelled speculative demand, contributing further to the upward spiral in property prices.

■ Strong credit growth in the broad property sector

Lending to the broad property sector by the banking system has increased significantly since 1990, accounting for more than 25 per cent of total loans outstanding. This was partly because financing of activities in the property sector was viewed by the banking institutions as involving lower risk since these loans were secured by the property. As at the end of 1997, lending to the broad property sector amounted to RM139.7 billion or 33.2 per cent of total loans outstanding, compared with RM36 billion at the end of 1990. Of this amount, RM42.5 billion were extended to the construction sub-sector, RM51 billion for the purchase of residential properties, RM28.2 billion for the purchase of non-residential properties and RM18 billion for the real estate sub-sector (Table 3).

■ Foreign demand

Demand by foreigners in certain towns, particularly Johor Bahru, caused upward pressure on prices. Developers took advantage of this strong demand by continuing to test the market with higher prices. The encouraging response was followed by even higher prices for the next launch. Hence, higher prices were attributed mainly to demand pressures.

Asset Inflation and Bank Soundness

In managing the economy, the objective of the Government is to ensure a sustainable pace of growth with price stability. Over the last several years, the developments in the property market have caused concern on the impact of high bank lending to finance property

transactions, on the soundness of the banking system and the overall macroeconomic stability of the country. BNM's concerns on excessive lending to the broad property sector are based on the following:

- The banking institutions are the main intermediaries in the financial system in mobilising savings for lending to finance investment in economic activity. Hence, instability in the banking system could cause a breakdown in the performance of this vital intermediation function.
- For banking institutions to remain healthy, prudence would dictate that they diversify their loan portfolio so that they would not be vulnerable to a downturn in any particular sector. Diversification would place them in a better position to absorb adverse developments that may affect certain sectors of the economy.
- A disproportionate increase in lending by the banking institutions to the property market could expose the banking system to the inherent risks in the property market. The property market is more volatile compared with the other sectors in the economy (other than the stock market) particularly when there are sharp increases in prices which are not based on fundamentals. Such high prices would not be sustainable. In the short term, these prices can be supported as long as confidence is maintained. Confidence in the property sector could be eroded suddenly even though the underlying fundamentals in the economy remain unchanged. A flight of confidence could lead to a severe correction in prices, which in turn would adversely affect the asset quality of the property loan extended by banking institutions.
- A feature of bank lending is that property is normally offered as collateral. Hence, where loans are granted on the basis of the value of the collateral rather than the viability of the loan, the banks would be likely to encounter delinquency. The liquidation of the collateral by the banks would only aggravate the situation, as forced selling would depress prices further. In addition to loans being directed to property financing, the bulk of other loans, including to the manufacturing sector, is also pledged against property. Hence, a severe correction in property prices can cause a severe deterioration in the asset quality of a significant proportion of bank loans.
- A collapse in property prices would cause negative wealth effects. A sharp correction in the property market would cause drops in rental values and property prices, which in turn would lead to severe difficulties in debt servicing by borrowers. Non-servicing of loans would adversely affect the quality of the loan portfolio of banks. When banks' exposure to the property market is too high, a fall in property values would impose risks that the banks' capital would not be sufficient to absorb the losses as asset quality of property begins to deteriorate.

The situation in Malaysia did not become alarming because pre-emptive measures were taken since 1995 to slow down excessive growth in bank lending to the property sector. If sentiments in the property market were allowed to be built up to higher levels and if asset inflation was not addressed by pre-emptive measures, a reversal arising from the current adverse economic developments would trigger a sudden sell-off and precipitate a self-fulfilling downturn. The correction in the

Table 4: Supply of Purpose-built Office and Retail Space in the Klang Valley

Year	Office space		Retail space	
	Previous estimate	Revised estimate	Previous estimate	Revised estimate
Net lettable area ('000 square metres)				
Stock in 1995	3,690	3,690	1,226	1,226
1996	322	322	331	137
1997	1,956	639	220	363
1998e	1,259	1,320	1,077	549

property market in Malaysia would undoubtedly be more severe if early measures were not implemented to arrest asset inflation.

Measures to Control Asset Inflation

As excessive lending to the broad property sector would increase the vulnerability of the financial institutions to financial distress, various measures have been introduced since 1995 to curb the rapid increase of loans to the broad property sector. These have helped avoid the build-up of an asset price bubble. The margins of financing for non-owner occupied houses and for shophouses were reduced to 60 per cent in October 1995. A levy of RM100,000 on the purchase of real estate by foreigners as well as the imposition of a real property gains tax at a flat rate of 30 per cent, irrespective of the holding period for foreigners, was imposed in the 1996 Budget. These measures had some dampening effect on sentiments in the property sector, especially condominiums. The foreign share of the

total transacted value for residential property declined from about 10 per cent during the 1993-95 period to 2.6 per cent in 1996 and 1 per cent in 1997.

However, as bank credit to the property sector continued to remain high, BNM introduced pre-emptive credit measures in April 1997 requiring the banking institutions to limit their exposure to specific sub-sectors in the property sector to not more than 20 per cent of their total loans outstanding. Lending for purchases, development of property to meet social objectives and to expand productive capacity were excluded from the credit limits. Among the lending activities excluded from the credit measures were loans to construction and for purchase of owner-occupied houses costing RM150,000 and below, infrastructure development, industrial factories and buildings. The pre-emptive measures taken by BNM in early 1997 to correct adverse developments have mitigated the sharp and abrupt correction in property prices, thus maintaining confidence

in the banking system. Latest data for April 1998 showed that loans extended to the broad property sector by the banking system (including loans sold to Cagamas) stood at 34.2 per cent of total loans. However, the exposure of the banking system to sectors subject to the credit measures moderated to 12.9 per cent at end-March 1998, well below the 20 per cent limit. With the decision of the Government to defer some of the infrastructure projects and the banking institutions' commitment to be guided by the overall 15 per cent growth in outstanding loans by end-1998, it is expected that loans to the broad property sector would moderate by end-1998.

As a result of the measures, the property sector consolidated in 1997. BNM's survey indicates that a total of 549,000 square metres of retail space would enter the market in 1998, instead of an earlier estimate of 1.1 million square metres. For purpose-built office buildings, the estimates on supply coming on-stream in 1997 and 1998 have also been revised downwards (Table 4). The slowdown was also reflected in a moderate increase of 8.4 per cent in the total value of property transactions in 1997, while the total number of transactions rose marginally by 1.8 per cent (22.9 per cent and 7.4 per cent respectively in 1996). Although house prices continued to increase in 1997 in view of the strong underlying demand and interest in property investment, the rate had moderated quite significantly. The National House Price Index for 1997 showed an increase of 1.9 per cent compared with an increase of 12.9 per cent in 1996.

The pre-emptive measures taken by BNM would allow the property sector to adjust gradually. The exposure of the banking system to this sector would also be corrected as past loan commitments were completed. It was expected that the full effects of the

measures on reducing banks' exposure to the property sector would take at least six months. Unfortunately, Malaysia suffered the contagion effects from the financial crisis in South East Asia. These affected both the stock and property markets.

Latest Developments

The loss of wealth due to the decline in the share market caused the volume and value of transactions to decline significantly for all types of properties in the Klang Valley. For the first quarter of 1998, house prices in certain areas in the Klang Valley declined by up to 25 per cent and by 10-20 per cent for the nation as a whole. The decline is more pronounced in areas where prices had recorded higher rates of increase. The decline in prices reflected significant moderation in demand due both to the loss of wealth as stock market prices declined as well as the increase in interest rates. The higher interest rates were due to the tightening of monetary policy to contain inflation and to restore macroeconomic stability.

The economic slowdown has prompted several developers to postpone or scale down their property projects. Developers have launched mainly projects which are priced below RM150,000, while deferring launches of higher-cost properties. For the secondary market, purchasers and investors are adopting a 'wait and see' attitude as they expect prices to fall further. With the near-completion of several projects and the deferment of new projects, activity in the construction sector is estimated to have declined by 10% in the first quarter of 1998. Growth in the residential sub-sector, however, showed a smaller decline, due to the continued construction of housing projects especially for low and medium-cost housing. The decline in construction activity

was reflected in the lower production of cement and concrete products, iron and basic steel and other construction-related products. For the first quarter of 1998, the number of houses approved for construction by the Housing and Local Government Ministry declined by 34.6 per cent.

Measures to Revive the Property Sector

In the light of the severe adjustment in the property sector following the financial crisis, several incentives were introduced to moderate the adjustment and to continue to ensure that the lower income group continued to have access to affordable housing. Measures were also taken to boost foreign interest in the market. These included the removal of the RM100,000 levy on foreign purchases with effect from 28 August 1997 and the 1998 Budget provisions for reduction of the Real Property Gains Tax to 5 per cent for disposal of properties after the fifth year as well as the relaxation of guidelines on foreign ownership of properties. Effective 22 April, 1998, foreigners are allowed to buy all types of housing units, shophouses, business and office space costing above RM250,000, provided financing for such purchase is not obtained in Malaysia. However, this leeway is only for newly-completed projects or those which were at least 50 per cent constructed.

Recognising that the residential sub-sector can provide the spin-off effects to stimulate growth in the economy in view of its high local content and linkages with other sectors, several measures were initiated to spur the growth of this sector, particularly the low and medium-cost houses costing RM150,000 and below. In particular, the Government has taken steps to ensure the continued availability of funds both for the developers as well as for purchasers. In addition to the RM1 billion made available to the National Housing Company for the construction of

low and medium-cost houses under the 1998 Budget, effective 1 May 1998, BNM provided an additional RM1 billion for bridging finance to developers for the construction of houses costing RM150,000 and below. Given the strong demand for housing, especially in the low and medium-cost category, the additional funding would help support the construction of this category of houses. At the same time, financing will continue to be provided by the banking system for the construction and purchase of houses costing RM150,000 and below. In a move to encourage developers to construct more low-cost houses and to reflect increasing construction and land cost, the Government has increased the ceiling price of RM25,000 for low-cost houses. Effective June 1998, the ceiling price of low-cost houses has been increased to RM30,000, RM35,000 and RM42,000 depending on location, land premium, built-up area, type of house and the prospective buyer's household income. The measures will promote stability in the property market and contribute towards economic recovery.

Conclusion

As a result of the various measures undertaken to restore and increase confidence in the property market, it is expected that the property market will be better placed to weather the current economic and financial crises. The slowdown in building activity in 1998 will mitigate somewhat the oversupply situation in certain segments of the property market and allow the market time to clear the surplus office and retail space and high-end condominiums after several years of over-investment. The contraction, therefore, will contribute to a better balance in demand and supply in the property sector and more sustainable growth in the medium term.

Isu *Betterment* - Antara Perundangan dan Amalan

Hj. Nordin Daharom
Pengarah Penilaian Negeri Kedah
Jabatan Penilaian dan Perkhidmatan Harta

Diterima : Jun 1998
Dipinda: Oktober 1998

Abstrak

Banyak telah dikatakan mengenai *betterment*. Walaupun terdapat peruntukan undang-undang mengenainya, kebanyakan pihak yang terbabit masih tidak menggunakan sepenuhnya peruntukan yang terdapat dalam Akta Pengambilan Tanah, 1960. Antara sebab-sebanya ialah rasionalnya sukar untuk difahami oleh orang ramai dan kesannya sukar ditentukan dengan jelas. Kertas ini cuba memberi alternatif bagaimana isu *betterment* boleh ditangani.

Kata kunci: Betterment, pampasan memadai

Pengenalan

Pemilikan harta di Malaysia bukanlah secara mutlak kerana ia boleh diambil balik oleh Pihak Berkuasa Negeri (PBN) melalui peruntukan undang-undang. Walau bagaimanapun hak pemilik dilindungi di bawah Perlembagaan Persekutuan. Peruntukan Perkara 13 Perlembagaan Persekutuan berbunyi "Tiada seseorang pun boleh dilucutkan hartanya kecuali mengikut undang-undang" dan "Tiada sesuatu undang-undang pun boleh membuat peruntukan bagi mengambil atau menggunakan harta-harta dengan paksa dengan tiada pampasan yang mencukupi". Hakim Y.A. Yeop Sani dalam kes *S. Kulasingam & Anor v. Commissioner of Lands, Federal Territory & Ors* (MLJ, 1982) menafsirkan Perkara 13 sebagai satu jaminan bahawa seseorang itu tidak boleh dinafikan hak memiliki harta semata-mata atas kuasa eksekutif. Dari segi implikasinya,

harta persendirian boleh diambil secara paksa oleh Pihak Berkuasa Negeri dengan menggunakan kuasa yang diperuntukkan oleh undang-undang. Pengambilan harta persendirian tidak boleh dilakukan kecuali dengan pampasan yang secukupnya. Rasional bagi pengambilan balik tanah ialah seperti yang terkandung dalam doktrin *salus populi supreme lex*, iaitu kepentingan awam adalah lebih utama.

Jadual Pertama, Akta Pengambilan Tanah (Pindaan) 1997 menggariskan prinsip penentuan pampasan. Ia merangkumi nilai pasaran tanah, pampasan bersabit pecah-pisah, penjejasan terbabit, serta lain-lain kerugian yang timbul akibat dari pengambilan balik tanah. Turut diperuntukan dalam Akta tersebut ialah berkaitan kesan *betterment*, iaitu apa-apa kenaikan nilai

pada tanah baki kepunyaan pemilik terlibat hendaklah dipertimbangkan dalam penentuan pampasan. Ini menimbulkan persoalan sama ada peruntukan ini merupakan satu penafian hak kepada pemilik tanah terlibat dan bercanggah dengan Perkara 13, Perlembagaan Persekutuan? Jika tidak, apakah pampasan yang memadai dibayar apabila sekeping tanah diambil itu mempunyai *betterment*?

Tujuan kajian ini ialah untuk membincangkan isu *betterment* dari segi perundangan dan pelaksanaan. Turut diberi perhatian ialah faktor yang mempengaruhi amalan peruntukan ini dalam pembayaran pampasan. Beberapa pendekatan untuk menangani isu *betterment* turut dicadangkan.

Prinsip *Betterment*

Konsep *betterment* ini, seperti undang-undang asalnya diambil daripada Britain. Konsep ini telah dipakai dalam status Inggeris sejak abad ke 15, seperti Statute of Sewers, 1427 dan 531, Rebuilding of London Act, 1670. Pemakaian konsep ini di Britain ini kekal hingga kini. Ini dapat diperhatikan dalam Housing Act, Town and Country Planning Act, 1947 dan Land Compensation Act, 1961. *Betterment* ini pada asalnya adalah satu kaedah bagi kerajaan Inggeris untuk mendapatkan tanah kembali dari pemilik tanah terlibat yang akan mendapat faedah dalam bentuk kenaikan nilai tanah hasil dari pembangunan yang dibiayai oleh perbelanjaan awam. Kebanyakan projek awam, antaranya seperti pembinaan jalan raya, atau pembinaan universiti akan memberikan kesan positif kepada nilai tanah di sekitar projek. Dari segi prinsipnya sebarang peningkatan nilai tanah baki yang dinikmati oleh seseorang pemilik tanah kesan daripada kerja-kerja awam, perlu disumbang semula kepada kerajaan. Rasionalnya yang pertama, kenaikan nilai tanah tersebut

bukanlah di atas usaha atau tindakan pemilik tanah, tetapi di atas tindakan kerajaan akibat daripada keperluan sosial dan juga ekonomi. Kedua, kerana prinsip pampasan adalah untuk meletakkan seseorang pemilik harta dalam keadaan yang sama dari segi kewangan seperti keadaan sebelum pengambilan tanah.

Dalam konteks kes pengambilan balik tanah, tanah baki yang terlibat dengan pengambilan tanah dianggap mempunyai *betterment* apabila tanah baki ini menjadi lebih baik atau terdapat peningkatan taraf hasil daripada projek awam. Dalam konteks ini, *betterment* merupakan durian runtuh yang dinikmati oleh pemilik tanah kesan daripada tindakan kerajaan. Segala keuntungan ini adalah hasil daripada perbelanjaan wang awam yang dipungut daripada pembayar cukai. Oleh itu segala keuntungan yang dialami oleh pemilik tanah kesan daripada tindakan kerajaan hendaklah diagih semula kepada komuniti (Cullingworth, 1998). Dalam konteks pengambilan tanah, pembayaran pampasan mestilah menolak segala kenaikan harga yang disebabkan oleh projek awam.

Isu *Betterment* dalam Penentuan Pampasan

Dalam menentukan pampasan yang perlu dibayar, pentadbir tanah sering mendapatkan nasihat penilai. Seperti yang telah disebutkan prinsip penentuan pampasan yang dijadikan panduan adalah seperti yang terkandung dalam Jadual Pertama, Akta Pengambilan Tanah (Pindaan) 1997. Pada hakikatnya, untuk menentukan sama ada wujud unsur *betterment* itu terhadap nilai tanah. Misalnya pembinaan sebuah jalan awam tidak semestinya membawa *betterment* kepada tanah baki. Pembinaan lebuh raya unyamanya, tidak semestinya mewujudkan elemen *betterment* kepada tanah baki, kerana tanah baki tidak mempunyai akses terus ke

lebuhraya. Dalam kes pembesaran jalan, unsur *betterment*, kesannya ke atas kenaikan nilai tanah sangat sukar ditentukan. Dalam kes membina jalan di kawasan pendalaman pula, sama ada pembinaan jalan itu boleh dianggap sebagai boleh menghasilkan *betterment* kepada tanah baki bergantung kepada pembinaan jalan itu sendiri, gradien dan ketinggian jalan dari paras tanah. Jika paras jalan adalah lebih tinggi dari permukaan tanah, ia bermakna tanah baki sukar mempunyai akses dari jalan. Pada hakikatnya *betterment* hanya boleh ditentukan dengan pasti setelah sesuatu pembangunan itu telah dijalankan. Walau bagaimanapun terdapat juga keadaan di mana penilai yang menjangka akan terdapat *betterment* pada tanah baki, mencadangkan kenaikan harga ini ditolak daripada pampasan yang dibayar.

Pada amnya, peruntukan mengenai penentuan pampasan dalam Jadual Pertama, Akta tersebut mudah difahami dan diterima umum tanpa banyak keraguan, kecuali peruntukan undang-undang untuk menolak kenaikan nilai dari pampasan disebabkan *betterment*. Pelaksanaannya agak sukar kerana peruntukan tersebut tidak mudah difahami oleh masyarakat umum. Ia telah banyak menimbulkan kontroversi, tekanan sosial dan politik. Dalam pengambilan tanah projek lebuh raya Gua Musang umpamanya, penentuan pampasan telah mengambil kira *betterment* tetapi mendapat tentangan dari tuan tanah dan ahli politik (Alias, 1987). Di Pulau Pinang cubaan telah dibuat untuk mengenengahkan prinsip ini di mahkamah. Selain dari sukar difahami oleh masyarakat umum, hakim bicara juga nampaknya seperti kurang setuju yang mengakibatkan kebanyakan kes diselesaikan di luar

Mahkamah. Bagi pihak pentadbir tanah, pelaksanaan *betterment* sering dibantah (ibid). Hal tanah adalah rumit kerana banyak melibatkan emosi tuan tanah.

Dilihat dari satu sudut lain, kenaikan nilai tanah akibat dari projek awam bukan sahaja dinikmati oleh pemilik tanah terlibat tetapi kesannya juga dapat dinikmati bersama oleh pemilik tanah di sekitar projek tersebut. Sebagai contoh, pembinaan sebuah universiti di sebuah kawasan dapat menjanakan pembangunan di kawasan tersebut dan memberi kesan positif kepada nilai tanah kawasan sekitar. Di sini, hanya pemilik tanah terlibat sahaja yang dikehendaki menyumbang semula kepada kerajaan terhadap faedah yang diterimanya walhal pemilik-pemilik lain dapat menikmati faedah dari projek awam secara percuma kerana tiada peruntukan undang-undang yang memerlukan mereka menyumbangkan semula keuntungan yang didapati kepada masyarakat. Pemilik tanah terlibat mengalami dua kali kesukaran. Pertama sebahagian tanahnya telah diambil balik di mana sedikit sebanyak menghasilkan gangguan dan keduanya pampasan yang diterima perlu ditolak segala kenaikan nilai yang dijangka dapat diterimanya di masa akan datang. Dalam konteks ini, perlu dipersoalkan tentang kewajaran peruntukan Seksyen 2 (b) Jadual Pertama Akta Pengambilan Tanah (Pindaan) 1997 dari segi keadilan terhadap pemilik terlibat.

Keraguan di kalangan pentadbir tanah untuk melaksanakan peruntukan berkaitan dengan *betterment* juga bersabit dengan amalan pemberian pampasan yang kadangkalanya dilihat tidak seimbang, yang mana boleh menimbulkan perasaan tidak puas hati. Berdasarkan pengalaman penulis, contoh yang nyata adalah mengenai setinggan. Mungkin

disebabkan oleh tekanan sosial dan politik, pampasan turut dibayar kepada setinggan. Di sesetengah negeri misalnya, terdapat kes di mana setinggan dibayar pampasan jika tanah yang mereka diami diambil kerajaan. Terdapat juga kes setinggan tanah kerajaan yang terlibat dengan projek pengambilan untuk maksud jalan raya, diberi tapak baru. Setinggan bukanlah pemilik tanah yang sah, oleh itu dari segi hak untuk menerima pampasan, setinggan bukanlah golongan orang yang berkepentingan untuk menerima pampasan. Amalan yang tidak sejajar dengan peruntukan pengambilan balik tanah ini telah menimbulkan perasaan kurang senang untuk mengambil kira *betterment* dalam pengiraan pampasan.

Keputusan Mahkamah Mengenai *Betterment*

Bagaimanakah pandangan mahkamah terhadap isu *betterment*? Di United Kingdom dalam satu keputusan Lands Tribunal Leicester City Council v. Leicestershire Country Council (Lands Tribunal Reference 166/1993), menyatakan bahawa:

"that the setting of benefit to land retained against compensation for land taken was entirely a statutory matter and depended upon the words of the applicable statute and the principle of equivalence was not relevant at this stage; that as development of the retained land was limited until such time as the link road should have completed, its value would be enhanced by road planned for the acquired land and as the enhanced value exceeded the compensation payable for the acquired land, compensation must be assessed at nil. The tribunal could find no reason why a discretion should be exercised in this case to increase the compensation".

Keputusan tribunal di United Kingdom telah menggunakan peruntukan undang-undang untuk menolak kesan *betterment* daripada pampasan. Bagaimana pula dengan mahkamah di Malaysia bersabit isu-isu *betterment*?

Oleh sebab-sebab yang tersebut di atas, kes-kes pengambilan balik tanah yang bersabit dengan isu *betterment* jarang sekali sampai ke peringkat mahkamah. Dalam kes Nagappa Chettiar. dll lwn. Pemungut Hasil Tanah Negeri Kedah 1968 (1 MLJ 1971 ms 43) yang melibatkan pembinaan jalan pintas (by-pass), Penilai Kerajaan En. Gopalakrishnan telah menjangkakan terdapat unsur *betterment* pada tanah baki. Penilai Kerajaan telah menolak kesan *betterment* dari jumlah pampasan yang ditawarkan dengan memberi pendapat bahawa *"the construction of the by-pass road gives impetus to its surrounding development..."*. Hakim bicara Y.A Wan Sulaiman telah menerima prinsip *betterment* dalam keputusannya. Beliau bersetuju dengan En Gopalakrishnan bahawa cadangan jalan pintas (by-pass) akan mengakibatkan kenaikan nilai kepada tanah baki.

Keputusan Mahkamah dalam kes tersebut adalah seperti berikut:-

- (i) Nilai pasaran tanah yang diambil (Nilai sebelum pembinaan jalan)

RM7,000 serelong x 9.5459 relong
= RM66,822

- (ii) Jumlah yang perlu ditolak di bawah Para 2 (b) Jadual Pertama Akta PT, 1960 (anggaran kenaikan nilai tanah selepas pengambilan)

RM1,000 serelong x 23 relong
= RM23,000

- (iii) Jumlah yang diaward di bawah Para 2(c) Jadual Pertama Akta PT, 1960 (anggaran pecah pisah RM7,000 kepada RM4,000)
 RM3,000 serelongs x 8.54 relongs
 =RM25,620

- (iv) Award Pentadbir Tanah RM69,442

Walau bagaimanapun kenaikan pada tanah baki adalah tidak ketara, dan pampasan yang diterima oleh tuan tanah masih merupakan jumlah yang agak besar.

Satu lagi kes bersabit *betterment* adalah dalam kes Kenny Height Development Sdn. Bhd. lwn. Pentadbir Tanah Daerah Wilayah Persekutuan Kuala Lumpur, (1994) Kes ini melibatkan pengambilan tanah untuk pembinaan jalan Kuala Lumpur-Klang Valley Expressway. Dalam kes ini penilai kerajaan telah menjangka akan berlakunya *betterment* dan mencadangkan kesan ini ditolak daripada pampasan. Penilai kerajaan telah mentaksirkan nilai tanah seekar adalah RM44,257.00 seekar dan kesan *betterment* adalah sebanyak RM7,500 seekar. Pemohon telah tidak berpuas hati dan merayu agar unsur *betterment* tidak ditolak daripada pampasan. Hakim Bicara Y. A. Datuk Mokhtar Sidin (Mahkamah Rayuan) telah berkata:

"The acquisition must relate to something which bettered the subject land such as building of infrastructure which the subject land can enjoy. There is no doubt in this case that the land was acquired for the purpose of building the expressway but that expressway does not contribute anything to the land. There is no direct access to the expressway from the land. In order to gain access to the expressway one has to use the existing road and make a detour to the expressway. As much I am of the view there is no betterment to the remaining portion because of the acquisition"

Hakim bicara berpendapat bahawa pembinaan lebuh raya tidak meninggalkan kesan kepada tanah baki kerana tiada akses terus ke lebuh raya bahkan terpaksa menggunakan jalan sedia ada dan membuat pirauan untuk ke lebuh raya.

Dilema Penilai

Khong (1996) berpendapat mengira kesan *betterment* bukan perkara mudah tetapi ianya perlu ditentukan kerana ianya merupakan tugas dan tanggungjawab penilai. Ia adalah prinsip penentuan pampasan seperti yang diperuntukkan dalam undang-undang pengambilan balik tanah. Khong (1996) juga seterusnya mengatakan jika penilai dan mahkamah dapat memberi penekanan yang munasabah ke atas *betterment*, tidak perlu "*two tier valuation*" seperti disarankan oleh sesetengah pihak.

Dilema yang dihadapi penilai adalah bagaimana untuk menentukan dengan pasti sama ada akan terdapat *betterment* ke atas tanah baki akibat daripada pengambilan balik tanah untuk projek awam. Setelah itu, penilai perlu menganggar setakat mana kesan *betterment* ke atas nilai tanah. Yang sukar ialah untuk memastikan *betterment* pada tanah baki. Ia mempunyai dua kemungkinan. Ia mungkin akan berlaku dan ia mungkin tidak berlaku. Dari segi etika dan moral, seseorang itu perlu tahu dengan pasti akan wujudnya *betterment* dan setelah itu menganggar setakat mana kesan *betterment* itu.

Undang-undang juga menuntut bahawa keadilan itu mesti ditegakkan tanpa sebarang keraguan. Dalam kes Khoo Peng Long & Ors v. Superintendent of Lands & Survey, Third Division (1966) 2 MLJ, Hakim Lee Hun Joe menyatakan "*The acquired land's possibilities is not the same and should not be taken as its realized possibilities*". Di sini

hakim bicara menekankan bahawa sesuatu kemungkinan tidak boleh diambil sebagai satu kemungkinan yang telah direalisasikan. Y.A. Mokhtar Sidin juga di dalam ceramahnya telah menyatakan bahawa beliau tidak menolak *betterment* di dalam penghakiman kerana *betterment* adalah satu perkara yang belum pasti (Sidin, 1998). Ia mungkin tidak akan berlaku. Keadaan juga bertambah sukar akibat pandangan mahkamah terhadap pendapat penilai. Misalnya dalam kes *Nanyang Manufacturing Co. v. The Collector of Land Revenue, Johor* (1954) MLJ 69. hakim bicara telah menyatakan "*expert opinion is likely to err, unless it is supported by, or coincides with other evidence*".

Mahkamah telah menegaskan bahawa pendapat pakar mungkin silap kecuali ada bukti-bukti yang dapat menyokong. Isu *betterment* adalah sukar untuk disokong dengan bukti kerana ia belum direalisasikan. Lebih menyukarkan lagi jika pampasan yang dicadangkan oleh penilai itu adalah pampasan nominal setelah ditolak kesan *betterment*. Walaupun prinsip asas *betterment* itu jelas, bahawa faedah yang diterima oleh tuan tanah akibat dari pengambilan tanah untuk projek awam dalam bentuk kenaikan harga pada tanah baki itu perlu disumbangkan semula kepada komuniti, namun ia sukar diterima oleh pihak terlibat.

Penutup

Bagaimanakah penilai harus menangani isu *betterment* ini? Ia adalah satu isu yang sering dipertikaikan. Antara sebab utamanya ialah ia begitu subjektif. Dalam tuntutan pampasan, penilai swasta yang membuat tuntutan bagi pihak pemilik biasanya enggan mengiktiraf tentang adanya *betterment* kepada tanah baki. Keadaan ini amat tidak membantu hakim, kerana pada kaca mata

mereka sebagai satu profession sepatutnya mempunyai prinsip penilaian yang sama (Sidin, 1998). Untuk menangani isu ini, pertama perlulah dipertimbangkan sama ada peruntukan seksyen 2 (b), Jadual Pertama, Akta Pengambilan Tanah, 1960 itu bercanggah dengan Perkara 13, Perlembagaan Persekutuan dan merupakan satu penafian hak? Dari perspektif yang lebih luas lagi, jika ada unsur *betterment*, pemilik tanah lain yang berhampiran dengan projek awam juga secara tidak langsung dapat menikmati kesan pembangunan yang dibawa oleh kerajaan. Kadang-kadang pembangunan inilah yang dapat menjanakan atau memangkin pembangunan sesuatu kawasan tersebut. Dengan lain perkataan, projek awam boleh membawa kebaikan kepada sesuatu komuniti. Walau bagaimanapun hanya pemilik terlibat perlu untuk menyumbangkan semula faedah yang diterima kepada kerajaan. Jika peruntukan seksyen 2 (b), Jadual Pertama berunsur penafian hak kepada pemilik tanah terlibat, maka pemindaan akta perlulah dibuat.

Sebaliknya jika ia tidak bercanggah dengan Perkara 13 Perlembagaan Persekutuan, maka alternatif lain perlu difikirkan untuk memastikan keadilan kepada pemilik tanah terlibat. Kesan *betterment* pada tanah baki hanya akan dapat ditentukan selepas projek itu siap. Oleh kerana pampasan yang memadai itu adalah hak pemilik tanah, maka adalah dicadangkan penilai membuat anggaran seperti biasa, tetapi amaun yang dianggarkan untuk *betterment* hendaklah didepositkan di Mahkamah oleh pihak berkuasa pengambilan (*acquiring authority*) atau dipegang oleh peguam pemilik terlibat.

Sekiranya terdapat unsur *betterment*, penilai boleh menilai sekali lagi kenaikan harga tanah tersebut. Amaun yang setimpal dengan

kenaikan harga tanah hendaklah dipulangkan kepada pihak berkuasa pengambilan. Sebaliknya jika tiada *betterment* kepada tanah baki, amaun yang didepositkan atau dipegang oleh Mahkamah atau peguam hendaklah dipulangkan kepada pemilik terlibat. Dengan cara ini ia dapat mengelakkan daripada penolakan kesan *betterment* daripada pampasan terlebih dahulu sedangkan ia belum pasti dapat direalisasikan. Sekiranya ini diterima, pindaan undang-undang adalah diperlukan. Walau bagaimanapun ini bukanlah satu penyelesaian yang mudah kerana cara ini akan menimbulkan isu lain yang boleh dipertikaikan iaitu elemen masa. Untuk sesuatu projek dapat direalisasikan mengambil masa mungkin setahun dua atau lebih. Sekiranya memang terdapat kenaikan harga, ia boleh dibahaskan sebagai kenaikan yang disebabkan oleh elemen masa dan keadaan pasaran dan tidak berkait dengan *betterment*.

Sememangnya peruntukan untuk menolak *betterment* dari pampasan, sama ada dari segi rasional ataupun kaedahnya kurang diterima oleh masyarakat umum, khususnya pemilik terlibat. Oleh kerana banyak pihak yang terlibat di dalam penentuan dan pemberian pampasan kurang senang dengan peruntukan ini, maka wajarlah ia dipertimbangkan semula.

Rujukan

- Alias, B., "Betterment: Its principles and Arguments". *Buletin Inspen*, Jun.
- Cullingworth, J.B., (1988), *Town and Country Planning in Britain*, London: Unwin Hyman.
- Khong, M. K., (1996), "Adequate Compensation". *Unpublished research paper*, Valuation and Property Services Department.
- Sidin, M., (1998), "Pendapat Asesor – Penilaian Penghakiman Nilai". *Kursus Penulisan Penghakiman Nilai untuk Assessor Mahkamah*, Institut Penilaian Negara.
- Kes Mahkamah**
- Leicester City Council v. Leicestershire Country Council, Land Tribunal (Reference No. 166/1993)
- Kenny Height Development Sdn. Bhd. v. Land Administrator, Federal Territory, (Land Reference No:S1-15-01-94 of 1994)
- Khoo Peng Long & Ors v. Superintendent of Lands & Surveys, Third Division, (1996), 2 MLJ 156
- Kulasingam, S & Anor v. Commissioner of Land, Federal Territory & Ors, (1982), 1 MLJ 204
- Nanyang Manufacturing Co. v. The Collector of Land Revenue, Johor, (1954), MLJ 69
- Nagappa Chettiar & Ors v. Collector of Land Revenue Kedah, (1971) 1 MLJ 43

Examining the Role of GIS in Valuation

Nasir Daud and David Parker, Ph.D.
University Of Newcastle Upon Tyne

Received: January 1998

Revised: October 1998

Abstract

Developments in technology have made possible the new efficiency with which to handle spatial problems. This is increasingly being achieved through the implementation of Geographical Information Systems (GIS). Since many aspects of valuation require analyses of factors related to location, the potential benefits of GIS to this discipline cannot be ignored. This paper attempts to examine the role of GIS in property-related functions, with special reference to valuation and analysis of property values.

Keywords: Geographical Information System (GIS), spatial correlation, spatial data, true distance representation/ trend surface analysis.

Introduction

The developments in computing technology have been mainly responsible for changes in the way property valuation is approached. They enable valuation and other property-related analyses to be undertaken to a degree that would have been time-consuming manually. Advancements in technology have also led to a growing number of analytical tools to be exploited for valuation. Indeed, techniques such as econometric modelling, regression analysis and other advanced statistical methods have been employed to automate valuations. According to Wyatt (1995), artificial intelligence in the form of expert systems and neural networks, and more recently an object-oriented approach known as case-based reasoning, has also been explored.

Developments in technology have also made possible the new efficiency with which to handle spatial problems. This is increasingly being achieved through the implementation of Geographical Information Systems (GIS). Since many aspects of valuation require undertaking analyses of factors related to location, the potential benefits of GIS to this discipline cannot be ignored.

The aim of this paper is to examine the role of GIS in property-related functions, with special reference to the valuation and analysis of property values. In doing so, the paper reviews some of the studies undertaken that apply GIS to valuation, assesses the benefits to valuation of incorporating GIS, highlights implementation issues, and considers the possibilities for future work in this area.

The Essence of GIS

There is no universally accepted definition of a GIS. The reason for this lies partly in the fact that, as a tool, GIS finds application across a diversity of user backgrounds. Because of its substantial value as a tool in many spatial analysis situations, GIS has attracted both technical and application-oriented workers from a large number of disciplines. As the individual disciplines apply GIS within their own area of interest, each tends to discover, understand, interpret and perceive GIS in the context of its own. Different views thus emerge with regard to what constitutes a GIS.

As a result of this state of affairs, there is a broad range of meanings with which GIS is associated. To some, GIS means only the suite of software used to analyse geographically-referenced data. To others, the term includes the hardware utilised by the system. Again, others would include all processes from data acquisition to data presentation. The Department of Environment, UK, (1987) defines GIS as "...a system for capturing, storing, checking, manipulating, analysing and displaying data which are spatially referenced to the Earth". This is normally considered to include a spatially-referenced computer database and appropriate applications software.

There have been attempts to identify criteria to define GIS (Maguire and Raper, 1990) and to categorise systems (Bracken and Webster, 1989) but definitions have remained a matter of individual opinion. Despite the fact that existing definitions are fuzzy, the term GIS is now in such universal use that it will be difficult to replace it with an alternative term.

Whatever the definitions offered, and so as not to be carried away by the semantics, this paper will focus on the functionalities a GIS potentially offers. A definition that, in the broadest sense, encapsulates the processes and activities of GIS in dealing with spatial data would therefore be accepted. As such, the authors choose to understand a GIS as a method for the organisation and analysis of geo-spatial data. Within this definition lies the major functional components that a GIS is expected to have: a data input sub-system, a data storage and retrieval sub-system and a data reporting sub-system.

It should be noted that the above definition makes no mention of the technology. This is because as a concept, GIS has been in existence even before the current computing technology exists. In fact, as a methodology for organising and analysing geo-spatial data, GIS has existed even before the advent of computer technology, although in the more rudimentary storage form of paper and file cabinets. GIS does not owe its existence to the computer; the computer has only provided the technological platform on which GIS has prospered to a level of sophistication that we see today. This remark merely serves to remind us of the existence of the traditional form; the interest of the present discussion, however, will be on the modern computer-based version that we now know of.

Before we review the GIS for valuation related functions, a brief discussion of the nature of valuation and value will be presented first to give an understanding of the roles GIS could potentially take.

The Nature of Valuation and Value

There are many definitions of valuation. According to Millington (1988), valuation is "the art, or science, of estimating the value

for a specific purpose of a particular interest in property at a particular time, taking into account all the features of the property and also considering all the underlying economic factors of the market, including the range of alternative investments". In reality, valuation is a mixture of both the art and the science; in some instances the scientific content in it will be greater, whilst in other settings the process could be almost entirely an art. The scientific part of valuation derives from the analysis of data and the mathematical calculations of value; the art lies in the skill of knowing which information to use to assist one's valuation, and the process of making judgements and forming opinions.

Similarly, there are many definitions of value, "for land can have as many values as there are purposes for which a valuation is required" (Turner, 1977). Again, value can be a subjective notion in the sense that the appreciation of it can differ from one person to another. As an example, it is common for land to be worth more to the person who owns it than to someone interested in buying it. However, where an impersonal, objective measure is called for, the most common basis of value used is an open market value, which may be defined as the price the land would fetch if put up for sale in the open market by a willing seller and purchased by a willing buyer. It is in this impersonal, objective value that interest normally lies.

Property values are determined by a whole host of factors, which originate from both within and outside of a property, and which often interrelate between one and another. When considering the determinants of value therefore, most valuers will take account of or have regard to a number of important

characteristics of property. Spatially, a property has a fixed location which means that it can only be used at that geographical location and therefore its value will depend upon the market's attitude towards owning a property at that specific location. Property also has a long life so that any sum paid has to be a fair reflection of the future benefits to be derived from the property. Purchasing property involves a substantial capital outlay; thus the availability of mortgage facilities and their costs are fundamental to the property market. Further, the total supply of particular types of property cannot be increased; duplicates are rarely of the same value as the originals.

The fact that a property is located in a particular neighbourhood - a spatial factor - also plays a part in determining property value such that the value of a superior property surrounded by inferior properties will tend towards the value level of the inferior properties, while an inferior property surrounded by superior properties tend towards the value tone of superior properties. This is also referred to as spatial correlation. This phenomenon takes place through the impact neighbourhood properties have on the value of subject property.

Role of GIS in Valuation

One benefit of GIS to valuation lies in its ability to provide useful representations of various spatial phenomena, often in the form of maps. Maps are an indispensable tool for understanding and interpreting spatial patterns and relationships. Maps can also be an important medium for communicating spatial messages. In fact, the messages a map conveys are often selective and partial models of the real world (Aalberts and Bible, 1992).

As a factor influencing property value, location is widely regarded as the most important. In practice, however, location is much talked about but under-analysed, and its incorporation into valuation methodology is often implicit. Appraisers often pay lip service to location analysis in arriving at value estimates. In the United States of America (U.S.A.) for example, appraisal standards require the three approaches to value to be preceded by material on location. Mostly, however, this material ends up being descriptive rather than analytical. Even when it is analytical, it is not usually linked with the valuation process by a proper line of reasoning. A GIS, by providing an efficient means of analysing locational or spatial data held by valuers, could allow explicit consideration of the spatial influences to be made.

All valuation techniques rely on the collection and analysis of data: general data such as social, economic, planning and environmental attributes, and specific data including local market conditions, details of transactions such as location, physical and functional form and legal characteristics. A GIS enables this by pulling together data from diverse resources into a single source.

Spatial analysis allows us to study real-world processes by developing and applying models. Such models illuminate underlying trends in spatial data, making new information available. A GIS enhances this process by providing tools which can be combined in meaningful sequences to develop new models. The models may reveal new or previously unidentified relationships within and between datasets, increasing our understanding of the real world.

All the above point to the reasons why a GIS holds potential for valuation. GIS is capable of providing the necessary analysis techniques for valuation. Since valuation involves a certain level of subjectivity in its decisions, an important role for GIS is seen to be in bringing down that level of subjectivity in valuation analysis. Objectivity in valuation has become increasingly emphasised as a result of the pressures, from both within and outside the valuation fraternity, for greater transparency and clarity in the way valuation is expressed. Thus, a potential contribution to be made by GIS will be towards making valuation more of a rational approach.

Potential for Improvement in the Valuation Process with GIS

Geographic information in the traditional valuation and real estate analysis context is generally contained in the form of a series of maps displaying physical and economic data. The maps generally show the location of a subject lot, competitive lots, market areas and local economy. But today's computing technology has resulted in GIS being a much more powerful and efficient way of collecting, storing, manipulating and analysing property data. The computational ability has meant that new functionalities are now available that were not previously possible with the traditional paper-and-file-cabinet GIS.

Valuation is a process requiring a whole range of analytical capabilities to handle the different analytical tasks taking place along the process; requirements range from the simple function for data summarisation to the more complex techniques involving tasks in modelling. To be of greater utility to valuation, a GIS therefore needs to support the functionalities needed to perform those tasks. In this section, we review some of the

more basic functions of GIS as applicable in valuation, look at some of related studies being conducted so far, and discuss the more complex functionalities that GIS offers for valuation.

Data Organisation

Since GIS is a methodology for the organisation and analysis of geo-spatial data, a significant benefit to a property-related organisation such as the Valuation Department of using GIS lies in the improved efficiency with which in-house property data can be held and managed. This improved performance is achieved because a GIS links data from different data-sets, including from spatial to aspatial datasets. As a simple example, suppose we need to know how many agricultural lots there are that lie from a certain kilometre distance from the town centre. The various pieces of information required to produce the answer are stored in separate files, and GIS brings them together.

The above example may seem trivial - hardly needing a GIS - but there are more complicated situations involving the different ways in which datasets need to be linked such as exact matching, hierarchical matching and fuzzy matching. A GIS can perform all these operations because it uses geography, or space as key between the different valuation datasets. Indeed, it is this ability at data organisation and manipulation that gives GIS the power to perform other complex tasks.

GIS also holds tremendous potential as a means for bringing together property-related data from disparate datasets, those that reside within external databases. This improved data availability is ideal to valuation, which always craves for access to myriad data. It certainly helps towards making automation in valuation more a reality.

Simple Query and Summary Functions

A GIS, through an appropriate software, provides the ability to display spatial data graphically. It allows a user to view on-screen a subject property together with other properties surrounding it. The view can be manipulated such that the individual lots can appear enlarged or reduced in size as desired. Also, details relating to any property can be retrieved and displayed, either textually or graphically. A GIS also allows users to perform queries of a lot's location, and of its physical characteristics such as lot size and shape. Basic statistical manipulations either of individual lots or of aggregated forms can be performed with ease.

The fact that GIS provides visual display capability is very useful to valuation. Since location is a major influence on value, GIS enhances valuation analysis by enabling the results of a database query to be displayed graphically. Simple questions of a 'what' and 'where' nature can be posed. Besides, the system allows a search to be conducted interactively with user specifying search criteria. A spatial query such as 'what is the shortest distance from a particular property to the town centre' can be easily handled by GIS.

A GIS can also be used to locate lots where certain conditions are satisfied. This function is particularly useful for seeking suitable comparables to be used in valuation. A typical problem will be one of locating a site for shopping centre where site suitability is dependent on certain criteria. The GIS, through overlay and buffer functions allows query of the database to take place.

Because a GIS is also a database, it also stores the aspatial aspect of lot data. This means

that details relating to other descriptions of property are also maintained within the system. Thus queries of such form as 'what is the plot ratio of this property' can be handled by GIS.

More Complex Tasks/Spatial Analyses

The comparable method is still an important method of valuation because every valuation must have recourse to comparable evidence ultimately. In English and North American valuation theory, this method is regarded as the most reliable method (Turner, 1977). Richmond (1986) states that "this procedure is widely adopted in practice, but requires the keeping of adequate records of transactions".

Identifying comparables and making appropriate adjustments form an integral part of valuation methodology. These are tasks that a GIS can perform efficiently. In valuation, after one adjusts for financing terms and conditions of sale to obtain the market-adjusted indicated sale price of comparable property, one must adjust for location and physical characteristics to obtain the indicated sale price of a subject lot. This process requires dealing with comparables. A GIS helps in analysing aspects of locational influences which arise in many ways in valuation. Since the value of a structure - residential, office or retail - is a function of location and linkages, a GIS is an excellent way of analysing the many complex linkages and arrive at better assessments of comparability and more accurate adjustments. A good GIS, fed with data specifying location of other lots and features such as infrastructure, can identify whether prospective comparable properties are truly comparable in terms of location and linkages. For example, in a residential appraisal situation, a comparable house may

be analysed in terms of distance to shopping, schools, transportation arteries, etc. In addition, the characteristics of neighbourhood can be analysed with a GIS. Income data and other economic characteristics of the neighbourhood and surrounding neighbourhoods can be pinpointed better with a GIS than with a survey or secondary statistical research methodology.

The development of a spatial property information system allows a more explicit approach to the quantification of the effect of location. As an example, Wyatt (1995) presented a technique for using as a means for quantifying the effect of location, using accessibility as the measure; he used gravity modelling technique available on Arc/Info GIS. In that approach, the database was first searched for comparable properties. Adjustments were then made for all differences the comparables have over the subject property except for the location factor. The remaining difference in value, which could now be ascribed to location factor, was then subjected to spatial analysis. The mapping display helped in 'the visualisation of which data constitute the best comparables. In this study, the index was found to correlate significantly with the locational values of the properties.

Some of the specific valuation-related studies undertaken in which GIS was involved have included alternative scenario (what-if) analyse, study of mortgage foreclosures (Aalberts and Bible, 1992), forecast of location of development (Pittman and Thrall, 1992), hedonic house price modelling (Rosiers and Theriault, 1991), site selection and location analysis (Barnett and Okoruwa, 1993), and accessibility analysis and retail gravitation modelling (Weber 1990).

Site analysis determines the ability of a site's specific physical and geographic characteristics to satisfy the operational and functional objectives of a particular land use. The focus of location analysis, on the other hand, is generally the evaluation of existing linkages. Linkage relationships develop because of the need to move people and goods between locations. In highest and best use analysis of a site, four criteria are considered namely physical supportability, legal permissibility, financial feasibility, and maximal productivity (Barnett and Okoruwa, 1993).

In another study on the application of GIS in valuation, Rosiers and Theriault (1991) considered the integration of GIS to hedonic price modelling in the Quebec region. He demonstrated how a low-cost GIS could be applied to the more complex tasks in valuation. In this study, the GIS was integrated with the RESIVALUE hedonic price model to produce the analytical capability to value property in Quebec region. The study concluded that the interpretations of complex phenomena such as spatial autocorrelation would not be possible without GIS.

This study had also shown the potential of GIS for data management and its ability to provide an analytical framework for information of a thematic aspatial nature, allowing for spatial cross-analyses of various urban dimensions. The integration was based on an open approach that creates an appropriate environment for data transfer between the many software packages involved. However, the fact that no less than ten individual small software packages need to be put together to perform the analysis would be a challenge that an average user would seriously need to consider when attempting to undertake such a

task. Therein lies some value in investigating into a more modern IT environment approach that handles the same task but in a less complicated manner.

The utility of GIS in valuation can also be viewed in terms of the functionalities it makes possible but which were not possible before. The following are two examples:

a. *True distance representation.* Distance used to be stored textually in database, and was given only as an estimate based on a straight line (Euclidean) distance from a reference point. In reality, a straight line distance does not accurately portray the true state of the real world. A GIS allows true distance representation to be made by enabling actual routes to be considered in the calculation, taking into considerations the turns and bends as they occur along the routes. Through this accurate representation, the quality of the data will be improved. Moreover, data on directionality and other factors can be incorporated so as to allow the computation of estimated travelling time from point to point. Consequently, the distance factor on property value can be more accurately analysed.

b. *Trend surface analysis.* GIS enables certain techniques of spatial analysis such as trend surface analysis, kriging and triangulated irregular network to be performed efficiently. The trend surface analysis technique, a further application of regression analysis, allows identification of trends in property value which are expected to vary in strength according to their location. This results in value surface being produced. With kriging, the interest is in prediction or interpolation of property value at points where there is no sample, with the end result being the ability to make predictions.

Issues In The Implementation Of GIS In Valuation

There are significant issues that complicate the implementation of GIS in valuation. Such problems need to be seriously confronted and resolved for GIS to be successfully implemented in valuation.

Data Access

“The power of GIS technology is often said to lie in its ability to act as an integration tool, bringing together data about people, places, and environment. The problem is that the integration concept depends upon two conditions - freedom of information and geographical comparability of data” (Fotheringham, 1994). This statement is true particularly in relation to the freedom of information.

All valuation techniques ultimately rely on the collection and analysis of data; general data such as social, economic, planning and environmental attributes, and specific data including local market conditions, details of transactions such as location, physical and functional form and legal characteristics. “The validity of a final estimate depends to a certain extent on how well it can be supported by market data” (Appraisal Institute, 1992).

Access to property data for valuation remains controlled, and this control manifests in a variety of forms. Despite the recognition that data freedom is vital to improvements in valuation decision-making, data still tends to be regarded as confidential and its release is often restricted, be it in the private sector or in the public domain. Thus, a certain amount of goodwill among all data providers and government intervention are necessary preconditions for improved flow of property data.

A related problem is that, because valuation requires access to myriad data, data need to come from various sources. Data also has to be reliable and timely. This cannot take place if there is no linked database in the first place. Then there is the issue of data standard agreement that need to be resolved before free exchange of data can take place. It is in this context that the Malaysian National Land Information System (NALIS) is a step in the right direction.

Limitations of Existing GIS

The commercial software available have limited capabilities for more complex tasks in valuation. As an example, no GIS can at present claim to be fully equipped technically to undertake tasks such as multiple regression analysis, a statistical tool that is rapidly gaining recognition as a versatile tool for mass valuation. It is true that this is not a serious setback in view of the possibilities for coupling with some statistical applications. But still it does mean that such functionalities are ranged beyond the capability of users with little or no experience with the techniques for coupling the applications.

The Future

The Temporal Dimension

The GIS models which are widely in use today are atemporal - without time dimension. The state of the database at any one time represents only a snapshot of the real world and not a continuum that it really is. Since valuation is as much about time as it is about location, a time dimension needs to be incorporated into existing techniques to facilitate accurate analysis when data are obtained at a different time horizon. This will be an area in which further research is necessary. Increasingly it

will become common to store large quantities of spatial data collected at different time periods.

Expert Systems

Another major area in which research is seen for the future is in automated valuation. This requires introducing elements of artificial intelligence in a way that enables a valuation system to perform the 'learning' and self-analysis functions, and to emulate the thought processes of an expert in carrying out valuation. This trend should be interesting to observe.

Conclusions

As technology develops, opportunity grows for a higher level of sophistication in valuation analysis, and the methodology of GIS will no doubt form an important component in this opportunity. Such developments further point to what lies ahead. The full potential of these developments will not be realised unless property data become more accessible. In this respect, efforts aimed at bringing about an integration of property data are not only desirable but necessary.

Thus the NALIS initiative is a step in the right direction. The success of the initiative will depend ultimately on the commitments of the various data providers, be they in the public domain or in the private sector.

As long as location forms an important influence on property, GIS, or any land information technology for that matter – should be regarded as a major opportunity not to be missed.

References

- Aalberts, R.J., and Bible, D.S. (1992), GIS: Application for the study of real estate, *Appraisal Journal*, Vol. 60(4) : 483-492
- Appraisal Institute, (1992), *The Appraisal of Real Estate*, Chicago, Appraisal Institute.
- Barnett, A.P. and Okoruwa A.A. (1993), Application of GIS in site selection and location analysis, *Appraisal Journal* Vol.61(2) : 245-253
- Bracken, I. and Webster, C. (1989), Towards a typology of GIS, *International Journal of Geographical Information System*, (3) : 137-152.
- Bracken and Webster, (1990), *Information Technology in Geography and Planning* London: Routledge
- Fotheringham, S. (1994), Commentaries, *Environment and Planning A*, Vol. 22 : 851
- Maguire, D.J. and Raper, J.F. (1990), *An Overview of GIS Functionality*, Proceedings of GIS design models and functionalities conference, Midland Regional Research Laboratory, Leicester, 10pp.
- Millington, A.F. (1988), *An Introduction to Property Valuation*, 3rd. edition, Estates Gazette London
- Pittman, R.H. and Thrall, G.I. (1992), Improving Real Estate Market Research, *Real Estate Issues* Vol. 17(1):1-7

Richmond, D. (1986), *Introduction to Valuation*, Hong Kong, Macmillan.

Rosiers, F. and Theriault, M. (1991), Integrating geographic information systems to hedonic price modelling: an application in the Quebec region, *Geographic Information Systems* (edited by S. Powers)

The Department of Environment, (1987), *Handling Geographic Information*, HMSO, London.

Turner, D.M. (1977), *An Approach to Land Values*, Geographical Publications

Weber, B. R. (1990), Application of GIS to real estate market analysis and appraisal, *Appraisal Journal* Vol. 58(1) : 127-132

Wyatt, P. (1991), Using a GIS for Property Valuation, *Journal of Property Valuation and Investment*, Vol. 14(1) : 67-79

Wyatt, P. (1995), The Application of Geographical and Land Information Systems to Property Value, *RICS Land and Hydrographic Survey Division Biennial Conference* September 1996

Brief Notes on Land Acquisition Practice

Mani Usilappan
Deputy Director General
Valuation and Property Services Department

(This paper is an abstract of the Background Paper on Land Acquisition presented at the Continuous Professional Development Talk on 14 April 1998, organised by the Institution of Surveyors Malaysia)

Introduction

Irrespective of a country's stage of economic development, compulsory acquisitions of lands by the state are sometimes inevitable in order to undertake the development. The maxim *salus populi suprema lex* i.e. the welfare of the people or of the public are paramount and the maxim *necessitas publica major est quam privata*, which means "public necessity is greater than private" legitimise the acquisition of private property by the State. Various terms have been used in different jurisdictions to describe the compulsory taking of land viz. compulsory purchase (UK), eminent domain (United States), expropriation (Canada) and land acquisition (India, Malaysia), resumption (Hong Kong). For the purpose of this paper, the term adopted is land acquisition.

The practice of land acquisition differs from country to country. How different are we in the land acquisition practice from the others? This paper is an attempt to provide a comparison on land acquisition practice in a number of countries. It is hoped that by comparing how other countries address similar issues, valuable lessons may be drawn. In this instalment, comparisons are made on rights of interested parties and principles of compensation.

Rights to Property

Although the interest of the public is paramount, the private rights to property must be preserved.

As a general observation, in most countries where land acquisition is practised, the Constitution provides for the protection of an individual's right to property. The Constitution not only allows acquisition of property in accordance with law and procedure, but also such law provides for "just" or "fair" or adequate compensation. The constitutions of the United States, India and Malaysia, for example, recognise this right and have accorded this right constitutional protection.

Right to be Heard

All jurisdictions provide for a notice to be given to the individual that his land is to be acquired. This is in line with the basic right of the individual, enshrined in the maxim *audi alteram partem*, the right to be heard.

Right to Object to Land Acquisition

Some jurisdictions allow the individual affected and other persons subject to the principle of locus standi, to raise objections to

any land acquisition proceedings. This right is available in India, Australia and United Kingdom but is not generally available in Malaysia and Singapore.

Right to Claim Compensation

All jurisdictions allow the affected landowners to be heard on their claims for the loss of property. Detailed procedures are laid out for enquiries to be held to determine compensation. All affected persons, not only landowners, are given the right to put in a claim for the losses suffered. At the enquiry all such claims are scrutinised before the acquiring authorities to determine the compensation payable. The amount of compensation is notified in a written form to enable landowners and others, to avail themselves of legal and technical opinion before they accept the offer.

As a general rule, all those who have an interest in land, legal or equitable, are allowed to make claims. Where illegal occupiers are present, a form of *ex-gratia* payment could be made payable.

Right to Object to Compensation

Landowners and others entitled to compensation can accept or reject the compensation. If they reject them, they have recourse to a higher legal tribunal such as a Lands Tribunal (UK), Valuation Review Board, or a High Court (Malaysia, UK) for a full trial before determination of compensation.

Principles of Compensation

The constitutional protection given in most jurisdictions on “just”, “fair”, or “adequate” compensation has not been clearly defined. However, the legislation which governs

the payment of compensation often refer to market value as equivalent to “just”, or “fair”, or “adequate” compensation.

In jurisdictions that mirror closely the legal practice found in the UK, the oft-quoted principle of compensation is:-

“the right to be put, so far as money can do it in the same position as if his land has not been taken from him. In other words, he gains the right to receive a money payment not less than the loss imposed on him in the public interest, but, on the other hand, no greater.”

Scott J in *Horn V Sunderland Corporation*.

This principle coupled with the constitutional protection protects the individual’s right to “a fair”, or “just”, or ‘adequate’ compensation.

All the jurisdictions provide for a market value basis for compensation, although in a number of countries market value determination is subject to a number of restrictions. Market value would be the best possible means of compensating an owner for the loss of his property, since, if the owner willingly disposed his property in the open market, on a “willing seller” basis, that would be the best price that he would have obtained.

Market Value

The general basis of compensation used in most jurisdictions is market value. This is often understood to be “a price that is obtained by a willing seller from a willing buyer with whom he has been bargaining for some time”. Though the wordings vary, the essence of the concept is a price struck between a willing seller and a willing buyer.

However, in some jurisdictions such as the UK, market value has been narrowed to mean the value to the owner, on the assumption that the value to the owner would in most cases exceed the open market value. In other jurisdictions, such as Malaysia and India, market value is not necessarily the value to the owner, though the law does not necessarily exclude such an assumption. It is submitted that the concept should be market value and not value to the owner. If this is acceptable, the standard for market value should be the same as used in the International Valuation Standards.

In determining market value, legislation in different countries have sought to place certain conditions.

a. Potentialities/Zoning

Potentialities are as much part of market value as the concept of a willing buyer and willing seller. Any purchase of land will include the potential for which the land can be used. In countries that practice rigid zoning codes, potentialities would depend on the zoning allowed. In other countries, such potential may not be easily determined. Nevertheless evidence of transactions used in determining compensation would provide abundant proof of potential. Potentialities would be a matter of fact, and would therefore need to be determined by the compensating authority, if claimed.

b. "Pointe Gourde" principle

Potentialities must be recognised only if the potentialities can be achieved in the absence of the acquisition. If the potential is as a result of the acquisition, and the enhancement is as a result of the

scheme underlying the acquisition, any increase in value needs to be disregarded. This was laid down by the Privy Council in the case *Pointe Gourde Quarrying* case and practiced in the UK and Australia.

c. Planning provision

Other jurisdictions require market value to be determined in accordance with planning provisions. Where an adverse planning position is noticed, or no proper planning is allowed, certain jurisdictions (UK) allow for the application of an alternative planning certificate to be used for the purposes of claiming compensation.

This practice appears to be good, because it provided certainty in the determination of compensation.

d. Illegal buildings, use etc.

Most countries (UK, Malaysia, Hong Kong, Singapore) prohibit additional compensation payable to an owner, if the use of the land or buildings is for a purpose contrary to public health, safety or law.

Even though this rule may appear harsh, it is fair, because owners take a risk when they try to circumvent existing laws when they erect or use the land or buildings for a use that is not condoned by law.

e. Increase or decrease in compensation because of the use to which the land acquired will be put to

Any increase or decrease in value because of the use to which the acquired land will be put to is often disregarded

specifically by legislation (Malaysia). This is only fair as it would not be right for an affected landowner to be paid less because of the proposed use of the land by the acquiring authority and similarly it would also not be fair for the authority to pay more because of the proposed use.

f. Urgency of the acquisition

In a number of countries the urgency with which lands are to be acquired are to be disregarded. The only recourse is to give interest from the date of taking possession of land prior to payment of compensation (Malaysia and India). In other countries a certain amount of *solatium* may be paid.

g. Disinclination to part with land

A number of countries expressly exclude any disinclination of the owner to part with land. In the past, some payments were allowed to reflect the compulsory nature of land acquisition. However, since the basis of compensation is market value, a deemed sale by willing seller and willing buyer is envisaged and this would negate any additional payment being made for the compulsory nature of the whole process.

h. Special suitability

In the UK one of the rules used in determining compensation requires that special suitability or adaptability of the land for a purpose shall not be taken into account, if that purpose is a purpose to which the land could be applied only in pursuance of statutory powers, or for

which there is no market apart from (the special needs of a particular purchaser or) the requirements of any authority possessing compulsory purchase powers.

i. Restrictions in use, title etc.

Strictly speaking, in all jurisdictions, any conditions restricting the use or ownership of land must be adhered to and the market value would be subject to those conditions. However, the various legislations affecting use and ownership also allow for rescission, adaptation and variation of those restrictions and conditions with or without additional payment. In all these cases the likelihood of that variation, adaptation or rescission should be taken into account. This would be especially true where the land being acquired has some potential over and beyond its existing value.

j. Reinstatement principle

There are properties, which may be acquired, that are seldom, if ever, sold in the open market. Examples are temples, mosques and churches. Since they are not old, there is no evidence of market value. The better way to compensate such uses would be the cost of equivalent reinstatement in another place. However, before such reinstatement can take place, there must be a genuine desire to reinstate the use.

In most instances, owners of such buildings may opt to claim for market value based on the highest and best use.

If so, then the value of the land would be the market value for that use; no recommendation would be made for reinstatement.

Date of Valuation

The date of valuation varies according to the legislation in each member country. Some are on the date of notification whilst others are on the date of possession being taken. For ease of computation and certainty of compensation it is recommended that the date of valuation must be predetermined with the safeguard that the compensation should be determined and paid within two years of gazette notification.

To be continued ...

Compulsory Acquisition of Land in Malaysia

Grace Xavier, LLB(Hons)(Lond), LLM(Mal), CLP

Advocate & Solicitor, High Court of Malaya

Lecturer, Faculty of Law, University of Malaya

Introduction

The right to own property is a fundamental right of every person who can afford to do so. A person cannot be deprived of his property unless the law provides for it. The right of the state to take a person's property is usually entrenched in the constitutions of various countries. This article examines the acquisition of land under the law and the principles to be considered when assessing compensation before an award is made to the landowner.

Property Rights in Malaysia

The rights of a property owner in Malaysia are governed by provisions contained in the Federal Constitution (the Constitution), the National Land Code 1965 (the Code) and the Land Acquisition Act 1960 (the Act). Property rights, as far as the Constitution is concerned, are similar to other jurisdictions. In the United States, the sovereign right to acquire private property at a fair price for a public use, is known as "eminent domain". The Fifth Amendment to the United States Constitution states that "no person shall ... be deprived of life or property without due process of law; nor shall private

property be taken for public use without just compensation". In India, the rights of the property owner is recognised under Article 31 of the Constitution of India which provides that "no person shall be deprived of his property save by authority of law" and that "no property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of law which provides for compensation for the property so acquired".

Closer to home, in Singapore, the preamble to the Land Acquisition Act, Cap 272¹ states that the Act is "An Act to provide for the acquisition of land for public and certain other specified purposes, the assessment of compensation to be made on account of such acquisition and for purposes connected therewith". In Malaysia, the Land Acquisition Act 1960 complements the Federal Constitution. Section 3 of the 1960 Act provides that the land is only to be acquired for any public purpose;² or for any work or an undertaking which, in the opinion of the Minister, is of public benefit or of public utility or in the public interest;³ or for any residential, commercial or industrial purpose.⁴

¹ As amended by the Land Acquisition (Amendment) Act, (Act No 66. of 1973)

² Section 3(1)(a)

³ Section 3(1)(b)

⁴ Section 3(1)(c)

The Land Acquisition Act 1960

The Land Acquisition Act was passed in 1960 and came into force on 13 October 1960. It repealed a number of existing enactments that had been in use previously.⁵ The purpose of the enactment was to provide a clear, unambiguous and simple system of acquisition supported by a uniform procedure of essential forms. Uniformity of procedure is essential to ensure that each acquisition is carried out without any prejudice. Since its inception, the 1960 Act has undergone a number of amendments subsequently. One amendment was not well received, namely the Land Acquisition (Amendment) Act 1991 (the 1991 amendment).

The Land Acquisition (Amendment) Act 1991

The 1991 amendment came into force on 12 September 1991. It amended section 3 of the principal Act and inserted a new section 68A. The original section 3 allowed the State Authority to acquire any land needed for any public purpose or for any person or corporation undertaking a work which in the opinion of the State Authority, was a public utility. The State Authority could also acquire land for purposes of mining, housing, agriculture, commerce or industry. Under these provisions, land could be acquired for public utility works.

Under the 1991 amendment, however, section 3 added another purpose for which land

could be acquired. The State Authority was empowered to acquire land for any person or corporation for any purpose which in the opinion of the State Authority was beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public. The discretion accorded to the State Authority extended the power of the state to acquire land for economic development. Members of Parliament voiced their fears when the 1991 Bill was being debated. The fears included:

1. The uncertainty of the test, which determines the award of the compensation - the State Authority may acquire any land, which is needed for any purpose, which is beneficial to the economic development of Malaysia. The word "public utility" that was present in the original section 3 is removed. Does this mean that the test of "public purpose" is removed?
2. The amendment allows the State Authority to acquire private land and this power may be abused. It is possible for acquisition proceedings to be carried out and later, the acquired lands may be disposed of to other individuals or to groups of persons or to favoured companies or to those companies with strong political ties.

Of even greater importance, and the cause of much dissatisfaction to many landowners, was the addition of a new provision, section 68A⁶. Section 68A provides that the

⁵ Section 70. The repealed enactments were The Land Acquisition Enactment of the Federated Malay States, the Land Acquisition Enactment of the State of Johore, 1936, the Land Acquisition Enactment (No. 57) of the State of Kedah, the Land Acquisition Enactment of the State of Kelantan, the Acquisition of Land for Railway Purposes of the State of Perlis, the Land Acquisition (Extension to Perlis) Enactment, 1958, of the State of Perlis, the Land Acquisition (Extension to Trengganu) Ordinance, 1952, and the Land Acquisition Ordinance of the Straits Settlements.

⁶ "Where any land has been acquired under this Act, whether before or after the commencement of this section, no subsequent disposal or use of, or dealing with, the land, whether by the State Authority or by the Government, person or corporation on whose behalf the land was acquired, shall invalidate the acquisition of the land".

subsequent disposal of the acquired land shall not invalidate the acquisition. However, the section does not mention that the subsequent disposal should only be for a similar purpose to the original acquisition. The section allows the acquiring body to dispose of the land, which for some reason or other, is no longer needed for the purpose it was acquired. But is this provision fair to the landowner? Can someone be deprived of his land, and then find that the land is used for another purpose different from the purpose that it was acquired for? The effect of section 68A is that it gives the right to the acquiring authority to acquire lands for economic development, re-sell the lands to any private body or corporation for any development to be carried out, and even if there is a vast difference in the price between the acquisition price paid to the original and subsequent resale to the said body or corporation, the original landowner is prevented from questioning the issue or challenging the matter in court.⁷ This is another fear that was voiced in Parliament:

... "that the jurisdiction of the court would be curtailed or even removed in land acquisition matters. The court may not have the power to declare null and void any acquisition even if mala fide (bad faith) could be attributed to the acquisition".

Does this then mean that the State Authority is vested with absolute powers in relation to acquisition of land and subsequent disposal of the said land? The State Authority may

not have absolute powers. In **Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd**⁸ the powers of the Executive were discussed. Suffian L.P.⁹ referred to a number of English decisions regarding the powers of the local authorities and came to the conclusion that whatever powers were given to the authorities, these powers had to be exercised fairly and reasonably. The authorities were not at liberty to use their powers for an ulterior object, *however desirable that object may seem to them to be in the public interest*.¹⁰

A discussion of the above case will not be complete without a quote:¹¹

"... Unfettered discretion is a contradiction in terms. My understanding of the authorities in these cases, and in particular the case of Pyx Granite (ante) and its progeny compel me to reject it and to uphold the decision of the learned judge. It does not seem to be realised that this argument is fallacious. Every legal power must have legal limits, otherwise there is dictatorship. In particular, it is a stringent requirement that discretion should be exercised for a proper purpose, and that it should not be exercised unreasonably. In other words, every discretion cannot be free from legal restraint; where it is wrongly exercised, it becomes the duty of the courts to intervene. The courts are the only defence of the liberty of the subject

⁷ Section 68A - Where any land has been acquired under this Act, whether before or after the commencement of this section, no subsequent disposal or use of, or dealing with, the land, whether by the State Authority or by the Government, person or corporation on whose behalf the land was acquired, shall invalidate the acquisition of the land.

⁸ [1979] 1 MLJ 135.

⁹ Ibid, p. 145.

¹⁰ Emphasis is mine.

¹¹ As per Raja Azlan Shah Ag. C.J. (Malaya) in the same case cited above, at p.148.

*against departmental aggression. In these days when government departments and public authorities have such great powers and influence, this is a most important safeguard for the ordinary citizen: so that the courts can see that these great powers and influence are exercised in accordance with law. I would once again emphasize what has often been said before, that "public bodies must be compelled to observe the law and it is essential that bureaucracy should be kept in its place", (per Dankwerts L.J. in **Bradbury v London Borough of Enfield**¹²)".*

It is concluded, at this point, that the State Authority must exercise its discretion judicially in the acquisition of land. The next question is that of adequate compensation.

Adequate Compensation

Adequate compensation is not defined in the Act but the principles to be adopted in assessing the determination of compensation are stated in the First Schedule to the Act.¹³ But what is adequate compensation for a person who has been deprived of his property?

Principles of Compensation under the Land Acquisition Act 1960

The First Schedule to the Act lists three principles for determining the amount of

compensation to be awarded. Briefly, the first is the basis of determining market value of the land; second is any contemplated increase in the value of the land acquired likely to accrue from the use to which the land acquired is put to and any damages which are likely to be sustained through the process of acquisition; and third, a list enumerates the factors that ought to be neglected in determining the award.

(a) Market value

In the First Schedule, market value of the land is stated as the market value of the land at the date of publication in the Gazette of the notification of proposed acquisition or a declaration of such an acquisition.¹⁴ The effect of any express or implied condition of title restricting the use to which the scheduled land may be put shall also be considered in assessing the market value of the land.¹⁵

- **Willing vendor and willing purchaser criteria**

Market value of the land has also been described as the price that an owner willing, and not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for sale and purchase of the land.¹⁶ Three recognized methods for arriving at this price are: (1) opinion of experts; (2) the price paid, within a reasonable time, in bona fide transactions of purchases of lands acquired, or of the lands

¹² [1967] 3 All ER 434, 442.

¹³ See sections 12, 35, 46 and 47 of the Act and also the First Schedule which lays down the principles and factors to be considered and ignored when determining the amount of compensation payable.

¹⁴ Section 1, First Schedule to the Act.

¹⁵ Section 1(2) of the First Schedule to the Act.

¹⁶ This was stated in the case of **Nanyang Manufacturing Co v Collector of Land Revenue, Johore** [1954] MLJ 69.

adjacent to the land acquired and possessing similar advantages; and (3) a number of years' purchase of the actual, or immediately prospective, profit from the lands acquired.¹⁷

- **Comparable and similar lots**

Cases have held that in relation to the determination of compensation as spelt out in the First Schedule to the Act, the most reliable guide in determining fair market value is evidence of sales of the same or similar land in the neighbourhood, due allowance being made for the particular circumstances of each case.¹⁸

Principles for the correct method of assessment of fair market value arose in **Pentadbir Tanah Daerah Petaling v Glenmarie Estate Ltd.**¹⁹ In determining the market value of certain portions of land acquired in the 1980s, the learned judge had solely relied on an earlier award made by the High Court concerning a portion of the same estate made in 1979. For the purpose of assessing the value of the lands the learned judge doubled the award per acre but in some cases gave due allowances for the location of the lands, size and time of acquisition.

The Supreme Court held that the learned judge had not applied the correct principle in making the award. Although it was not wrong for the learned judge to accept the evidence of a previous acquisition award of the same

estate as relevant consideration indicative of the market value of the property, it would be more reliable to follow the normal and accepted guide in determining the fair market value of the lands by considering the sales of similar lands in the neighbourhood after making due allowances for all circumstances, when such evidence is available.

- **Bona fide transactions**

Where the court is using similar pieces of land or property that have been acquired or sold earlier as a comparison, it must be satisfied that the transactions were bona fide. The sale must be a genuine sale and the price paid must be a realistic figure when all the circumstances of the case and the current market value of property are taken into account as was held in **Che Pa bin Hashim & 3 Ors. v The Collector of Revenue, Kedah.**²⁰

(b) Potential development

Potential development of the land in question is not to be taken into consideration²¹; neither any increase in value due to improvement made by the owner within two years before the declaration of the acquisition unless it can be proved that the improvement was made bona fide and not in contemplation of proceedings for the acquisition of the land²²; nor an increase by reason of the use of the land where it is shown to be contrary to law,

¹⁷ Ibid.

¹⁸ **Bertam Consolidated Rubber Co Ltd v Pemungut Hasil Tanah, Seberang Perai Utara, Butterworth** [1989] 2 MLJ 178. See also **Ng Tiou Hong v Collector of Land Revenue Gombak** [1984] 1 CLJ 350.

¹⁹ [1992] 1 MLJ 331; [1992] 2 SCR 29.

²⁰ [1993] 1 CLJ 193.

²¹ Section 1(2B) of the First Schedule to the Act.

²² Section 1(3)(a), First Schedule to the Act.

or is detrimental to the health of the inmates of the premises or to the public health.²³

However, cases have taken potential development into account when determining the amount of compensation to be awarded. The court recognises that the value of the land must be considered as it stands in its actual condition at the material date with all its existing advantage due to the carrying out of any scheme by the government for which the land is compulsorily acquired. In this regard, the fairest and most favourable manner to consider compensation is to take into account the most lucrative and advantageous way in which the owner could dispose of the land with reference to its future utility.²⁴ However, potential development may only be taken into consideration if it is not too remote as held in **Siah Brothers Plantation Sdn Bhd v Pentadbir Tanah dan Daerah Kuantan**²⁵.

(c) Factors to be disregarded

The various factors to be disregarded in computing the compensation award are the degree of urgency which led to the acquisition, reluctance of the landowner, damage sustained, either depreciation of or increase in value of the land from the proposed use after acquisition and outlay on additions or improvements made to the land after the landowner had been notified of the proposed acquisition (para 3 of the First Schedule).

In 1997, considering the dissatisfaction that prevailed since the 1991 amendment, Parliament decided to make a further amendment to land acquisition procedures. The Land Acquisition (Amendment) Act 1997 (Act A999)(the 1997 amendment) was published in the Gazette on 31 July 1997. The article now explores the salient provisions of the 1997 amendment.

The Land Acquisition (Amendment) Act 1997

(a) Purpose of acquisition

One further category under which land may be acquired is added. Land may now be acquired for recreational purposes.²⁶ It must be noted that recreation is not defined, neither is it clear whether recreational purposes are for the use of the general public. It is suggested that in order not to depart from the original purpose of the acquisition enactment, i.e. that land is to be acquired for public purposes, recreation should be confined to the types of recreation that may be enjoyed by the general members of the public e.g. public parks. In this regard, land ought not to be acquired if the intended recreation is a golf course. A golf course would cater only to a select class of the public and not to the general public.

²³ Section 1(3)(b), First Schedule to the Act.

²⁴ See **Khoong Peng Loong & Ors. v Superintendent of Lands and Surveys, Third Division** [1966] 2 MLJ 156. In this particular case, the Court increased the award. See also **Bukit Rajah Rubber Co Ltd v Collector of Land Revenue, Klang** [1968] 1 MLJ 176, where the court held that the property must be valued not only with reference to its condition at the time of acquisition but also its potential development value.

²⁵ [1993] 3 CLJ 435 - the judgement is in Bahasa Malaysia but there is an English translation of the headnotes.

²⁶ Section 3(c)- The State Authority may acquire any land which is needed ... for the purpose of mining or for residential, agricultural, commercial, industrial or recreational purpose or any combination of such purposes.

(b) Establishment of “Jawatankuasa Khas Pengambilan Tanah”

A “Jawatankuasa Khas Pengambilan Tanah” is made up of the State Secretary, State Director of Lands and Mines, the Director of the State Economic Planning Unit, the State Director of Town and Country Planning and representatives of other related Government departments or agencies. While this is commendable in that a number of experts would now study all applications for acquisition of land, it is submitted that public participation should be included. To ensure that this is done, the membership of the Committee should include representatives from non-government organisations and private agencies. This would reflect a more balanced representation.

(c) Principles relating to assessment of compensation

In relation to assessment of compensation, a new section, section 9A provides that the Land Administrator ought to check whether the scheduled land is within a local planning authority area and whether any development had been proposed in relation to town and country planning. If yes, then the category of land use for the proposed development will be an important factor in assessing the amount of the valuation for the scheduled land. Where such land is the scheduled land, then the valuer should consider the specific land use indicated in the development and uses this information to assess the market value (para 1A of the First Schedule).

Another additional factor to be considered is the recent sales of lands with similar

characteristics (para 1A). This principle applies specifically to the sales that had taken place within two years preceeding the date of the proposed acquisition.

(d) Factors to be disregarded

The 1997 amendment has added in a new category (para 3A) that the value of any building on the scheduled land, if the building is not permitted by virtue of the category of land use or due to any restriction on the title, shall be disregarded.

(e) Appeals against awards of compensation – Judge and two Assessors

A Judge previously heard appeals against awards of compensation. Under section 40A of the 1997 amendment, the Court shall appoint two assessors, one of whom shall be a Government valuer, to assist the Judge in determining the validity of the objection and in arriving at a fair and reasonable amount of compensation. However, there is no further right of appeal against the decision of the Judge and the two assessors.

Conclusion

The article has examined the various problems linked to land acquisition in Malaysia. A number of uncertainties arose as a result of the 1991 amendment. Land could be acquired for economic development. But economic development was not defined. Landowners were unhappy that their lands would be acquired arbitrarily. The 1997 amendment appears to provide for a better-regulated procedure of acquisition of land. The establishment of a special committee is a good start. Recent sales of similar land

are to be taken into consideration. Two assessors and a judge would hear appeals against awards of compensation. But there is an added category of acquisition, for recreational purposes. It is still too early to decide on the effects of the 1997 amendment. There may be flaws and inadequacies, which may emerge with time.

Review of the Malaysian Property Market 1998

Iskandar Ismail, Ph.D

Property Information Programme, INSPEN
Valuation and Property Services Department

After a year of austerity measures to alleviate the impact of the regional financial crisis on the country, the Malaysian government implemented a counter-cyclical monetary and fiscal policy complemented by a flurry of new rules regulating the currency and stock markets. In the corridors of power, the new buzz words are expansionist monetary and fiscal policies, currency stability, lower interest rates, strong trade figures and increasing liquidity. This apparent *volte-face* in policy, going against the mantra of free markets, was brought about by the difficulties the government faced in restructuring the banking sector whilst maintaining tight monetary policies to keep the Ringgit stable.

The last twelve months have shown that controls on short-term capital inflows and outflows were necessary due to their destabilising effects. To insulate Malaysia from a hostile external environment, new foreign exchange controls were introduced which ended the tradability of the Ringgit outside of the country and fixed its exchange rate at RM3.80 to the US dollar. The expected inflow of the Ringgit from foreign shores is tantamount to a fresh injection of capital into the country's banking system, thereby boosting liquidity in the economy. The ruling means that there would be a longer time horizon for foreign funds invested in Malaysia, unless approval is granted by the Central Bank (BNM). It is designed to discourage short-term speculators in the stock market and encourage long-term investors in the real economy by ensuring a

more predictable foreign exchange regime. It also trades the risks of a foreign investment slump in favour of currency stability, which is badly needed by businesses. However, the risk is short-term, as the pegging of the US dollar at RM3.80 would make foreign direct investment more attractive, given the low costs of doing business in the country. Interest rates can now be lowered without fear of a fall in the value of the Ringgit, which in turn will reduce inflationary pressures. It is expected that the new measures announced by the government are short-term in nature, designed to give the government the space and time to bring the economy back on its feet.

Foreigners selling their real properties in this country would now have to keep their money within Malaysia for one year, after which it can be converted in to foreign currencies for transfer overseas. It is too early to gauge the impact of the new measures on the property market, especially on Singapore's neighbour, Johor Bahru, but the role of foreign speculators would be curtailed. This may be offset by the higher ceiling on property loans to both developers and buyers, encouraging more properties priced up to RM250,000 per unit to be built. Nationally, this new loan ceiling is expected to have a significant impact on the property market, since it is also higher than the National Economic Action Council recommendation of RM200,000 per unit as the affordable threshold for the Klang Valley.

The general level of prices of new residential units is expected to move gradually to this higher price level as confidence returns to the property sector, from the previous affordable limit of RM150,000 per unit. However, developers are expected to carefully monitor the demand for houses at the higher price levels before committing themselves, as prospective purchasers may be reluctant to take on such liabilities before full economic normalcy returns. In the short-term, if investors are not sure of the demand for higher priced units, they will not put funds into property development, even if funds are more easily available. Instead, investors may choose to put the newly found liquidity into equity instead of into property. The good performance of the Kuala Lumpur Stock Exchange in November and December may encourage this trend.

BNM also relaxed the lending guidelines for the construction and purchase of residential properties by exempting houses costing RM250,000 per unit and below from the 20 per cent lending cap on loans to the broad property sector. The increased liquidity and lower interest rates is expected to revitalise the property sector and increase the supply and transaction of residential units as the costs of funds would be much lower. The lower holding costs may also see fewer developers launching houses at cost price to stay afloat. They may opt to wait out the recession until their cash flow problems are over before launching their new schemes at higher prices later. Thus, we may only see a general increase in house price levels in the medium term.

As developers heave a collective sigh of relief at the easier availability of credit due to the expansionary economic policies, a sense of *déjà vu* prevails. The revitalisation of the property sector should utilise strategies which

would not see a return of the problems which BNM has worked hard to resolve over the last year. Prices should not be allowed to escalate beyond affordable levels and speculative controls should remain in place to ensure some measure of price stability. Exposure of the banking system to the property sector, a perennial bugbear of central bankers, should be closely monitored. Finally, issues of asset quality must be foremost in the minds of the nation's bankers, lest the banking sector becomes hostage to the vicissitudes of the real property sector.

For the commercial and retail sectors, the spectre of space oversupply, especially in the Klang Valley, is well and truly here. Despite the best efforts of the various authorities over the last few years advising the property developers to take heed of the impending huge space over-supply, not all were able to reschedule their completion dates and many were caught *in flagrante delicto* by the abruptness of the economic recession. It would take years for the extra space to be absorbed into the market or redirected to other uses. Rentals and occupancy rates are already declining. Given the huge current over-supply and new space still expected to come on-stream, in the celebrated words of Mrs. Thatcher, it will get worse before it starts to get better. The unkindest cut of all is the knowledge that despite their best efforts, it may not mean much if the current national economic recovery falters.

Over the next six months, the outlook for the real property sector is still not totally clear. Certainly, on a macro-economic level, the country is still not out of the woods. Offshore, the regions' currency and share markets are recovering from the severe speculative attacks. The situation in Russia is worrying. Japan seems unwilling to look beyond its

internal problems and regenerate its economy. The situation in Indonesia remains fluid. A continuing slowdown in global demand and the regional economic and financial crisis will continue to influence developments in the medium term. The increased liquidity in the economy may not have an immediate impact on the real property sector until confidence eventually returns to the national economy. It is also important for the policy makers to appreciate that the property market is heterogenous; there is thus no single panacea for the ills of the entire real property sector. Problems faced by the different sector would require different time frames before improvements can be seen.

Notes to Contributors

1. Submission

Contributors can submit their papers before the 31st July of each year to:

The Editor
Journal of Valuation and Property Services
National Institute of Valuation (INSPEN)
N0. 5 Persiaran Institusi Bangi
43000 Kajang

Computer disk copies (IBM compatible 3.5") are encouraged. In preparing the disk, please use the Microsoft Word or Rich Text format.

A prospective contributor may submit a summary of a proposed paper to the editor for preliminary consideration as to its suitability for publication in the journal. The receipt of each paper submitted will be acknowledged. The Editor reserves the right to accept, modify or decline any article.

2. Reviewing Process

All contributions will be reviewed by one or more referees. Contributors will be informed about the acceptance (or otherwise) of their papers after the comments of referees have been received. The entire reviewing process will be conducted in complete confidentiality. For this purpose, the name, address and affiliation of the contributor should not be on the first page of the paper, but only on the accompanying letter.

3. Style

Papers should be the original, unpublished work of the contributors. They should not be under consideration for publication elsewhere. Submissions can be in either Malay or English language. Papers should be written in a clear and simple style, and should have a carefully considered structure. Contributors are encouraged to adopt the most effective way of communicating their information to the reader. Illustrations may be used to elucidate the issues raised.

4. Contents

Papers should preferably be in the range of 4000 to 6000 words, including illustrations. A brief (max 60 words) profile of the contributor should accompany each article.

All manuscripts for publishing are to be typed in double-spacing on one side of A4 sized paper with 1.5 inch margin on the left-hand side. The pages should be numbered consecutively.

(a) First Page

The full title of the paper must be shown on the first page of the manuscript. Also to be included on the first page are an abstract of not more than 200 words and up to five keywords to facilitate indexing. The abstract should summarise the objectives, main finding and conclusions of the paper.

(b) References

Only references which are cited in the text should be included in the Reference List.

The Harvard reference system is adopted in the Journal. References within the text will be shown in bracket, by quoting first, the author's name followed by a comma and year of publication all in round brackets, e.g. (Agus, 1994).

References should appear at the end of the article, arranged in alphabetical order by the first author's surname as follows:

For books: surname, initials, (year) *title*, publisher, place of publication.

For journals: surname, initials, (year) "title", *journal*, volume, number, pages.

Example

References:

Book

Lim, K. K. (1990), *Valuation Methods*, Pelandok, Kuala Lumpur.

Journal

Zahuruddin A. (1994), "The New Economic Policy and the Integrated Housing Model", *Ilmu Alam*, Vol. 2 No. 7, pp 23-35.

(c) Illustrations

Illustrations such as diagrams, tables, graphs and similar materials should not be part of the text but should be submitted separately with the text. Table of values used to generate graphs must be included to ensure accurate representation. All illustrations should be identified correctly in the order in which they are referred to in the text, e.g. "Figure 1 or Table 1., etc". The exact places where illustrations are to be inserted in the text should be clearly shown in the manuscript. Photographs should be black and white glossy prints. The contributor's name, figure number, caption, and an indication of which is top, should be written lightly on the back of each photograph.

Acknowledgements, Footnotes and Endnotes are to be listed at the end of the article on a separate piece of paper in the following format:

Footnotes, Endnotes

- a. Comment
- b. Comment
- c. Comment

5. Editorial Scope

The Editor reserves the right to edit/format the manuscript to maintain a consistent style.

6. Copyright

Contributors shall undertake to ensure that articles submitted for publication do not infringe any copyright law. Relevant acknowledgements should be included in tables, figures, or wherever necessary.

All contributions become the legal copyright of the publisher unless otherwise agreed. This covers the exclusive rights to reproduce and distribute the article, including reprints, photographic reproductions, microfilm or any reproduction of a similar nature, and translation.

7. Disclaimer

Although the Valuation and Property Services Department (JPPH) is the publisher of the Journal of Valuation and Property Services, the views presented in the Journal are entirely those of the contributors' and do not reflect the official stand of the department. JPPH does not hold itself responsible for the accuracy of any article published. The role of the publisher is merely to provide a platform for discussion and exchange of ideas.