

GOVERNMENT OF MALAYSIA

**DELIVERING LAND ADMINISTRATION SERVICES AT SCALE**  
**Transformation in Malaysian Land Administration**

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**SALLEHUDDIN ISHAK**

Ph.D (Glasgow), M.Phil. (Aberdeen) B.A. Hons (Malaya)  
State Secretary of Pahang, Malaysia

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## ***1 Introduction***

Land as a scarce resource should be well administered, managed and distributed, in a way that it is helpful in sustaining the agricultural production and food supply, reducing poverty, providing sufficient shelter as well as encouraging businesses and trades. A proper land administration system should be established in order to ensure stability in society by creating security not only for landowners but also for investors, traders and the government. Therefore, a system for recording land ownership, intensifying land use, promoting sustainable land development and expediting conveyancing is an integral element for sustainable management of land resources.

## ***2 Malaysia and World Bank Ease of Doing Business Reports***

As far as the Doing Business Reports by the World Bank is concerned, land administration in Malaysia has seen significant improvements and changes, particularly in the area of registering properties. Malaysia has managed to reduce numbers of procedures, time and cost of transactions in conveyancing. For example, registration of land transfers at the land registrar is only within one (1) working day instead of 105 days previously. The improvements and changes have assisted more foreign and local investments to this country and further strengthened Malaysia's position in World Bank Ease Doing Business as depicted below:

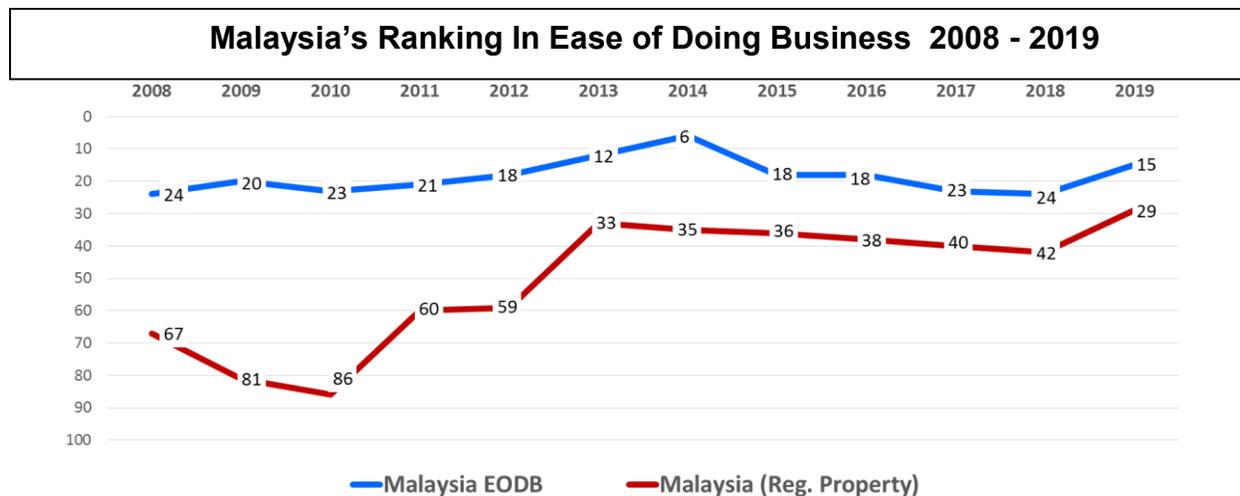


Figure 1: Malaysia's Ranking In Ease of Doing Business 2008-2019

### 3 History of Malaysian Modern Land Administration System

Before the establishment of the Malacca Sultanate in the 1400s, the indigenous people and the Malays practiced the concept of 'one who fell the trees owns the land'. The nature of this custom was that any person may clear any portion of unused land and occupy it by utilisation. They would then be regarded as the owner, provided that the land is continuously cultivated and one-tenth of the produce is given to the ruler or tribal chief. The inception of Islam from 1400s to the 1780s greatly influenced the locals to adopt Islamic principles relating to land tenure and administration into their customs which then became an integral part of the Malay society's way of life.

Prior to the advent of the British, the Malay States<sup>1</sup> were sovereign entities with established legal and administrative systems. Historical records of the

<sup>1</sup> The Federation of Malaysia comprises thirteen States and three Federal Territories, namely, Selangor, Perak, Negeri Sembilan, Pahang, Johore, Kedah, Perlis, Kelantan, Terengganu, Penang, Malacca, Sarawak and Sabah, and the Federal Territories of Kuala Lumpur and Labuan. There are various terms to address to what Malaysia has been. Different terms refer to different stages in its history. However, sometimes they are used indiscriminately. The terms that are used are; (a) 'Malaysia', when it refers to the period after the formation of the Federation of Malaysia in 1963. (b) 'Peninsula(r) Malaysia' or 'Malay Peninsula' or 'Malay States' to exclude two states in East Malaysia, that is, Sabah and Sarawak. 'Peninsula(r) Malaysia' and 'Malay Peninsula' are only used to explain its geographical location whereas the term 'Malay States' has legal and historical meanings. (c) 'Malaya' as it is referred to after the formation of the Federation of

Malacca Laws of 1523, Pahang Laws of 1596, Kedah Laws of 1605, Johor Laws of 1789, Perak Code and Ninety-Nine Laws of Perak 1765 are proofs that the Malay States were structured societies governed by written laws. Land administration, especially under the states in the Peninsular Malaysia, has evolved from customary systems to a coordinated system that at present is regulated by the National Land Code 1965.

Land administration underwent a significant transformation after signing of the Pangkor Treaty in 1874. Following which the British had introduced a more structured and new system of private land ownership to improvise the Malay customary tenure. It was in line with efforts to boost land investments, especially for large scale agricultural and mining purposes. During which, written land laws and systematic land registration was introduced by applying the *Torrens System*, a structured land administration system.

## **4 Malaysian Land Administration Framework**

### **4.1 Legal Background of Land System**

Articles 74, 76 and 91 of the Malaysian Federal Constitution as well as the case of *East Union (Malaya) Sdn. Bhd. vs. Government of The State of Johore & Government of Malaysia*<sup>2</sup> define the power structures applicable to the Malaysian land and tenure system. These rulings affirm that land

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Malaya in 1948 which comprised all States in the Malay States. This name had been used even after independence from the British in 1957. When Sabah (including Labuan), Sarawak and Singapore were independent and subsequently joined the federation in 1963, the name 'Malaya' was changed to Malaysia. (d) 'Malay States' comprised the Federated Malay States, the Straits Settlements and the Unfederated Malay States. (e) 'Federated Malay States' (FMS) was formed in 1896. It comprised the States of Perak, Selangor, Negri Sembilan and Pahang. (f) 'Straits Settlements' was formed in 1826. It comprised Penang, Singapore and Malacca. Before merging with Sabah, Labuan was also a part of the Straits Settlements. (g) 'Unfederated Malay States' (UFMS) refers to the States of Johore, Kedah (including Perlis), Terengganu and Kelantan. See Figure 1.1 for the map of the Malay States with indications of the historical background of its member States.

<sup>2</sup> The company (the appellant) challenged the validity of State Government repossession of its land. The issue at hand was that the land, a 7,470 rubber estate, was in default of the quit rent. The Land Office of Kota Tinggi confiscated the estate under section 100 of the Land Code. The appellant claimed that the law which was created by the Parliament to be implemented by the State Authorities, would be inconsistent with the Constitution and so *ultra vires*. The main argument was that if the matter is a state concern, the laws should be legislated by the State Assembly. Appeal was dismissed [MLJ], 1981, 1, 151 – Federal Court].

matters are vested in the Ruler or Governor of the State and the State Legislature. The court case emphasised that the Central Government may, by virtue of Article 76(4) of the Constitution, with consent of the National Land Council, legislate a uniform law and policy with respect to land matters for all states in the Federation.

## **4.2 The National Land Council**

The National Land Council, can be considered the highest authority in the Malaysian land and tenure system due to two reasons. **First**, constitutionally, no laws pertaining to 'land matters' shall be put before Parliament prior to the Council's approval. **Second**, decisions made by the Council are binding on both the Federal and State governments. The Council which convenes at least once annually is chaired by a central government cabinet minister (normally the Prime Minister or Deputy Prime Minister). The Council comprises of ten voting members representing the central government, nine of whom are central government cabinet ministers, the other being the Attorney General. The rest of the council consists of eleven voting members who are Chief Ministers of eleven states in West Malaysia and two non-voting members representing the two states in East Malaysia. The council's composition, constitutional backing and chairmanship indicate the importance of the Council in the Malaysian legislative system.

## **4.3 The State Authorities**

Power to execute land laws is vested in the state authorities. State authority is defined in *Hanisah v. Tuan Mat*<sup>3</sup> as "His Highness in Council". "His Highness in Council" means 'His Highness acting in accordance with

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<sup>3</sup> The abbreviation 'EXCO' is hereafter used.

the advice of the State Executive Council (EXCO)<sup>4</sup>. The EXCO, known as the State Cabinet in Sabah and Sarawak – as it is instituted by Articles 80 and 81 of the Federal Constitution – is the highest State Government executive body is presided over by the Chief Minister. Further, the EXCO body consists of politicians who have been elected to the state legislature (the number varies) as well as three top state officials. The *ex-officio* members are the State Secretary, State Finance Officer and State Legal Advisor.

#### **4.4 The Administrative System**

The front-end of the Malaysian land administrative system is the Land Office. Decisions made by the NLC and EXCO are mostly passed down to be executed by the Land Office. This sub-section will describe the position of the Land Office in Malaysian public administration (MPA)<sup>5</sup>. A brief description of the functions of the Land Office follows.

##### **(a) The Land Office and Malaysian Public Administration**

Prior to further discussion, it will be beneficial to briefly describe the setup of the MPA. The root of the administrative system is Part X of the Constitution<sup>6</sup>. The Constitution divides the MPA into Federal and State Services. An appointee to each service is answerable to their respective King or Ruler<sup>7</sup>. In other words, the responsibilities of government officials

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<sup>4</sup> (a) The High Court of Kota Bharu held that Hanisah (the appellant) was not Malay. Hence she was disqualified from owning land reserved for Malays. The appellant was born Chinese but was adopted by and grew up in a Malay family. She managed to secure a ‘Malay’ certificate from the Sultan of Kelantan. The Federal Court held that (a) the issuance of the Malay certificate was made by the ‘Sultan in Council’. Thus, it was constitutional and no Court can question or revise it, (b) the Sultan (Ruler) in Council means His Highness’ decision in accordance with the advice of the State Executive Council, (c) The Ruler in Council and State Executive Council are two distinctive bodies. Appeal allowed [MLJ, 1970, 2, 213 – Federal Court].

(b) The case applies only to land governed by Malay Reservation laws. Therefore the Court ruling has no implication on land transfer among non-Malays or foreigners outside the areas designated as Malay reservation. See Ishak (1998).

<sup>5</sup> The abbreviation: ‘MPA’ is hereafter used.

<sup>6</sup> Articles 132-148 of the Constitution.

<sup>7</sup> Articles 132(1)(c), 132(1)(g), Clause 6(c) of List I and Clause 7(a) of List II of the Constitution.

as well as the departments to which they are attached shall be in line with the Ninth Schedule of the Constitution. The system is believed to be derived from arrangements which have been observed or honoured over generations.

***(b) Functions of the Land Office***

The Land Office has specific tasks that are outlined in the Land Code. It functions to process applications, carry out investigations, and conduct hearings related to its seven main roles. These are:

- (a) agent for government land disposal;
- (b) registrar of titles;
- (c) revenue collector;
- (d) custodian of government and reserved land;
- (e) mediator between parties in the compulsory land purchase;
- (f) land law enforcer; and
- (g) inheritance distributor.

***(c) Land Office Administration***

At the Land Office, day-to-day land matters are handled in accordance with the Code, SLR and various other directives. The legislation also details a procedure on Land Office administration that includes how to create, maintain and manage information and records.

***(d) Land Registration System***

In the past, land administration in Malaysia has always been perceived as bureaucratic, complex, cumbersome and time-consuming. As the country moved from an agriculture-based economy to manufacturing and

technology-based one, the need to speed up the process of land dealings and transactions was a concern. It is observed that rapid economic growth corresponds with the increase in volumes of property transactions. In the past, registration of property transactions was done manually. The usage of physical documents and hard copy files can no longer cope with the surge of the economic activities, so manual land registration was converted to electronic system.

Central to the transformation is the introduction of the Computerized Land Registration System (CLRS). CLRS's objective was to provide a secure and cost effective land registration system through the computerised registration procedures. Introduced in 1995, this system used Oracle as a platform and it provided eight (8) modules, among others are ownership registration, conveyancing and land title search.

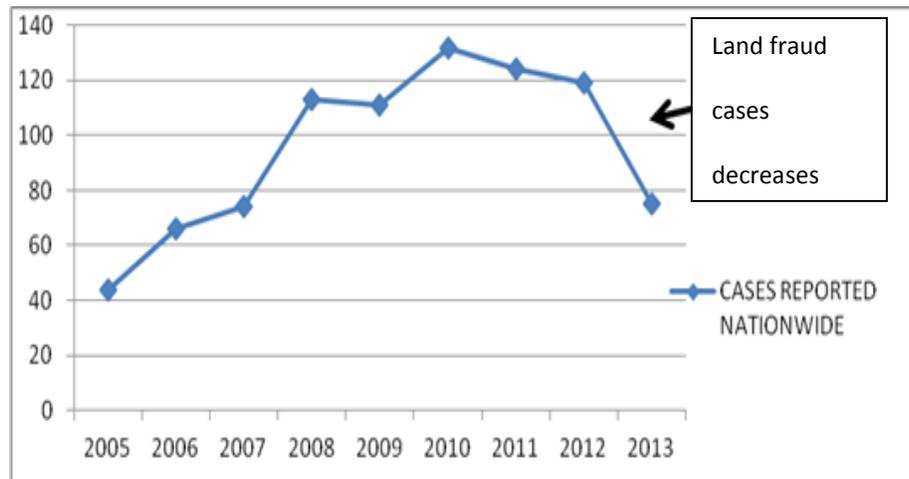
Besides CLRS, other independent systems were also developed to support separate functions within the land administration. These systems include the e-Consent, the Computerized Land Revenue System (LRS) and the Secured Land Management System (SELAMAT).

<b>SYSTEM</b>	<b>DATE OF COMMENCEMENT</b>	<b>APPLICATION</b>
Computerized Land Revenue System	1985	An integrated database for collection of land related taxes
SELAMAT	2011	Landowner biometric identification system
e-Consent	2015	An application system for government approvals for property transaction

**Table 1: Independent Computerised Land Administration Systems**

SELAMAT, a system using biometric identification during land transaction process was introduced to improve security during conveyancing and to prevent frauds. As reported by the Royal Malaysian Police, since its application in 2011,

as depicted below, the country has witnessed a dramatic drop in incidences of frauds and forgery in land transactions.



**Figure 1 : Statistic of reported fraud and forgery in land transaction cases 2008-2013**

### ***(e) Cadastral Mapping System***

Another feature in Malaysian land administration is the introduction of the e-Cadaster system. The system utilizes latest wireless broadband technology, Geographic Information System (GIS) and global satellite navigation system to accelerate the issuance of final titles from qualified land and strata titles. Previously, the process converting from the issuance of qualified titles<sup>8</sup> into final titles would take about two years. Currently, it takes only two months.

The cadastral system in forms of 2D (two-dimensional), with the introduction of Part 5A of the National Land Code, Malaysia successfully introduced 3D (three-dimensional) land title which is applicable in ownership of underground land. This is to accommodate the emerging trend of overlapping or stacking developments in cities such as Kuala Lumpur, Johor Bahru and George Town, Pulau Pinang.

<sup>8</sup> *Qualified title* is temporary land title waiting for *final land title* which can only be issued after the land is surveyed conclusively.

## (f) *eTanah*

In 2005, Malaysia embarked on the development of a total electronic land administration system known as eTanah<sup>9</sup>. eTanah was developed primarily to improve the working mechanics of land administration with the introduction of an electronic platform to perform conveyancing and other land related transactions. It integrates all databases for land registration, consents, and land revenues and is able to interface with the e-Cadastral system.

eTanah will go beyond conventional land administration. It is designed to connect land office to a wider range of government administration to other related industries. At present, eTanah is connected to government departments such planning authorities and income tax department. In the near future, it will be made accessible to business communities such as lawyers, planners, land surveyors and financial institutions.

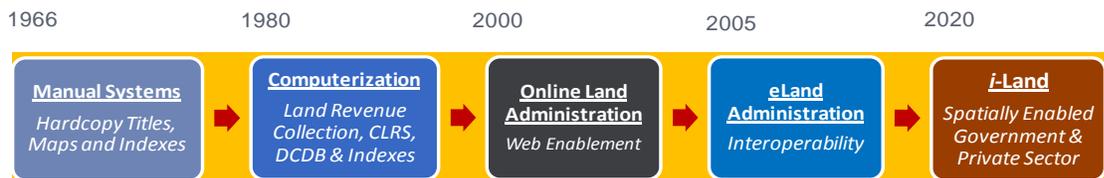


Figure 3.: The evolution of Land Administration Systems in Malaysia

## 5 *The Future of eTanah - the Challenges*

Despite the use of technology and the introduction of various systems to speed up, expedite and simplify conveyancing, including amendments to relevant laws and practices, principles of land administration, further improvements towards the strengthening of the Malaysian land administration is required. Such improvements

<sup>9</sup> *Tanah* is Malay term which means land

require both commitment and willingness at the government side as well as the business community. The present fragmentation which is sourced from the federation's legal framework between the central government departments, need to be reexamined further. The general public, especially business community and related professional organisations must participate in the transformation process.

Legal issues are another question in the land administration reform. For instance, there are questions whether it requires new laws or clarification of existing laws relating to the ownership, copyright, privacy, liability, and exploitation of land related data. In particular, there may be a need for a new legislation permitting electronic conveyancing and to facilitate the sharing of data between the public and private sectors.

## **6 *Conclusions***

Land administration cannot be in isolation from global trend in development. To date, Malaysia has successfully shifted the roles of government from securing land ownership for the community to promoting development, investment and trade in real estate. Malaysia will continue to enhance its land administration in order to meet the demands of ordinary people, business community and global standards. Various initiatives are in the pipeline to improve land administration at all levels. This is necessary to facilitate the ever-changing business environment where simplicity, customer centric and efficient service delivery are imminent.