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Volume 16

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Announcement

Notes to Contributors



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Objective

The Journal of Valuation and Property Services is a publication specifically intended for property professionals to keep abreast with the 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:

- i. address areas of major interest and practical relevance to the real estate profession.
- ii. create awareness of new theories, techniques and applications as well as related concepts relevant to the real estate profession.
- iii. 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 market analysis.

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REMEDIES OF SPECIFIC PERFORMANCE FOR LAND CONTRACTS: LEGAL DEVELOPMENT

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Abstract

This paper discusses the relief of specific performance (SP) and deals with types and nature of contracts that may be ordered by the court to be specifically performed and those that cannot be specifically performed. Specifically, this paper analyses the circumstances in which the courts decide to grant SP and not to grant SP for land contract. Under the law the remedy of SP is discretionary, and such discretion is to be exercised according to well established principles. Employing doctrinal legal research, this study analyses the relevant provisions under the Specific Relief Act 1950 and identifies how the courts applied the provisions to case laws thus developing a precedent on SP for immoveable property. It is found out that the right to sue for specific performance in equity is quite distinct from a cause of action at common law. Specific performance is granted when there are circumstances justifying it. The grant of SP is always subject to conditions. SP is said to be the best remedy for breach of contract for immoveable property. For example, land is normally deemed by the law to have a special value, the loss of which may not be adequately measured or compensated by damages or money (S 11(2) of the Act) unless and until the contrary is performed. All the above must be read subject to section 20 of the same Act that provides for circumstances where SP cannot be granted.

Keywords: *Specific performance, land contract, Specific Relief Act 1950, damages*

1. INTRODUCTION

When a vendor fails to perform his part of contract relating to land, the purchaser may choose to force him to continue performing his contract or agree with the circumstance of the vendor and opts for a remedy to compensate his losses. It is the duty of the lawyer to determine whether the proposed remedies structure would produce a viable remedy for his client. Thus, specific performance (SP) is a type of an equitable remedy where the court orders the parties in breach to actually perform the contract. There are two options either, remedies under the law in monetary form or remedies under equity such as SP. SP is governed by sections 11 to 29 of the Specific Relief Act 1950 (SRA 1950) and must be read with other laws such as the Contracts Act 1950, the National Land Code 1965 and the Rules of Court 2012, the Companies Act 1965 and the Arbitration Act 2005. Despite the well-established principles with preference for equity, courts have in various occasions give preference to award damages to an aggrieved purchaser. This may arise in situation where either the purchaser does not favour SP or because the vendor was unable to complete his part of the contract.

2. RESEARCH METHODOLOGY

This study employs a doctrinal and qualitative legal research which involves analysis of the secondary and primary sources of laws. This method involves analysis of the relevant provisions under the Specific Relief Act 1950, the case law as well as the equitable principles.

3. WHY SP IS A PREFERENCE?

SP of contracts was founded on the want of adequate remedy at law by English Court of Chancery.

4. SP AND CONTRACT OF LAND

The SRA 1950 has clearly provided that unless and until the contrary is proved, the court shall presume that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money, and that the breach of a contract to transfer movable property can be thus relieved(Section 11 (1)(2). Following this, the court has developed alternative remedies for breach of land contract i.e. through the payment of damages or the combination of SP and damages.

5. RESULT AND DISCUSSION

5.1 THE APPLICATION OF THE LEGAL PRINCIPLES ON SP

The cause of action for SP arises due to breach of contract and the plaintiff needs to pay for SP or damages.

Apart from the statute, the cases also provide for various judicial guidelines on SP. For instance, the remedy for specific performance as provided in the Specific Relief Act 1950 is entirely discretionary (Sekemas, 1989). SP is also ideal to enforce an agreement, whether in writing or not, for the sale and purchase of a property (Bank of Tokyo, 1991). SP was also held to be effective in ordering the delivery of a strata title (Syed Azman, 1992).

In explaining the problem revolving around SP and emphasizing the importance of the Specific Relief Act 1950 (SRA) relating to SP, Andrew Phang commented: "However, by their very nature, the provisions of the Specific Relief Act go into far more specific details and would obviously be the initial as well as primary focus for any application of the law relating specific performance in the Malaysian context. It should also be noted that the illustrations to the various provisions are extremely helpful in elucidating the operation of the various provisions, but cannot, owing to constraint of space, be set out here" (Phang, 1994).

SP is an equitable relief granted by the court in favour of a plaintiff, to be enforced against the defendant or his representative to perform what he had agreed to do by contract. The relief of SP is only allowed when there is no other relief which will meet the circumstances of the case. The court will only grant SP instead of damages when it can by that means ensure complete justice.

Section 11 spells out circumstances for SP where the court must *prima facie* be satisfied that the circumstances as below are present and mandatory for the grant of SP: The circumstances are:

- i. Where the act agreed to be done is of a trust;
- ii. Where SP is generally denied where monetary compensation is satisfactory;
- iii. When there is no standard to ascertain actual damage for the non performance of the act;
- iv. When it is probable that pecuniary compensation cannot be got for the non performance of the act.

The above provision however must be read with section 20 or section 21(2)(a) or (b) of the SRA 1950 dealing with circumstances where court can decline SP. It is to be noted that the exercise of the discretion is always governed by fixed rules and principles (Caeser, 1984).

5.2 PRESUMPTION THAT COMPENSATION IS NOT AN ADEQUATE REMEDY FOR CASES INVOLVING IMMOVEABLE PROPERTY

Section 11(2) raises a presumption that compensation is not adequate in cases of the transfer of immoveable property. Nevertheless, the defendant may rebut the presumption. On this point, it is important that the defendant raises a reasonable ground such as hardship or produces evidence to rebut the presumption (Loh, 1982). The degree of the presumption cannot be sought to be rebutted by merely making submissions on principles of law (Yang, 2000). The presumption can be said to have been rebutted for a reason which does not allow the SP to be enforced (Ho, 1987). In *Mars Equity Sdn Bhd v Tis Ata Ashar Sdn Bhd* (2005) 1 CLJ 513, the judge explained that section 55 (of the Malaysian Contract Act 1950) is of course of general application when it speaks of the promisor having to pay compensation to the promisee. But, whether compensation is sufficient in a given case depends on the subject

matter of the contract. He further emphasised that in the case where the subject matter is land, a breach of a contract relating to land is rebuttably presumed to be irremediable by monetary compensation; thus the appropriate remedy was the SP.

It is generally believed that section 11(1) and (2) SRA is clear. Nevertheless, it must be read with Section 55 of the SRA 1950 which provides the general remedies for breach of contract.

5.3 CIRCUMSTANCES WHERE COURTS MAY NOT GRANT SP

In *City Investment Sdn Bhd v Koperasi Serbaguna Ceupacs Tanggungan Bhd* [1985] 1 MLJ 245 the court among others viewed that section 15 deals with divisible contracts; a reference was made to the opinion of Lord Sumner in which his Lordship said that s. 16 (Indian SRA 1877) afforded the only ground on which the Court could help him. To make this section applicable it had to be shown that there was a part of the contract, to wit, that relating to plot A which (a) 'taken by itself could and ought to be specifically performed', and (b) 'stood on a separate and independent footing' from the other part of the contract, which admittedly could not be performed. Their Lordships were in the view that before a Court can exercise the power given by s. 16 it must have before it some materials tending to establish these propositions, and cannot apply the section on a mere surmise that, if opportunity were given for further inquiry, such material might be forth-coming and possibly might be found to be sufficient; and that the words of the section, wide as they are, do not authorize the Court to take action otherwise than judicially, and in particular do not permit it to make for the parties or to enforce upon them a contract, which in substance they have not already made for themselves.

Again the court in the same case held that the court may refuse SP on the first agreement to build or to get approval for license but that is not the reason for the court not to award damages for breach of contract. Similarly, as regard to the second agreement to build a few bungalow lots, the court had granted SP for the lots that have not been affected by problems of terrain.

5.4 COMPENSATION OR DAMAGES IN ADDITION TO SP

Section 18 of the SRA 1950 deals with the power of the court to award compensation or decree SP in *Tan Ah Chim and Sons Sdn Bhd v Ooi Bee Tat and Anor* (1993) 3 MLJ 633. Sub-section (1) provides for the right of a party suing for SP to ask for compensation in addition to or in substitution for SP and sub-section (2) deals with the power of the court to award compensation when it decides SP cannot be granted. Sub-section (3) contemplates a situation in which both SP and compensation, respectively, ought to be granted and awarded because SP is found not to be the adequate remedy but always subject to the discretion of the court which rules in order to give justice to the case (Rasiah, 1985).

Another issue pertains to the use of the term 'compensation' or 'damages'. There are many situations where the SRA 1950 and the courts dealing with provisions in SRA 1950 used the word "compensation and damages" synonymously or alternately. It is observed from the

Contracts Act 1950, the word “compensation” is used throughout the provisions. Thus, the use of “compensation” covers a wider scope as compared to the word “damages” under the English law. It includes every pecuniary remedy under the Contract Act 1950 (Tan, 1993). In these cases, the court had awarded compensation but the parties appealed on damages. Thus there is uncertainty to both terms whether it can be used synonymously or both have a different meaning.

The use of ‘compensation’ under this provision seems to be consistent and correct. In general, the word “compensation” must be highlighted and used by judges with understanding of its meaning and application. The Supreme Court in *City Investment* commented on s 18(4) of the SRA 1950 concerning the method of assessing damages. The court was in the opinion that the matter is left to the discretion of the trial judge. In the particular case, since the method has not been shown to be wrong in principle his award must stand.

While the provision uses “compensation” the judge used the word “damages”. Can the two terms be synonymously used? Perhaps, any law student would answer in negative form.

A reading of the whole provision seems to indicate that “a person suing for SP” (S 18(1) is exclusively refers to the plaintiff. Similarly there is no case law that shows the scope covers any other person other than the plaintiff thus; we propose that the words “any other persons” is replaced with “plaintiff”.

5.5 WHAT IF SP IS A PRE-AGREED STIPULATED REMEDY?

If there is any stipulation relating to money in any agreement, the court have decided that such stipulation shall not bar a court to decree SP (Nithyanathan, 1998). Similarly, a stipulation of a sum of money to be paid as damages for breach of contract is not a bar to a claim for SP. This point was made clear by the Privy Council in *Zaibun Sa Syed Ahmad v Loh Koon Moy* [1982] 2 MLJ 92. In this case, the respondents sought SP of a contract for the sale of land against the appellant. The learned judge decided in favour of the respondents but found that there was an oral agreement enabling the respondents to pay damages for breach. He therefore gave damages in favour of the respondents who again appealed to the Federal Court seeking SP of the contract. The Federal Court held that the respondents were entitled to SP. The appellant then appealed to the Privy Council. In dismissing the appeal, the Privy Council held, *inter alia*, that the fact that there was an alternative claim for damages, in an action by the purchaser for SP of a contract for the sale of land, could not be a fact relevant to the exercise of the discretion by the learned judge and the Federal Court was entitled to exercise its discretion and was correct in reversing the decision of the judge and ordering SP. Jones and Goodhart on Specific Performance stated that the mere fact that a contract contains a liquidated damages clause, or a clause of a similar nature, is not generally an admission that damages are an adequate remedy or that one party has an option to pay or perform (Sekamas, 1989). Exceptionally, the court may reach the opposite conclusion and give judgement that SP will nonetheless be granted if it is the appropriate remedy.

In principle, therefore, the court has a discretion to order SP and decree damages in favour of a party. In *Kow Lup Plow & Ors v. Lee Soh Hua* [1982] CLJ 499 the court had ordered the defendant to pay damages apart from SP in a purchaser’s action for SP in respect of a

contract for the sale and purchase of land at a price of RM700,000 which the plaintiff had intended to develop. The court also ordered the defendant to pay RM50,000 damages for wrongful termination of the contract after taking into consideration that it was well over five years since the defendant broke the contract, thus bringing the plaintiffs development project to a standstill for several years. In *Interstate M & E Sdn Bhd & 2 Ors v. Foresight Trading Sdn Bhd & 2 ors* [2007] 1 LNS 220 Abdul Malik Ishak J. granted both SP and compensatory damages.

Section 20 of the SRA provides for types of contracts which cannot be specifically enforced such as a contract for the non-performance of which compensation in money is an adequate relief and the circumstances where SP shall not be considered by the court. As such, this section must be read together with section 11 and section 21 of the same Act. There are 7 circumstances where SP shall not be granted:

- i. Where non performance of a contract can be adequately relieved with money (Sekamas, 1993) ;
- ii. A contract which runs into minutes details, or contract that depend on personal qualification or volition of the parties (*Dayang Nor Faizah bte Awang Dowty v Bintang Sei Sdn Bhd & Ors* [2004] 2 MLJ 39); or court cannot enforce SP of its material terms or contract which court cannot find its reasonable certainty;
- iii. A contract which in its nature revocable;
- iv. A contract made by trustee in excess of power or in breach of trust;
- v. A contract by company or corporation , promoter, which is in excess of its powers;
- vi. A contract the performance of which carries continuous duties which is more than 3 years (Howard, 1742);
- vii. A contract which material part of the subject matter, before it has been made, ceased to exist.

Though in the above situations the court cannot order SP, it does not prohibit the court from awarding damages if breach of contract occurs. It must be read together with sections 11, 19 and 21 of the SRA 1950.

In *Sale and Purchase of Real Property* (1984), Visu Sinnadurai observes that specific performance is a discretionary remedy and over the years the courts have spelt out the circumstances under which the relief may not be granted. These equitable principles are reflected in sections 20 and 21 of the Specific Relief Act 1950. Section 20(1)(a) provides that a contract will not be specifically enforced if the non-performance of it can be adequately relieved by compensation in money. As Professor Sinnadurai correctly pointed out at p 436, this provision has to be read with some reservations in dealing with contracts for the sale and purchase of property. Section 11(2) clearly says that there is a presumption that in contracts for the sale of immovable property monetary compensation cannot be an adequate remedy. It was further shown that s 20(1)(a) is of general application while s 11(2) deals specifically with contracts for the sale of land. It is therefore right that s 11(2) will prevail in cases involving contracts dealing with sale and purchase of property. He further said these two sections provide that it is for the defendant to establish that the plaintiff would be adequately relieved by an award for damages and that specific performance should not be granted. This burden of proof on the defendant is a heavy one and if he fails to satisfy the court of the adequacy of damages, the court will generally grant the relief to the plaintiff unless there are other special grounds against granting it.

SP will not be granted if the court cannot enforce the material terms of the contract. For example, if the facts show that the court will not be able to supervise the work required, or the contractor cannot complete the construction of a house, thus no order of SP will be granted (*Mohammad bin Bae v Pembangunan Farlim Sdn Bhd* [1988] 3 MLJ 211).

Section 20 of the SRA further provides for if the court has decided not to enforce SP based on this provision then would it be possible for the court to allow injunction to prevent breach of the agreement? It was held in several cases that if a contract is such that cannot be specifically enforced thus, injunction cannot be granted (*Puncak Niaga Holding Bhd v NS Water Sdn Bhd & Ors* [2004] 5 MLJ 430; *Marble Terrazo Industries Sdn Bhd v Anggaran Enterprise Sdn Bhd & Ors* [1991] 1 MLJ 253). It is proposed that the illustration to section 20 (1)(b) to be re-arranged to reflect the flow of the sub-sections.

Section 21 provides for court discretion as to decreeing SP which is discretionary. The court is not bound to grant any such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal. The court may properly exercise discretion not to decree specific performance in cases where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part. The illustration given is in cases where *A* contracts to sell to *B* the interest of *C* in certain stock-in-trade. It is stipulated that the sale shall stand good, even though it should turn out that *C*'s interest is worth nothing. In fact, the value of *C*'s interest depends on the result of certain partnership-accounts, on which he is heavily in debt to his partners. This indebtedness is known to *A*, but not to *B*. Specific performance of the contract should be refused to *A* or where *A* contracts to sell, and *B* contracts to buy, certain land. To protect the land from floods, it is necessary for its owner to maintain an expensive embankment. *B* does not know of this circumstance, and *A* conceals it from him. Specific performance of the contract should be refused to *A*.

A case to show how to properly exercise discretion to decree specific performance is where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance. For example, where *A* sells land to a railway company, who contracts to execute certain works for his convenience. The company takes the land and uses it for their railway. Specific performance of the contract to execute the works should be granted by the court in favour of *A*.

In *Ganam d/o Rajamany v Somoo s/o Sinnah* (1984) 2 MLJ 290 FC, the court held that the power of the court in decreeing SP is a discretionary one. The discretion of the court and the jurisdiction to decree SP is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by the court of appeal. Under s 21(2)(b), the courts may refuse to grant the relief of SP to the plaintiff if the granting of it would involve some hardships on the defendant which he did not foresee. Each case must be decided on its merits as facts vary from one case to another. In *RM Venkatachalam Chettiar v NKR Arunasalam Chettiar* ([1953] MLJ 234). Thomson J. as he then was, held that no great hardship would be caused to the vendor's representative to complete the transaction even if it would incur some unanticipated expenditure. In *Osman Abu Bakar v Saiyed Noor Saiyed Mohamed* [1952] MLJ

37, SP was granted. The court rejected the argument that hardship would be caused to the beneficiaries if such an order was granted. The appellant in *Patel v Ali* (1984] 1 All ER 978) was successful in her appeal against an order of SP on ground of hardship. In that case, there was a delay of more than four years. The court was in the opinion that it would be just to leave plaintiffs to their remedy in damages. In *Johnson v Agnew* ([1979] 1 All ER 883), the House of Lords varied the order of the Court of Appeal holding that if a vendor obtained an order for SP and it became impossible to enforce it, he then had the right to ask the court to discharge the order and terminate the contract. On such an application he could be awarded damages at common law for breach of contract since the contract was not rescinded *ab initio* but remained in existence until it was terminated by the court. In *Sekemas Sdn Bhd v Lian Seng Co Sdn Bhd* the Supreme Court agreed with the trial judge's opinion that the hardship had been brought by the appellant himself when he decided to embark on this expensive venture without having secured adequate finance. In this case, the SP decreed by the trial judge was retained by the appeal court.

6. PERSONAL BARS TO THE RELIEF

SP Specific performance of a contract cannot be enforced in favour of a person:

- (a) who could not recover compensation for its breach; or
- (b) a person who has become incapable of performing; or who violates, any essential term of the contract that on his part remains to be performed;
- (c) who has already chosen his remedy and obtained satisfaction for the alleged breach of contract;
- (d) a person who, previously to the contract, had noticed that a settlement of the subject matter thereof (though not founded on any valuable consideration) had been made and was then in force (S. 23 of the SRA).

The SRA 1950 has provided many illustrations to the above provision. For example, if *A*, in the character of acting as an agent for *B*, enters into an agreement with *C* to buy *C*'s house. *A* is in reality acting not as agent for *B* but on his own account. *A* cannot enforce SP of this contract (S 23(a), Illustration).

Although SRA 1950 follows the provision of the repealed Indian Specific Relief Act 1877 (ISRA) where there is no express statement that the averment of readiness and willingness is necessary (as it is in India and England), the development of the cases as regards to section 23(b) seems to fall in line with these two jurisdictions.

In *Caltex Oil (Malaya) Ltd v Ho Lai Yoek & Anor* (1964] MLJ 76, *MMI Industries Sdn Bhd v Let Hin Industries Sdn Bhd*[2010]1CLJ 36; [2009] 1 LNS 890, the court held that where the plaintiff were ready and willing to complete at all times and the purported repudiation of the contract by the vendors had not been accepted by them, they will be entitled to SP. In *Ganam d/o Rajamany v Somoo s/o Sinnah* (1984) 2 MLJ 290 (FC)). In a suit for SP, a party treated and was required by the court to treat the contract as still subsisting. He had in that suit to allege, and if the fact was traversed, he was required to prove a continuous readiness and willingness, from the date of the contract to the time of the hearing, to perform the contract on his part. Failure to make good that averment brought with it the inevitable dismissal of his suit.

Section 25 of the SRA 1950 highlights “fraud” as a ground on the basis of which SP may be refused. Specific performance is dependent on a complete and definite contract. Thus, a contract cannot be specifically enforced if it is suffering from illegality, uncertainty, fraud, undue influence, mistake, misrepresentation or lack of consent. A contract which lacks in any of the three essentials of proposal, acceptance or consideration is also not enforceable. Similarly, varied and vague contracts where the meaning may not be ascertained cannot be enforced.

As the SRA 1950 was modeled upon the repealed Indian Specific Relief Act 1877, the cases from India are relevant for judicial reference with the exception that the doctrine of equitable notice is irrelevant as it is against the spirit and the provisions of the National Land Code 1965. In other words, SP cannot be enforced against any transferee who can prove that he is a party in good faith and has no notice of the original contract. Section 26(2) is based on the decision in *Tiladkhari Lal and Aor v Khedan Lal & Ors* (AIR 1921) which was also adopted in various other Malaysian cases which is *Aik Ming (m) Sdn Bhd and Ors v Chang Ching Chuen and Ors* (1995) 2 MLJ 770; *Keef Gevald Francis Noel John v Mohd Noor Abdullah and Ors* [(1995) MLJ 193]. If the subsequent transferee has given no consideration and is a mere volunteer, he has no right against the first promisee (Banrjee, 1996).

7. CONCLUSION

SP principles and rules as embodied in Ss 11- 28 of the SRA 1950 seem to work well in the system. Although the SRA 1950 prescribes that SP is the best remedy for breach of land contract, the courts have, in many occasions differ with reasons, depending on the circumstances of the cases. Flexibility in trends is sometimes necessary to meet the contemporary developments relating to sale of real estates as well as to ensure justice to the parties. Furthermore, the importance of providing appropriate remedies is timely in meeting global changes.

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A MODEL FOR EFFECTIVE AND EFFICIENT DISPUTE RESOLUTION PROCESS FOR STRATA SCHEME DISPUTES IN PENINSULAR MALAYSIA

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Abstract

The current dispute resolution processes for strata scheme disputes in Peninsular Malaysia are built on the centrality of adjudicative approach by the Strata Management Tribunal. Whilst a quasi-judicial adjudicative body like the Tribunal offers simpler, quicker and cheaper dispute resolution processes compared to the courts, its orientation may not produce the quality outcomes desired for strata scheme dispute resolution processes such as parties' satisfaction, improvement in the parties' relationships, changes in behaviour and enhancement of people's well-being. One of the reasons for the potential low quality outcomes is that adjudicative approaches in traditional adversarial legal systems normally limit their attention to a narrow view of the dispute without addressing the underlying issues or problems. As a result, the relationships between the individuals involved may deteriorate further and it may become even more difficult for them to work together effectively. Taking into consideration the current legal framework for resolving disputes in strata schemes in Peninsular Malaysia, this paper posits that dispute resolution approaches for strata scheme disputes should not be limited to addressing the legal rights and interests of individuals. They must also consider other important humanistic factors such as neighbour relationships and a sense of community. More importantly, these approaches must provide support for the concept of self-governance in the strata titles system. This paper proposes a comprehensive, integrated, therapeutic and humanistic dispute resolution model that may become a new dispute resolution model for strata scheme disputes in Peninsular Malaysia.

Keywords: *dispute resolution, strata schemes disputes, adjudicative approach, therapeutic*

1. INTRODUCTION

Living in high-rise residential buildings is different from living in traditional free standing homes. In the traditional neighbourhood, houses are separated with clear physical boundaries and the residents enjoy freedom and privacy within their own property. Residents in strata schemes, however, have to share the common facilities and spaces in the buildings with other residents. The universal concept of common property in strata schemes makes all proprietors as “tenants in common” sharing proportional shares in the common property. The proprietors are jointly responsible for the maintenance and upkeep of their common property.

One of the unique features of the strata title systems is that it imposes upon all unit owners the important task of governing their own strata scheme. For the purpose of governing an individual strata scheme, a statutory management body is created where all unit owners automatically become members. In order to ensure smooth day to day operations and administration of the management body, a council or committee member is elected from among the parcel owners. However, the council is not the sole party responsible for the management and maintenance of the strata development. The mechanism of self-management in strata title system operates on the principles of collective responsibility and liability involving all parcel owners of the strata community.

The concept of self-governance in strata title schemes combining the elements of self-management, self-regulation and self-resolution gives broad powers and authority to the management corporation to manage and maintain the common property, regulate the conduct of owners and occupiers and even make an effort to resolve any disagreement, misunderstanding or disputes involving the unit owners, occupiers or the stakeholders. These broad powers and authority may inevitably cause dissension and disputes among interested parties in strata schemes. Unreasonable rules and procedures, arbitrary decisions, selective enforcement of rules and unruly behaviour of proprietors and occupiers are examples of the challenges confronting the self-governance concept in strata title system.

According to Christensen and Wallace (2006), strata title living by its very nature leads to a higher incidence of neighbour disputes. The physical and legal features of strata living combined with occupational stress and other daily life issues create a situation which is ripe for disagreements, disputes or conflicts involving members in the strata schemes. Since members of the strata scheme may have to go on living side by side, meeting each other every day, improper or negative reaction to the disputes may affect neighbour relations and peaceful enjoyment of the neighbourhood. According to Williamson and Adams (1987), in such situation, residents may take a withdrawal approach or apathy which in the long run will cause problems to the concept of self-management by neglecting their duties and responsibilities as proprietors in the strata schemes.

The Government of Malaysia has recently enacted the Strata Management Act 2013 (Act 757) (SMA). The enactment of the SMA has improved many aspects of governance of strata schemes previously provided by the Strata Titles Act 1985 (STA) and the Building and Common Property (Maintenance and Management) Act 2007 (BCPMMA). One of the important improvements that have been made is the establishment of the Strata Management Tribunal (Tribunal) to adjudicate disputes in strata schemes. While improvements made in the SMA could potentially increase efficiency in the governance of the strata schemes, this paper argues that the scope of dispute resolution processes under the SMA is still limited to enforcement and short-term adjudication solutions. Despite providing a dispute resolution mechanism that is simpler, faster and more flexible than court processes, adjudication that is based solely on the facts of the case, statutory provisions and case precedents may potentially produce adverse effects on disputing parties. Furthermore,

the underlying issues of the legal problem will continue to be unresolved, affecting inter-personal relationships, people's well-being and the concept of self-governance in the strata schemes. This paper argues that, instead of having adjudication as the single-gateway in resolving the strata scheme disputes, the Government of Malaysia should adopt a dispute resolution model that is comprehensive, integrated, therapeutic and humanistic.

2. LITERATURE REVIEW

There has been significant growth in academic interest in the development of high-rise buildings and strata communities particularly in common law jurisdictions such as in Australia, the United States, Canada and even Malaysia. However, the volume of academic research in this area is relatively small resulting in significant gaps in the regulatory framework, for example on dispute resolution mechanisms in strata schemes.

Nor Asiah and Azlinor (2013) for example analyse various alternative dispute resolution (ADR) processes that would be appropriate for settlement of dispute in strata schemes in Peninsular Malaysia compared to litigation in court. They also analyse the recent establishment of a Tribunal by the Strata Management Act 2013 (SMA). According to Nor Asiah and Azlinor (2013), the decision to introduce a Strata Management Tribunal by the government must be applauded since the objective of dispute resolution in strata schemes is to create peace and harmony among the residents.

In Australia, Leshinsky et al. (2012) have carried out a research project on disputes in owners corporations (OC) in the State of Victoria. The research reveals that disputes in OCs basically relate to breach of internal rules, behavior in common areas, issues regarding amount and collection of fees and contractual terms with the managers and developers. On dispute resolution, the research finds that in most cases, the OC committees prefer to adopt informal conflict engagement and in some cases dispute avoidance.

In another article related to the same research above, Douglas and Leshinsky (2012) argue that the Owners Corporation Act 2006 (Vic) provides many options for disputes in owners corporation to be resolved earlier without the parties going to litigation in the Tribunal. According to Douglas and Leshinsky (2012), the three-tier dispute resolution system in the Act consists of an internal dispute resolution scheme which may include mediation and conciliation process (first tier), formal process involving mediation or conciliation processes provided by the Consumer Affairs employee (second tier) and adjudication process by the Victorian Civil and Administrative Tribunal (VCAT) (third tier). Research by Leshinsky et al. (2012); Douglas and Leshinsky (2012) are important as they inform the importance of early disputes resolution processes to be conducted internally.

In the State of Queensland, Australia, Toohey (2011) have been pioneering ways of encouraging the application of therapeutic jurisprudence in dispute resolution processes in high-rise developments such as community titles or strata titles schemes. According to Toohey (2009), therapeutic jurisprudence can be applied in community titles dispute resolution processes in order to promote positive behavioural change for example investigation process carried out by adjudicator in adjudication process under the Body corporate and Community Management Act (Qld) 1997.

Through investigation process, the adjudicator may identify the root cause for the problems which may not appear in the documents filed. Furthermore, through this process, the adjudicator may also have the opportunity to let the parties assess the effects of the whole episode on their well-being. The work done by Toohey (2009) is important because it establishes the needs for dispute resolution process in community titles schemes to facilitate behavioural change amongst the

disputants. Promoting necessary behavioural change using a therapeutic jurisprudence approach would contribute significantly to the overall quality of dispute resolution in high-rise schemes.

Adams and Williamson (1986) have carried out empirical research on dispute resolution in condominiums in the State of Florida, United States. The main objective of their study was to explore the various mechanisms through which condominium-related disputes could be resolved. One of their key findings is that there is great potential for the Alternative Dispute Resolution (ADR) mechanisms to be implemented to resolve conflict within the condominium system. The findings from research in Australia and the United States mentioned above are significant to support the argument of this paper that non-adversarial processes such as mediation and conciliation have the potential to be included in the dispute resolution model for strata scheme disputes in Peninsular Malaysia (Williamson and Adams, R. J., 1987).

3. METHODOLOGY

The methodology employed in this paper is largely doctrinal and theoretical. Empirical research from Malaysia, Australia and the United States has been used to support the arguments in this paper on the concept of good neighbor relations, a sense of community and nature and effects of disputes in strata schemes. The ideas and proposals presented particularly on the linkages between the principles of therapeutic jurisprudence and the principles of self-governance in strata scheme are original and have yet to be tested empirically in the Malaysian alternative dispute resolution field.

4. DISPUTE RESOLUTION MODEL FOR STRATA SCHEMES IN PENINSULAR MALAYSIA

This paper proposes a five-component dispute resolution model for strata schemes disputes in Peninsular Malaysia to support the existing adjudicative approach provided by the Tribunal. The objectives of this model are not only to achieve effectiveness and efficiency in dispute resolution for strata scheme disputes, but most importantly, to address the stressful nature of neighbourhood disputes and place a primary emphasis on the well-being of the disputing parties and the members of the strata schemes. The first component of this model consists of an internal dispute resolution process for strata scheme disputes. This is followed by the second component of the model which provides for a conciliation process by a government agency or body, preferably the Commissioner of Buildings (COB). The third component of the model involves an adjudication process by the Tribunal. The fourth component deals with court litigation while the final component of this model involves a post-dispute resolution process. This model has two distinctive characteristics. First, the model proposes creative solutions in strata scheme disputes that not only address the legal issues of the disputing parties but extend to other human functions such as values, morals, needs, relationships and parties' interests. Secondly, this model seeks to optimise the outcomes of dispute resolution for strata schemes to human well-being such as emotions, psychological functioning and relationships.

The objectives of the model can be summarised as follows:

- i. To produce therapeutic outcomes by encouraging positive communication between individuals in a strata community;
- ii. To prevent legal risks and future disputes through the educative function of the processes;
- iii. To promote positive interpersonal and individual change;
- iv. To preserve neighbour relations in the strata community;

- v. To optimise people's psychological and emotional well-being;
- vi. To establish process efficiency.

The details of the components of this model is examined in the next section.

5. FIVE COMPONENTS OF DISPUTE RESOLUTION MODEL FOR STRATA SCHEMES

5.1 First Component- Internal Dispute Resolution Processes

Strata living has been described as an intensified and highly regulated form of living that may become antecedent to disputes and disagreements. Disputes in strata schemes may arise for various reasons including: dissatisfaction with a neighbour's behaviour, restrictive by-laws, unprofessional conduct of the management staff and council members and deteriorating quality of life in the strata schemes. Disputes in strata schemes that are not resolved speedily and allowed to escalate into bigger conflicts may lead to stress, apathy, disunity and a lower sense of community among members of strata schemes. A dispute between neighbours in strata schemes may also have the potential to "lead to a feeling of disengagement and separation from the community as a whole" (Douglas, Kathy, Goodman and Leshinsky, 2008). The negative effects of disputes in strata schemes may affect relationships and the concept of self-governance in the long run. In order to address the anticipated outcome of strata scheme disputes, this paper argues that it is imperative for early intervention by way of internal dispute resolution processes be introduced in the strata schemes.

There are a number of benefits of early intervention in resolving strata scheme disputes. First, early intervention limits hostility and emotional damage to the parties, particularly neighbours who are living in close proximity in the same strata scheme. Secondly, internal processes can prevent minor disputes from escalating into bigger conflicts. According to Mollen and Scott, E. (1999), if disputes in strata schemes are not resolved earlier, there is strong possibility that such disputes will escalate as follows:

The hostility may spiral even higher as the adversaries encounter each other in their five foot by five foot elevator, in their hallways, in the lobby of the building, in their parking lots or at their common area recreational facilities. An occupancy conflict, like an infectious disease, may spread through the condo and co-op as factions evolve. Members of the community will often rush to support their neighbours and friends (Mollen, 1999).

Since many incidents of disputes in strata schemes are due to the behavioural conduct of the parties in common or private areas, it is argued that the disputing parties should first take the step to talk to each other about the issues in dispute in a friendly and polite manner. Furthermore, Marler and Gregory (2013) argues that the need for parties in dispute to engage with each other positively and express their emotions freely are important because, "in many cases, people just want to be heard and to have their thoughts and feelings validated by others ." Early intervention provides the disputing parties with a chance to communicate and discuss their disputes or misunderstandings informally and in a less hostile manner.

Thirdly, internal processes potentially prevent both the underlying cause of dispute and the direct cause of the dispute from having negative effects on individuals and community through educational approach. According to Beasley and Amy (2007), disputes involving parcel owners, committee members and building managers normally revolve around breaches of the rules and regulations while disputes between occupiers are more about behavioural and

lack of understanding on the concept of communal living in strata schemes. The opportunity to engage with each other during the internal dispute resolution processes may also educate the parties regarding the rules and regulations of the strata scheme and the concept of community living in the strata development environment.

Fourthly, internal dispute resolution processes are an important aspect of self-governance where the parcel proprietors and the management body are expected to self-resolve disputes occurring in strata schemes to avoid such disputes from being referred to formal adjudicative body for resolution. Self-resolution supports the principle of self-determination which is an important value in mediation systems. According to Cooper, Donna and Field (2008), self-determination allows the parties to actively and directly participate in the communication and negotiation process, choose and control the norms that guide their decision making, create their own options for settlement and have input in the final decision. Self-resolution that subscribes to the philosophy of self-determination may also ensure parties' satisfaction, a high degree of compliance and prevent future disputes from occurring.

There are many benefits that have been identified for self-resolution by way of internal process in strata scheme disputes. The outcomes from these benefits are related to positive communication, educational effect, preservation of relationship, positive personal transformation and psychological well-being. Internal dispute resolution processes have become so important that many common law jurisdictions have now sanctioned internal dispute resolution processes as necessary or even mandatory before any formal dispute resolution process takes place. In the State of Queensland, Australia for example, the internal process is made mandatory under the Body Corporate and Community Management Act 1997 (BCCMA).

In Peninsular Malaysia, the statutes are silent with regard to internal dispute resolution processes in strata schemes. However, the Rukun Tetangga Act 2012 (Act 751) (Neighbourhood Watch Act) does provide for a mediation process in resolving any dispute or difference amongst the members of the community. However, the process is voluntary and is applicable to the wider community or neighbourhood. The Government of Malaysia has also enacted a Mediation Act 2012 (Act 749) to promote and encourage mediation as a method of alternative dispute resolution that facilitate fair, speedy and cost-effective settlement of disputes. Since there are positive developments in community mediation in Malaysia at the moment, this paper argues that the mediation process can become the mechanism in resolving strata scheme disputes internally. Since internal dispute resolution through mediation can be carried out informally, there is no need for any new institution or body to be established to carry out the process. It also does not require the services of legal professionals which in turn makes it cheaper in costs.

Based on the advantages offered by mediation in the context of internal dispute resolution process in strata schemes, this paper argues that the building manager and the committee member may play an important role in the internal process and become the first contact point if there is a dispute between the parcel proprietors or occupiers or even between a parcel proprietor and the management corporation. In order to implement this idea, it is imperative for the strata managers and the committee members to have advanced skills in mediation, negotiation and creative problem-solving to facilitate internal dispute resolution. Perhaps, the government may impose a condition that the strata manager must attend professional training on various dispute resolution techniques prior to appointment and such requirement can also be extended to committee members upon election to the committee of the management corporation.

In summary, an internal dispute resolution process is a process whereby the disputing parties

need to start communicating directly with each other over a dispute or disagreement. More often than not, the miscommunication or rather lack of communication between the parties exacerbates the dispute (Baum, 2010). In this respect, the internal process allows them to interact with one another more positively. This paper argues that mediation process is the most appropriate and effective process for internal dispute resolution in strata contexts. This paper further argues that leadership in strata schemes including the building manager must encourage disputing parties to resolve disputes at the earliest possible stage to avoid the unnecessary escalation of conflict. If the internal dispute resolution process through mediation fails to resolve the dispute, then the parties should be advised to make another non- adversarial attempt through conciliation process. The conciliation process by the Commissioner of Buildings (COB) is the second component of this proposed model. The next section elaborates on conciliation process by the COB.

5.2 Second Component – Conciliation By The COB

Conciliation is in many ways similar to mediation. From a practical point of view, conciliation processes involve relatively informal discussion and negotiation sessions between the disputing parties. The process is assisted or facilitated by a third party. The role of a conciliator in a dispute is normally to identify the issues in dispute but, similar to a mediator, a conciliator is prevented from determining those issues. However, a conciliator does have a more interventionist role than the mediator. This is because they will provide information and offer options based on their knowledge of the relevant law, and also of how a Tribunal or a Court may decide a particular matter (Sourdin and Tania, 2012).

There are many benefits of conciliation as a dispute resolution mechanism, particularly for strata scheme disputes. As a non-adversarial process, the conciliation reduces the negative psychological effects that are associated with adversarial processes such as the Tribunal or the Courts. Further, unlike the adjudicative process which could be rigid and procedural, a conciliation process is conducted in an informal setting where the parties are encouraged to discuss the dispute honestly and openly and to generate options for potential solutions. More importantly, the discussion and admissions made during the conciliation process are considered confidential and generally cannot be used against the other party in the adjudication processes (Body Corporate Act, 1997).

Similar to internal process, conciliation can be used to resolve disputes quickly as the process is conducted informally and is not subjected to any legal procedures. Normally, a conciliation process can be completed in just three hours (Common Ground, 2011). The quick resolution of disputes can contribute significantly to reducing stress among the disputants and it can also contribute to further supporting the psychological well-being of the parties. More importantly, the parties would then have more opportunities to focus on reconciliation and rebuilding the interpersonal neighbour relationship that have been damaged by the disputes (Shuman and Daniel, 1992). Another advantage or benefits of conciliation is it provides useful information regarding the operations of law and the concept of strata living. While a conciliation process does not and should not amount to formal legal advice to the parties, a conciliator who possesses sound knowledge of the law and procedures can play a significant role in assisting the parties to design workable solutions for the parties within strata legal framework (Stolle, 1997-1998).

A conciliation process that involves positive interactions and exchange of views may promote better understanding of each party's position and allow them to let go their pre-occupation with their own individual concerns. A significant benefit arising from improved communication is the development of good relations between the parties who are neighbours and living together in a strata scheme. Joint problem-solving approaches like mediation or conciliation can improve long-term relations because the parties may attain better understanding of each other and acquire the relevant experience and skills in managing future disputes. Since disputes in strata schemes involve people having ongoing relations, it is argued that conciliation is a process that can reduce the damage to the parties' relationship as well as preserve, maintain, restore or create good interpersonal relationships. Other advantages or benefits of conciliation are high compliance to the settlement agreement that have been entered by the disputing parties due to the fairness of the process, and conciliation generates parties high satisfaction due to the ability of the parties to control the process and to achieve self - determination and self-transcendence.

Despite of the many advantages conciliation process can offer to resolve strata scheme disputes, The State of Queensland in Australia is the only common law jurisdiction which provides comprehensive statutory provisions on conciliation processes and procedures (Faizal, 2011). The conciliation processes in Queensland are conducted by the Office of the Commissioner for Body Corporate and Community Management (Corporate office, 2016). In Malaysia, there is no provision on conciliation in the SMA or in any other statutes related to strata scheme disputes. However, this paper argues that the COB is the most appropriate party to play a role in providing conciliation processes to disputing parties in strata schemes. The enactment of the SMA resulted in the powers and duties of the COB being increased. However, the increased powers and duties of the COB provided in the SMA only relate to enforcement of the law and not resolution of disputes or educative role. Conciliation process that has educational elements regarding rules and regulations in a strata system may help the disputing parties from among the members of the strata schemes to further understand the responsibilities and the liabilities of the management corporation, council members, proprietors and occupiers as well as the principles of strata living. If conciliation process fails to resolve the disputes in strata schemes, the COB should then advise the parties to refer the dispute to the Tribunal for adjudication. An adjudication process by the Tribunal therefore becomes the third component in this proposed model and discussion of the processes is highlighted in the next section.

5.3 Third Component – Adjudication By The Tribunal

The adjudication process to be implemented by the Tribunal is considered a significant component of this model since the Tribunal has already been established formally by the SMA. Even though this model is proposing a non-adversarial approach in resolving strata scheme disputes, it does not mean that any adversarial adjudicative processes should be excluded from this model. Instead, this paper acknowledges that there are many advantages attached to the Tribunal as a quasi-judicial adjudicative body in resolving strata disputes efficiently. For example, the Tribunal offers a cheaper and quicker dispute resolution compared to litigation in court. Section 117(1) of the SMA provides that the Tribunal shall make a finding within 60 days from the date the first hearing commences. Another advantage of the Tribunal concerns the power it has to conduct proceedings using simplified rules and procedures compared to the rigid procedural formalities that have to be applied by the courts (Strata Management Act, 2013). The simplification of the procedures will also help the Tribunal to assess the application and issue an award on the merits of the matter rather than on technical procedural aspects of court proceedings.

The fact that the SMA does not allow any party to be represented by an Advocate and Solicitor unless it involves complex issues of law minimises the costs for adjudication by the Tribunal (Strata Management Act, 2013).

Despite the advantages of a Tribunal adjudication process compared to court litigation, adjudication by the Tribunal still retains an adversarial approach to resolving disputes. Adjudication by a quasi - judicial body normally provides the same result as litigation in courts where one party is declared a winner and another is the loser. Unlike other non-adversarial processes like the mediation and conciliation, decisions or orders by the Tribunal are imposed upon the parties and have binding effects. Appeal to a higher authority such as the court is not allowed under the SMA unless on points of law or when there is a serious irregularity (Strata Management Act, 2013).

This approach of imposing orders on parties based on the merits of the case and under the guidance of existing legal principles minimises the opportunity for the parties to achieve self-determination in adjudication processes.

Whilst the Tribunal still retains many traditional adversarial elements of adjudicative processes, there are ample opportunities for it to apply therapeutic approaches in resolving strata disputes under the SMA. First, it can adopt a problem-solving approach in strata schemes. Section 112 of the SMA provides that the Tribunal may assist the parties to negotiate an agreed settlement in relation to the matter. Since the SMA is silent on the procedures for negotiation process to take place, this paper argues that the Tribunal may take a creative problem-solving approach to assist the parties in negotiation process. The first creative problem-solving approach that can be applied by the Tribunal is for the Chairman of the Tribunal to engage with the disputant actively. The objective is to obtain more information about the dispute and the background of the disputants. Through this process, the Chairman of the Tribunal may not only understand the contentious issue at hand but is also able to identify the underlying issues that may have become the root cause for the dispute (De Villiers, 2011).

Secondly, this paper proposes that the Tribunal can apply a creative problem-solving approach during the adjudicative process by taking a more inquisitorial role. The Tribunal should be encouraged to seek more information based on the evidence presented by the parties or even to conduct its own investigation. The inquisitorial approach may provide the opportunities for the adjudicator to probe the real issues and to understand the whole situation that leads to the dispute. This paper further argues that the need for the Tribunal to play a more inquisitorial role is justified since the SMA does not allow for legal representation unless the matter in dispute involves complex legal issue and one party may be greatly prejudiced if a legal representative is not allowed to argue the case on his behalf. According to De Villiers (2011), when the parties are self-represented, the Chairman of the Tribunal must adjudicate with empathy and play a creative role in assisting the parties to resolve the disputes themselves rather than simply imposing a decision on them.

Thirdly, the Tribunal must exercise its power beyond strict legal rights, individual rights, duties and liabilities in order to ensure the order given is for the well-being of the parties as well as the strata community. Such approach by the Tribunal would contribute positively towards promoting relationships, moral development and the well-being of the disputants. Such approach is also consistent with the statutory provisions in the SMA. Section 117(4) of the SMA provides that:

In making an order under the subsection (3), the Tribunal shall have regard to:

- (a) The relevant provisions of this Act; or
- (b) The interest of all parcel owners or proprietors in the use and enjoyment of their parcels or the common property or the limited common property.

Finally, the Tribunal may help to educate the disputing parties on the rules and regulations of strata title system as well as the concept of strata living by providing reasons for its decision or award (Strata Management Act, 2013).

There are many benefits for writing reasoned decisions, for example, such an approach gives the parties a sense of fairness because they were made aware of the reasons for their victory or loss. It also gives the opportunity for the adjudicator to explain the law and establish precedents. More importantly, writing reasoned decisions may create therapeutic effects for the disputing parties. According to Toohey (2009), "in writing their reasons for decision, the adjudicator has the opportunity to refer in a respectful way to the parties' allegations and submissions and to avoid unproductive castigation of the parties."

In conclusion, while adjudicative approaches by the Tribunal, as proposed in this model, are still very much influenced by traditional adversarial approaches, the Tribunal may in fact provide better efficiency than court processes in terms of time, procedures and costs. Certain procedures of the Tribunal, as provided in the SMA may also provide opportunities for the Tribunal to apply therapeutic approach for the parties in giving decisions and awards. The therapeutic orientation of the tribunal as proposed in this model will benefit the parties, strata community and the society at large in terms of the psychological functioning of the parties and their future relationships. The next section discusses court litigation and appeal as the fourth component of this model.

5.4 Fourth Component – Court Litigation

In Peninsular Malaysia, the SMA provides specific processes for dispute resolution for strata schemes involving the Tribunal. However, the SMA does not prevent anyone from seeking settlement or remedy from the court of competent jurisdiction in matters involving strata schemes disputes. The SMA even allows a party to Tribunal proceedings to apply to the High Court challenging a decision by the Tribunal on the ground of serious irregularity (Strata Management Act, 2013).

While the strata legislation in Peninsular Malaysia allows any person to bring an action in court to resolve a dispute arising from strata schemes, this paper argues that such action should be an option of last resort or be avoided totally if possible. This is because dispute resolution in traditional adversarial court system only provides temporary solutions in terms of damages, remedy, compensation or injunction. Furthermore, court litigation in an adversarial model normally restricted itself to establishing the facts, weighing the evidence, applying relevant legal principles, selecting legal authorities and making decisions based on the best argument and available evidence (Spiller and Peter, 1999). The end result of this method is not a solution to the whole problem as the issues underlying the legal problems are not resolved, but continue to simmer (Sammons and Kathryn, 2008-2009). According to Lippman (2007), court litigation involving people in relationships such as neighbours serves no-one's interest. Such an approach is achieving very little, making little difference to disputing parties or the community.

Based on the above observation regarding the court litigation and the negative impacts it has in resolving strata scheme disputes, this paper argues that the adversarial court processes for strata should consider a transformative approach to litigation, similar to what has been proposed to the Tribunal in the third component of this model. Instead of just focusing on reducing court dockets, the courts should embrace a creative problem-solving approach that not only addresses the legal issues but also gives attention to the underlying social, psychological or economic problems of the disputing parties. Judges in such cases may, instead of merely being an arbiter, take a collaborative and active role in the proceedings. According to Kaye (2004), "problem-solving courts are courts. They strive to ensure due process, to engage in neutral fact-finding, and to dispense fair and impartial justice." A problem-solving court introduces a new constructive approach to processing cases with the objective of resolving problems rather than adjudicating cases.

According to Sammon (2008), the problem-solving courts have several distinctive features. First, problem-solving courts are outcome based rather than focusing on traditional court approaches such as processes and precedents; secondly, problem-solving courts encourage active interaction between judges and litigants; thirdly, problem-solving courts are not limited to restrictive sanctions prescribed by the law; fourthly, problem-solving courts are creative and innovative in utilising community service and other social services as alternative sanctions and finally, problem-solving courts do not only impose sentencing and sanctions, but are also actively involved in monitoring and ensuring compliance by offenders particularly where community based sanctions are applied. Blagg argues that problem-solving courts do not aim to resolve complex legal issues, but rather are more concerned with complex social problems which cannot be effectively dealt with by the standardised and mechanistic focus of legal norms alone Sammons (2008).

Today, court systems particularly in the United States, United Kingdom and Australia have undergone significant change, shifting their orientations from traditional adversarial approaches to problem-solving approaches, employing a collaborative process that focuses on therapeutic outcome (Blagg, 2008). Instead of viewing themselves as arbiters, judges in problem-solving courts consciously view themselves as therapeutic agents, applying therapeutic functions in their dealings with the disputing parties. According to Judge Lippman (2007), "problem-solving court is about modifying court processes to fit the trends that are driving caseload activity. It is about courts putting the individual front and center, fashioning individualised responses designed to change future behaviour (Daicoff & Susan, 2006)." Whilst problem-solving courts began as specialised criminal courts such as drug treatment courts and domestic violence courts, they have now expanded to include community and housing courts such as the housing court in New York that was created to resolve disputes in condominiums and co-operatives.

For the purpose of this model, a theoretical framework based on the concept and principles of problem-solving courts is proposed for formal court adjudicative dispute resolution for strata schemes. With the objective of creating peaceful and harmonious strata neighbourhoods that will then support the concept of self-governance in strata titles system in Peninsular Malaysia, this paper proposes that judges administering adjudicative processes based on traditional adversarial system should take a transformative approach in resolving disputes by embracing a problem-solving court approach. A problem-solving court approach in the context of resolving strata scheme disputes means the judges should give attention to the underlying social, psychological or economic problems of the disputing parties rather than just determining the disputes based on the existing facts, principles of law and case precedents. Judges in problem-solving court approach could play an active role in the

proceedings with the objective of providing the disputing parties freedom to express their emotions, validate their concerns, achieve self-determination and restore their relationship as neighbours.

In conclusion, problem-solving court approaches promote better outcomes for the disputants in terms of supporting a change in behaviour and enhancing the parties' psychological well-being. Problem-solving court approaches also promote a stronger internal commitment among the disputants to change for the better. In terms of modification of court processes, a problem-solving court approach does not require any fundamental changes in the traditional court structure, processes or procedures. Instead, problem-solving court approaches can enhance procedural justice for the parties within the existing structure by giving litigants greater voice, validation and respect than is currently achieved in the court system. Adjudication by the Tribunal in the third component and litigation by the court in the fourth components are based on adversarial adjudicative approach. No matter how the processes are conducted, the experience and the outcome normally yields unsatisfying results for the disputants and the community. In such situation, a reconciliation process needs to follow. The next section proposes a post-adversarial approach employing transformative mediation as the final component in this model.

5.5 Fifth Component – Post-Dispute Resolution Process

The main issues in strata living are not about individual legal rights and interests but rather how neighbours and stakeholders with different values and interests can work through their differences and still live together in a harmonious and peaceful strata neighbourhood. Dispute resolution among neighbours particularly through adjudication by the Tribunal or court litigation may not necessarily resolve the whole episode of the conflict. In many situations, adversarial approach by traditional court systems may only lead to the “settlement of disputes” and not the “resolution of relationships.” As a result, hostility between the parties may continue and there is still a possibility that the wound will never heal, the trust will never be recovered and the enmity will silently continue. Where this is the case, the negative effects or outcomes of the dispute resolution process for strata scheme disputes may contribute to creating a community with entrenched conflict and deteriorating personal relationships thus undermining the concept of self-governance.

Research by Miencke et. al. (1990) has shown that good neighbour relations contribute significantly to a higher sense of community and these two important social constructs may contribute positively to the strata neighbourhood and the concept of self-governance in strata titles system. While the previous four components of this model propose various problem-solving approaches in resolving strata scheme disputes, this model is not complete without a post-dispute resolution process between the parties in continuing relationships to further heal the wounds, mend the fences and renew the relationship. The objective of a post-dispute resolution process is to allow any underlying issues involving behavioural, emotional or relationship factors that were not publicly highlighted and addressed during the informal and formal process of resolving disputes to be further deliberated and discussed in a private reconciliation process.

An important question that can be asked about the final component is how a post-dispute resolution can be implemented? What will be the main driver that pushes the parties to undertake reconciliation process? Taking into consideration the objectives of this model which are to promote positive communication and an educational experience during dispute

resolution processes, this paper proposes for the Tribunal and the Courts to encourage the disputing parties during the adjudicative processes to participate in post-adversarial mediation as part of reconciliation process. The Chairman of the Tribunal or a judge in such cases may provide information to the parties about the tangible and intangible benefits of reconciliation mediation on future relationships, psychological well-being and economic incentives.

The management corporation and the building manager can also play an important role in encouraging disputing parties to resolve any underlying issues post-adjudication. Due to the destructive conflict interactions normally occur during adjudication, the parties may not be able to communicate with each other positively or constructively post-adjudication. According to Folger (2008), conflict tends to lessen parties ability to accurately understand and assess their situations. As a result, their relations as neighbours may further deteriorate and this will affect the stability of strata neighbourhoods in the long term. In order to maintain peace and promote good neighbour relations among members of strata community, the management corporation or the building manager is encouraged to facilitate “transformation” in the parties’ interaction by applying transformative mediation framework for example.

6. CONCLUSION

Strata title systems create a unique form of communal living based on the principle of self-governance. The success of this concept relies strongly on good neighbour relations and a strong sense of community. These are the keys to strata schemes functioning well and form the basis for a good neighbourhood. A good strata neighbourhood is one where neighbours have mutual respect for each other, a strong sense of belonging, actively participate in the community and demonstrate in-group solidarity and unity. All these elements of a good strata neighbourhood contribute significantly to people’s health and psychological well-being when living in a strata environment.

Disputes in strata scheme may occur in relation to a variety of issues and can be damaging to harmonious strata living. According to Leshinsky et al (2012), “conflict between neighbours can be some of the most bitter and protracted types of disputes in our communities.” Traditional adversarial adjudicative approaches to dispute resolution have been shown to be ineffective in resolving disputes involving relationships, particularly in terms of neighbour relations in strata schemes (Fuller and Lon, 1978). In order to address the inadequacies in the current dispute resolution model for strata scheme disputes in Peninsular Malaysia, this paper proposes a model that is comprehensive, dynamic and responsive.

This model is proposed not only to achieve effectiveness and efficiency, but most importantly, to produce some form of therapeutic outcome for people experiencing disputes in strata title contexts through the preservation of neighbour relations and optimisation of community’s well-being. This model consists of five components. The first component is centred on a mediation process in an internal dispute resolution setting. The second component builds on the centrality of conciliation, which is a non-adversarial dispute resolution process involving the COB. The third component identifies therapeutic opportunities in an adjudicative process offered by the Tribunal, while the fourth component suggests a problem-solving approach for the courts system in resolving strata scheme disputes. The fifth and final component proposes a post-dispute resolution reconciliation process. These five components of dispute resolution processes need to be read and understood as an integrated whole in order to construct a new dispute resolution model for strata scheme disputes in Peninsular Malaysia.

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THE IMPACT OF THE GLOBAL FINANCIAL CRISIS ON PUBLIC LISTED PROPERTY DEVELOPMENT COMPANIES OF MALAYSIA, SINGAPORE, INDONESIA AND THAILAND

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Abstract

The Global Financial Crisis (GFC) that peaked in 2008 is said to be the worst economic crisis since the Great Depression. The contagion was transmitted to Asian economies indirectly through the collapse in exports. A study was conducted to examine the impact of the GFC on public listed companies and real estate investment trusts (REITS) of Malaysia, Singapore, Indonesia and Thailand. This article only gives focus on public listed companies. The study period was 2004-2012 inclusively to enable the dynamics of the pre-GFC, GFC and post-GFC periods to exert their full impact on the sampled companies. The companies were selected based on a set criteria. Panel Data Regression Analysis reveals that Singaporean (measured by ROAA and ROAE) and Thai companies (measured by ROAE) were affected by the GFC in 2008 and 2009 respectively. Malaysian companies (measured by ROAE) were negatively affected by the cessation of the mini-property boom in 2005 whereas Indonesian companies (measured by ROAA) were affected by the sharp domestic inflation of 2012. A country-by-country macro-analysis was conducted to provide explanation behind these performances.

Keywords: *Corporate financial performance, domestic shocks, external shocks, government intervention*

1. INTRODUCTION

The Global Financial Crisis (GFC) with its epicentre in the US has been acknowledged as the worst economic crisis since the Great Depression of 1929-1939. It emanated from the US investors' loss of confidence in the value of sub-prime mortgages in July 2007, which then escalated into a liquidity crisis. By September 2008, the crisis rapidly reverberated around the world when stock prices in many countries plunged dramatically. The full-blown systemic crisis in emerging countries did not take place immediately in 2007, but in September 2008 with the Lehman Brothers' collapse (Frank and Hesse, 2009). Asian economies were affected even though their business cycles and that of industrial countries have been observed to be decoupled (Kose, 2008). The contagion was transmitted to Asian economies indirectly through the collapse in global demand and world trade (Lin and Treichel, 2012). Singapore, Malaysia and Thailand suffered negative growth rates in 2009, though not Indonesia (see Figure 1).

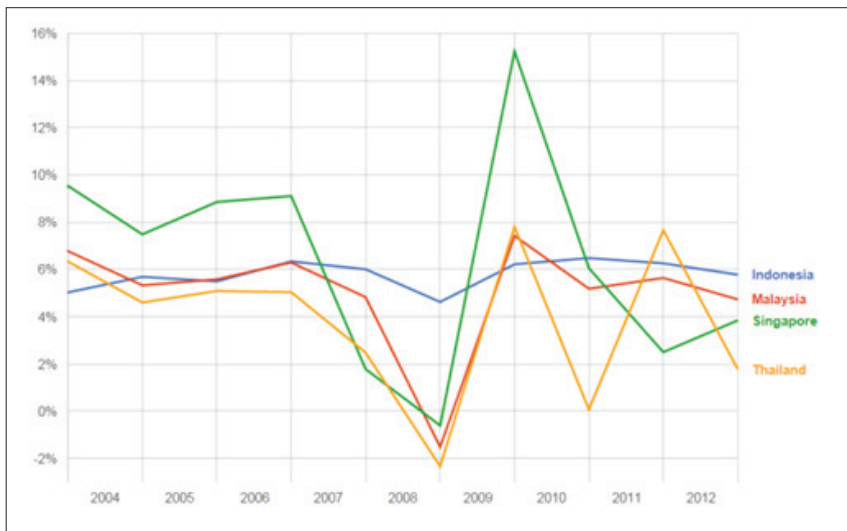


Figure 1: GDP growth of Malaysia, Singapore, Indonesia and Thailand
Source: World Bank.

Different countries responded in different ways to mitigate the contagion. Malaysia and Thailand increased their expenditure whereas Indonesia relied on tax deductions to stimulate the economy (Sangsubhan & Basri, 2012). Singapore adopted the 'Keynesian logic' (Chew, 2011) and complicated monetary policy (Lee, 2011).

Milunovich and Truck (2013) note:

"Despite the ongoing debate on contagion in financial markets, there is only a small body of literature investigating contagion specifically for property or real estate markets. This is even more surprising, since GFC originated from a subprime mortgage crisis and was, therefore, heavily related to real estate."

Hence a study was initiated to examine the extent to which the GFC impacted the financial performance of public listed companies and REITS of Malaysia, Singapore, Indonesia and Thailand. Because of space limitation, this paper presents the findings of the former. The listed companies of

these companies were impacted by the GFC (see Figure 2). Their combined market capitalisation in 2008 was US\$568.442 billion, which was just over half (52%) from the previous year of US\$1,086.891 billion. The selected study period was 2004-2012 inclusively to enable the dynamics of the pre-GFC, GFC and post-GFC events to properly manifest in the financial performance of these companies.

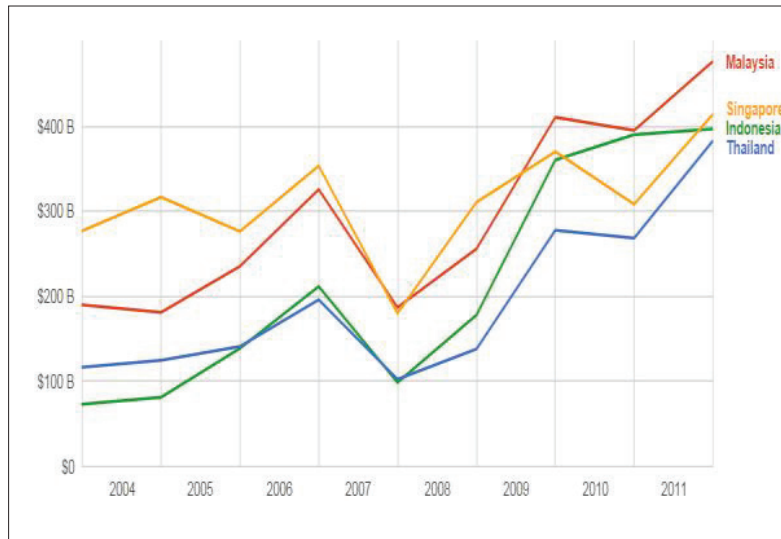


Figure 2: Market capitalisation of listed companies (current US\$) of the studied countries.
Source: World Bank.

The research objective were as follows:

1. To determine whether the lowest points in the financial performance of public listed property developers of Malaysia, Singapore, Thailand and Indonesia coincided with the GFC.
2. To provide possible explanations behind the emergence of these lowest points.

Singapore, Thailand and Indonesia were chosen as they are Malaysia's closest neighbors. Together they, like the rest of Asia have been experiencing closer financial and trade linkages, as well as increase in business cycle co-movements (Gong and Kim, 2013). It is always useful to conduct a cross-country comparative study to gauge how Malaysia fare in the face of external shocks comparatively to others, and to provide explanations for the phenomenon. (Singh and Dhinga, 2013) Because of financial and time constraints more neighbouring countries could not be included.

2. THE GLOBAL FINANCIAL CRISIS

This section sets the scene by providing some details about the GFC, in particular what triggered it and how it reverberated around the world. It ends by hinting of the Eurozone Crisis.

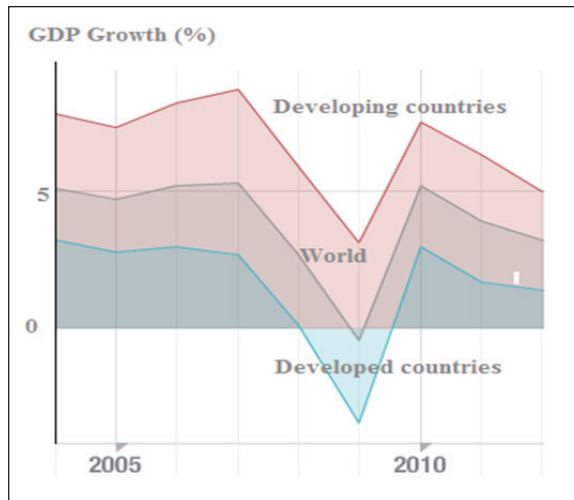


Figure 3: GDP growth of selected regions of the world, 2004-2012.
Source: IMF

Except for a few economists, the GFC was largely unanticipated (Lin and Treichel, 2012). Since 2000, the world economy had experienced strong expansion. Accompanying it, was the emergence of large current account surpluses in East Asia and Europe and a widening current account deficit in the US. Many accept that the GFC began with the collapse of Lehman Brothers on September 14th, 2008 following accumulated defaults on mortgages and derivative products. Panic ensued. It triggered a significant decline in credit to the private sector and a sharp rise in interest rates. The collapse of the US financial institutions led to the crash of equity markets, international trade and international production around the world. Advanced economies, including the US, together with developing countries entered into a recession (see Figure 3). Simply put, what started as an asset bubble, exploded into a housing and banking crisis with a cascading effect on consumer and investment demand (Krugman, 1998).

In the run-up to the GFC, credit expansions fueled real estate booms in many developed economies including the US (Laeven, 2010). When the GFC gripped these countries, the housing bubble could not be sustained. Many householders could not cope with the rising interest rates and falling home values. Sharp compression in consumer spending compounded already difficult situations in the real estate. Austria, Hungary, the UK, Iceland, Ireland and the US were among the earliest to experience house price declines (Pais and Stock, 2011). The GFC demonstrated the powerful links between the housing sector, finance and the economy (Doling, 2013). Figure 4 shows the global house price index peaked just before the GFC. By the end of 2012, it had yet to recover to the pre-GFC level.

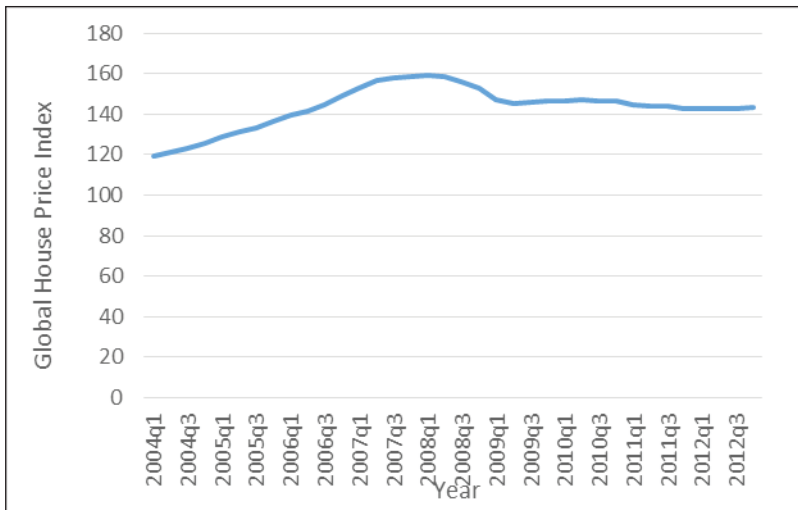


Figure 4: Global house price index, 2004-2012.

Source: International Monetary Fund (<http://www.imf.org/external/research/housing/>)

Pais and Stork (2011) posit that one of the channels that contributed most to the global spread of the GFC was common shocks to asset markets, especially the real estate markets. The real estate sector of different countries experienced different levels of vulnerability to GFC (Peto, 2011). While this was true for countries like Singapore which displayed the highest extreme dependencies to react together with similar countries, it did not apply to countries like Malaysia (Kim and Zhuo, 2013). Instead the GFC was transmitted to many developing countries through the contraction in aggregate demand caused by the collapse in exports, either directly or indirectly, from the US (Zainal and Rasiah, 2009).

The US Financial Crisis Commission created to investigate the root causes of the GFC noted that the crisis was avoidable. It said:

“Despite the expressed view of many on Wall Street and in Washington that the crisis could not have been foreseen or avoided, there were warning signs. The tragedy was that they were ignored or discounted. There was an explosion in risky subprime lending and securitisation, an unsuitable rise in housing prices, widespread reports of egregious and predatory lending practices, dramatic increases in household mortgage debt, and exponential growth in financial firms’ trading activities, unregulated derivatives, and short-term “repo” lending markets, among many other red flags. Yet there was pervasive permissiveness, little meaningful action was taken to quell the threats in a timely manner. (p. xvii)”

More ominously, Razin and Rosefielde (2011) warned that the mentality and institutions which prompted the crisis in the first place remain firmly in command. There is little prospect that a constructive consensus will emerge capable of disciplining contemporary societies for the greater good by promoting optimal efficiency, growth and economic stability.

The GFC triggered unprecedented European sovereign-debt crisis resultant of the real estate bubble burst in Ireland and Spain, and tax revenues deflation in Greece, Italy and Portugal (Burda, 2013). The crisis began in October 2009 when Greece’s finance minister revealed that the budget deficit

would be double the previous government's estimate and will reach 12% of GDP. International lenders lost confidence in the ability of these countries (which became known as PIIGS) with their severe sovereign government debt vis-a-vis their GDP to cover their deficits. Their borrowing costs reached a level that threatened the integrity of the Eurozone banking system, the mechanisms of payments, the European Central Bank and the common currency itself. The OECD (2014) indicated that the combined gross borrowing needs of OECD governments of US\$11 trillion appeared to have peaked in 2012. However it warned that the government debt ratios are expected to further increase and remain at high levels in the near future as their economies are taking longer to recover. In fact for a group of selected major OECD countries, general government debt as a percentage of GDP in 2014 is projected to surpass the World War II peak of around 116%.

3. RESEARCH METHOD

All property companies that were listed in their respective stock markets (i.e. SGX, Bursa Malaysia, IDX and SET) made up the sample population on the condition that they passed the following criteria:

- (1) Listed before or on 1 January 2004.
- (2) No significant changes to the financial structure due to mergers and acquisition, changes of financial years that leads to discontinuities in the reporting period, or trading status suspension due to sanctions or irregularities.
- (3) Remained substantially as a property development company (i.e. the proportion of revenue from property activities must be at least 50%).
- (4) Financial reporting was in local currency (Singapore cases only).
- (5) At least 50% of revenue from domestic sources (Singapore cases only).

Because the number of Malaysian companies that passed this pre-participating screening process was big (i.e. 71), systematic sampling of firstly arranging them according to size of total assets (2012 figures) in descending order and then selecting companies alternately was adopted. One company was eliminated from the final sample due to extreme outlier data. The final numbers of the sample population are as follows: Singapore 12, Malaysia 35, Indonesia 18 and Thailand 27. Three types of financial analyses were exercised:

- 1) financial statement, including total revenue, total profit before tax, net profit, total assets, total liabilities, total net assets, total equity and total market capitalisation, and
- 2) financial ratios, including examine profitability ratio, efficiency ratio, liquidity ratio, and market ratio.

The adopted financial measures follow past studies (Hoberg & Phillips, 2010). A weight was applied to each ratio to ensure that the companies represented their sectors. The weightage changed annually concomitant with revenue change. Financial data were extracted from annual reports usually available from the respective stock market website, if not the companies themselves. Obtaining annual reports proved particularly challenging for Indonesian and Thai companies.

SPSS PASW (Predictive Analytics SoftWare) and E-Views 7 were used to analyse the financial data of the companies. Panel data regression analysis was used to explore the relationship between independent variables and dependent variables for the most suitable pair of event years. Financial performance of the companies was represented by 6 variables: net profit margin (Profit), return on average asset (ROAA), return on average equity (ROAE), debt ratio (Leverage), market capitalisation

(Size) and market-to-book value (Growth). Independent variables were represented by Leverage (Debt Ratio), Size (Market Capitalization) and Growth (Market-to-book Ratio). Profit (Net Profit Margin), ROAA (Return on Average Asset) and ROAE (Return on Average Equity) signified as proxies for dependent variables. The correlations between these 6 financial variables were examined by SPSS. Several pairs were tested to find the most appropriate years to be included in the model. All market capitalisation values were converted to log value in order to have a standardise data and to obtain the best interpretation of results. The econometric model was developed which states Profit, ROAA and ROAE were depending on Leverage, Size and Growth:

$$Y(P, ROAA, ROAE)_{it} = \beta_0 + \beta_1 L_{it} + \beta_2 S_{it} + \beta_3 G_{it} + \beta_4 D_1 + \beta_5 D_2 + \mu_{it}$$

where
 $i = 1, 2, \dots, 27$ (company)
 $t = 1, 2, \dots, 9$ (year)
 $D_1 = 2008$ (year)
 $D_2 = 2009$ (year)
 μ_{it} is a random error term

Panel data consists of three types of model namely Pooled OLS Model, Fixed Effects Model and Random Effects Model. The Random Effect Model was chosen after applying the Hausmen test which determines the appropriate model to be applied in this study. Panel data regression in this study was diagnosed for normality and autocorrelation problems. The remedies applied differed between large and small sample sizes. Jarque-Bera normality test was conducted to diagnose for normality case for all models. Durbin-Watson statistic test was applied for autocorrelation problem which means correlation between members of series of observations ordered in time (as in time series data) or space (as in cross-sectional data). And if necessary, the Cochrane-Orcutt iterative procedure was also adopted.

4. FINDINGS AND DISCUSSION

The results of the panel data regression analysis show that Singaporean companies (measured by ROAA and ROAE) followed by Thai companies (measured by ROAE) a year later were negatively impacted by the GFC. The other nationality groups however were affected by domestic events during the study period – Malaysian companies by the cessation of the mini-boom in 2005 (measured by ROAE) and Indonesian companies by the sharp inflation of 2012 (measured using net profit margin and ROAA). Below, all events that led to such outcomes are elaborated below.

4.1 Singapore

The two equations below from the transformed model shows that the ROAA and ROAE of Singaporean public listed companies were most affected in 2008:

$$\text{LNROAA} = 0.0737 - 0.0444D1$$

$$\text{ROAE} = 0.1475 - 0.0947D1$$

where D1 is 2008.

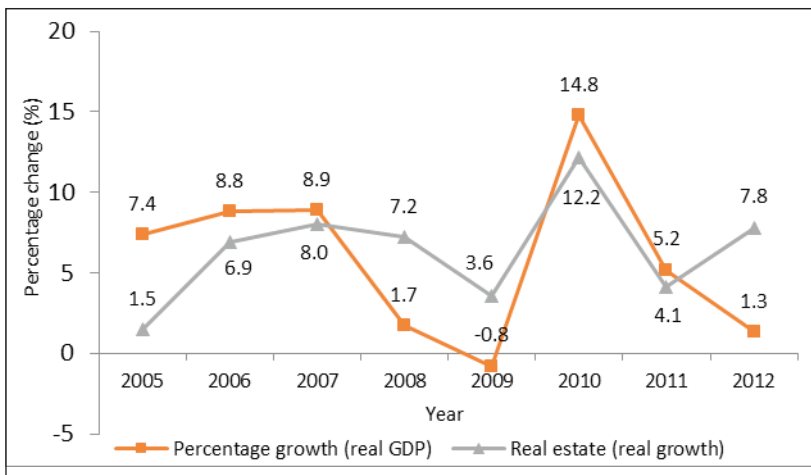


Figure 5: Real GDP and real estate growth, year-on-year, 2005-2012 (2005 market prices).
 Source: Department of Statistics and Ministry of Trade and Industry.

Figure 5 shows that Singapore’s economy suffered contraction in 2009, and that the real estate concomittantly experienced a sharp drop in growth that same year. Yet the panel regression analysis in fact points to the sampled Singaporean property development companies as a group actually suffering from the GFC the previous year. This stands to reason as Singapore’s economy was among the earliest in the region to contract sharply at the end of 2008 (Doraisami, 2011). By late 2007, some signs of slower growth became evident in Singapore’s broader economy due to economic downturn in the US (Monetary Authority of Singapore, 2008). Being highly open, the GFC led to Singapore’s economy experiencing sharp drop in growth rate in 2008.

Table 1: Percentage change of property price indices for various real estate sub-markets.

	Private res.	% change	Office sp.	% change	Shop sp.	% change	Factory sp.	% change
2004	113.8	0.9	73	-0.7	86.6	0.5	78.1	1.7
2005	118.2	3.9	76.3	4.5	92.5	6.8	80	2.4
2006	130.2	10.2	89.3	17	101.3	9.5	85.4	6.8
2007	170.8	31.2	118.4	32.6	114.7	13.2	105	23
2008	162.8	-4.7	110.1	-7	112.5	-1.9	92	-12.4
2009	165.7	1.8	92	-16.4	105.6	-6.1	113.8	23.7
2010	194.8	17.6	109.4	18.9	114.7	8.6	144.6	27.1
2011	206.2	5.9	124.5	13.8	120.8	5.3	180	24.5
2012	212	2.8	126.2	1.4	123.2	2.0	185.7	3.2

Source: Department of Statistics.

Table 1 shows all real estate sub-markets suffering from drop in prices in 2008. The GDP

contraction in 2009 as a whole was milder than expected (Monetary Authority of Singapore, 2010). In fact the economy rebounded in 2009, partly because of the turnaround in Singapore's trade-related industries and asset market activities as firms around the world replenished inventories which had been run down earlier, and credit and financial market conditions improved. The economy recovered strongly in 2010. Despite Singapore's fiscal policy being geared mainly to promote long-term economic growth rather than cyclical adjustment, the government took the drastic step of unveiling the Economic Resilience package to the tune of S\$20.5 billion or RM50 billion - equivalent to 8.2% of GDP - in January 2009 (Doraisami, 2011). The package was purposely designed to curtail leakage by way of imports. In October 2008, Singapore also ceased allowing its currency to appreciate gradually against the US dollar, thus reversing a policy that was implemented in April 2004 (Takagi, 2009). Furthermore in April 2009, Singapore, re-centered its policy band to the prevailing level of the nominal exchange rate (which represented an effective depreciation of the currency).

Most important to note is that there was no specific counter-cyclical measure for the real estate sector. If anything at all, the government implemented various measures to cool down the property market beginning 2006 until the end of the study period (Kim and Yong, 2013). These measures had an impact on players in the industry as reflected in the downward spiral of the general business expectation in the real estate segment from the end of 2007 onwards (see Figure 6). Earlier, in July 2005, the government introduced a raft of measures to resuscitate the market (Lum, 2011). In December 2006, buyer stamp duty concession was withdrawn. In October 2007, the Deferred Payment Scheme introduced by developers was disallowed. In September 2009, the Interest Absorption Scheme introduced by developers was also disallowed. To sum up, these cooling measures coincided when the GFC hit Singaporean developers the most. Notwithstanding the fact that the GFC coincided with the implementation of these cooling measures, one possible reason why real estate was not targeted by the stimulus package is because of the small role private developers play in housing delivery.

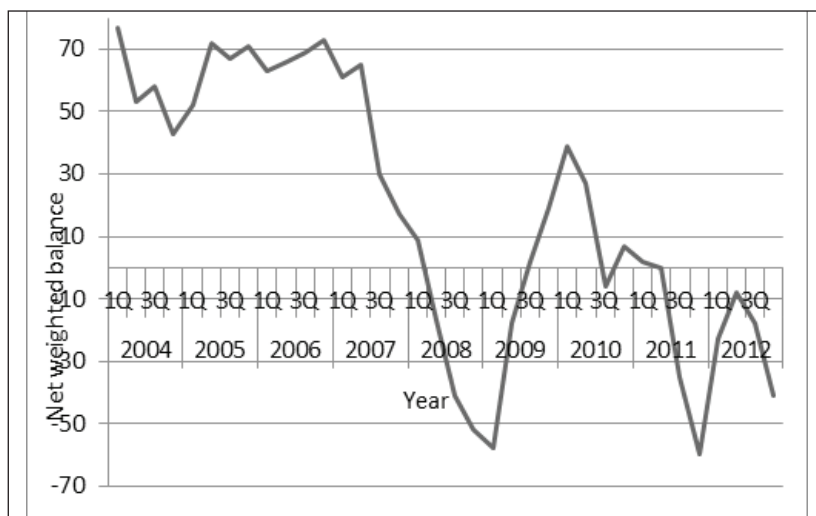


Figure 6: General business expectation in the real estate segment, 2004-2012.

Source: Department of Statistics.

As to why the Singapore government did not intervene to prop up the property market, one needs to appreciate its housing market. The Singapore government, via its agent, the Housing Development Board, dominates the housing sector. Private developers concentrate on the small but growing high-end housing segment (Lum, 2011). They cater largely to the upper echelons of Singapore's society, expatriates and foreign investors (Phang, 2007). The sharp economic downturn during the second half of 2008 continuing into the first half of 2009 resulted in a drop in demand for private homes, but the demand for new and resale HDB flats continued to hold steady during this period. Therefore, any stimulus for the private housing sector would have had minuscule impact on the broader economy. The strong influence of foreign housebuyers is absent in the other three studied countries. Singapore has long used foreign liquidity to stabilise its real estate market by easing rules and regulations on foreign investment when the market is dull and tightening them when the market overheats (Liao & Zhao, 2014). To boost the market, foreigners were allowed to buy land parcels and completed homes at Sentosa Cove since August 2004. This resulted in a surge of foreign liquidity into the private residential market. In mid-2005, the government removed the restriction for foreigners to own apartments below 6 stories, raised the loan-to-value limit and reduced the cash down payment. The influx of foreign liquidity into high-end private housing market aided the recovery of the market (Deng and Mcmillen, 2012). However as Table 2 shows, there was an appreciable slowdown in growth of number of private residential units owned by non-Singaporeans in 2008, which led to private developers suffering as a consequence.

Table 2: Number of private residential units owned by Singaporeans as compared to permanent residents and foreigners.

	Singaporeans	% change	Perm. res. & foreigners	% change
2004	183,519	5.7	22,652	6.5
2005	189,311	3.2	23,884	5.4
2006	192,988	1.9	25,113	5.1
2007	191,945	-0.5	28,872	15
2008	194,102	1.1	31,809	10.2
2009	198,892	2.5	35,201	10.7
2010	206,497	3.8	401,185	14.2
2011	208,662	1.0	44,134	9.8
2012	217,488	4.2	48,216	9.2

Source: REALIS

Due to Singapore's small housing market compared to its neighbours compounded by the small role private developers play in housing delivery, some public listed property development companies ventured overseas. To capture the GFC impact domestically, those that earned more than 50% revenue overseas were excluded from the study.

4.2 Thailand

Thai companies (measured by ROAE) were negatively impacted by the GFC a year after their Singaporean counterparts did as shown by the equation below:

$$ROAE(1) = - 2.6074 - 0.7276L + 0.1477S - 0.1194G - 0.2279D2$$

where D2 is 2009.

This is despite the government's efforts to prop up the ailing housing market. The GFC even overshadowed the domestic shocks that local property developers faced during the study period, the two main ones being the combination of tsunami, political unrest and drought of 2005, and the worst flooding in 70 years which inundated the Mekong and Chao Phraya river basins including Bangkok.

As Figure 7 shows, in 2008, the Thai economy expanded 1.7%, decelerating from 5.4% in 2007, following a decline in net exports, particularly in the fourth quarter when global economic downturn and internal political unrest adversely affected Thai export demand, manufacturing production as well as tourism prospects (Bank of Thailand, 2009). In 2008, overall real estate market expanded from 2007, due mainly to the government's economic stimulus packages to reduce property transfer and mortgage registration fees. The number and value of real estate transactions grew at 8.4% and 18.0%, respectively.

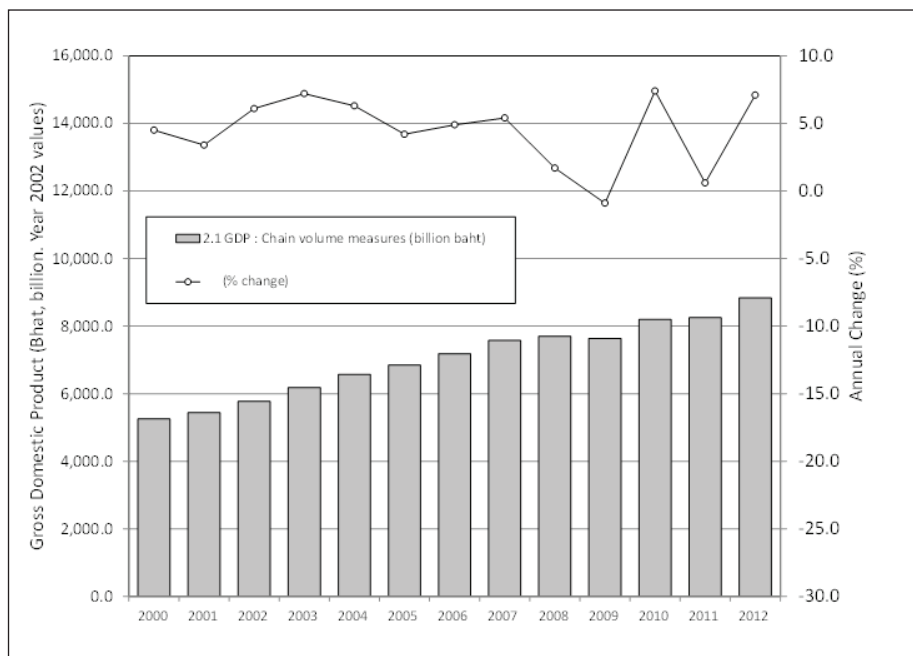


Figure 7: GDP in real 2002 values and growth rates

Source: Bank of Thailand

Two stimulus packages, the first (SP1) valued at Baht 117 billion was disbursed at the end of March 2009 and the second (SP2) valued at Baht 350 billion in 2010. The government’s tax reduction on property transfer and mortgage registration fees effective on 29 March 2008 caused a large jump in purchases and transactions in the second and third quarters in 2008. However, in the fourth quarter, real estate demand declined considerably due to a low level of consumer confidence following domestic economic slowdown which was tied to both political instability and the global financial crisis. Although new projects were launched in 2008, and put on sale in the first half of 2009, new supply in 2009 were limited due to tightened credit standards, especially for small and medium sized real estate developers, as a result of higher risk perceptions.

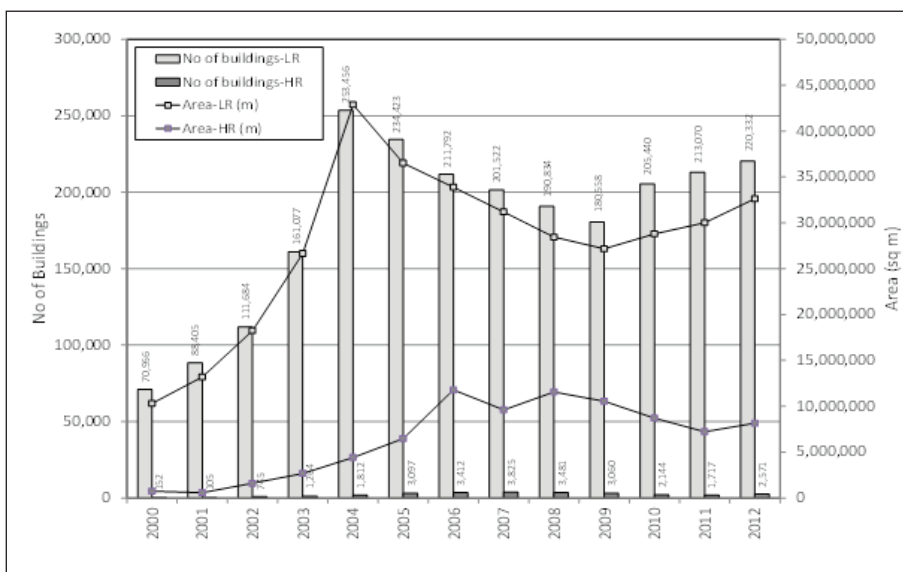


Figure 8: Construction permits for low-rise (LR) and high-rise (HR) housing – nationwide
Source: REIC

For the first time in a decade, the Thai economy contracted by 0.9% in 2009 due to the GFC which had significantly affected its major trading partners (Bank of Thailand, 2010). Exports shrank sharply, leading to a fall in business confidence, as well as domestic consumption and investment. During the first quarter of 2009, the Thai economy was most severely affected by the GFC. However, in the second half of that year, the Thai economy showed signs of recovery following the world economic recovery, as well as monetary and fiscal policies designed to stimulate the economy and shore up producer and consumer confidence. Nonetheless, construction permits for low-rise housing were at their lowest in 2009 compared to the rest of the study period (see Figure 8).

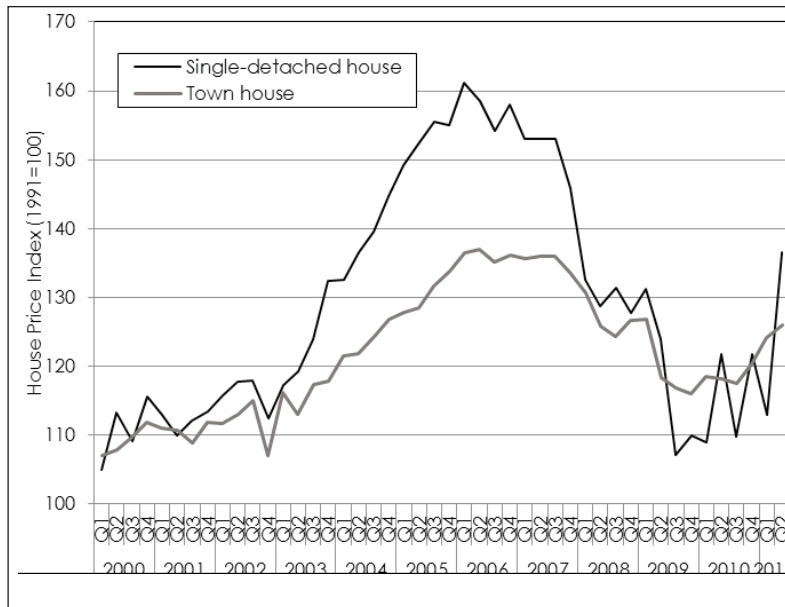


Figure 9: GDP in real 2002 values and growth rates

Source: Bank of Thailand

House price index for single detached houses and town houses peaked in the first quarter of 2009 before crashing in the third quarter 2009 (see Figure 9) as a result of the contraction in the Thai economy, and the uncertainties with regards to the stimulus measures, in particular the income tax deductible for new residential property purchases, which were supposed to cease at the of March 2009. Other incentives include reduction in ownership transfer fee from 2% to 0.01%, and reduction of mortgage registration fee from 1% to 0.01%. (In the end all these measures was extended until end 2009). Housing developers were also rushing to complete their projects to qualify for the government real estate incentive programme originally scheduled to end in March 2009. In 2010, when the economy recovered with a growth of 7.4%, the real estate sector expanded and housing demand started to gradually improve until the end of the year. The price of single detached houses also rose but slower than for condominiums partially due to higher demand for the latter and their corresponding lower prices.

The GFC coincided with yet another round of political upheaval (see Table 3). Somehow the housing market was resilient to this domestic shock. Elections were held in December 2007, after a military-appointed tribunal outlawed the Thai Rak Thai party and prevented TRT party executives from contesting in the elections. The People's Power Party (PPP) won the December 2007 general election. Though it became the largest party in the House, the PPP did not gain an absolute majority, and had to win the support of five smaller parties to appoint its chief, Samak Sundarvej as Prime Minister. The opposition People's Alliance for Democracy (PAD) soon resumed protests against the coalition government. In November 2008, protestors seized and closed both Don Muang and Suvarnabhumi International Airports, paralysing air travel for several days. The government eventually declared a state of emergency in Bangkok and five neighbouring provinces in April 2009.

Table 3: Thailand's prime ministers between 2004-2012.

Note: * acting ** caretaker

Name	Term start
Thaksin Shinawatra	February 9th 2001
Chitchai Wannasathit*	April 5 th 2006
Thaksin Shinawatra**	May 23 rd 2006
Surayud Chulanont	October 1 st 2006
Samak Sundaravej	January 29 th 2008
Somchai Wongsawat*	September 18 th 2008
Chaovarat Chanweerakul*	December 2 nd 2008
Abhisit Vejjajiva	December 17 th 2008
Yingluck Shinawatra*	August 5 th 2011

4.3 Malaysia

Malaysian companies were relatively unscathed from the GFC. Instead they were most affected by the cessation of the mini-boom in 2005 as measured by ROAE:

$$LNROAE = -0.2295 - 0.2162LEVERAGE + 0.0189SIZE - 0.0399D1$$

where D1 is 2005

Table 4: Volume and value of property transaction, 2003-2012.

Year	Volume of transaction		Value of transaction	
	Number	Change (%) y-o-y	(RM billion)	Change (%) y-o-y
2003	243,376	-	43,435	-
2004	293,318	20.5	60,012	38.1
2005	276,508	-5.7	56,782	-5.3
2006	283,897	2.7	61,599	8.5
2007	309,455	9.0	77,143	25.2
2008	340,240	9.9	88,342	14.5
2009	337,859	-0.6	80,996	-8.3
2010	376,582	11.4	107,440	32.6
2011	430,403	14.3	137,828	28.3
2012	427,520	-0.7	142,845	3.6

Source: NAPIC

As Table 4 shows, the volume of transaction contracted in 2005, marking the end of a mini property boom that began in 2002. It also coincided with slower GDP growth (see Figure

10) in the midst of moderation in the growth of the global economy due to oil price hike, downturn in global electronics cycle and US' less accommodative monetary policy (Ministry of Finance, 2006)

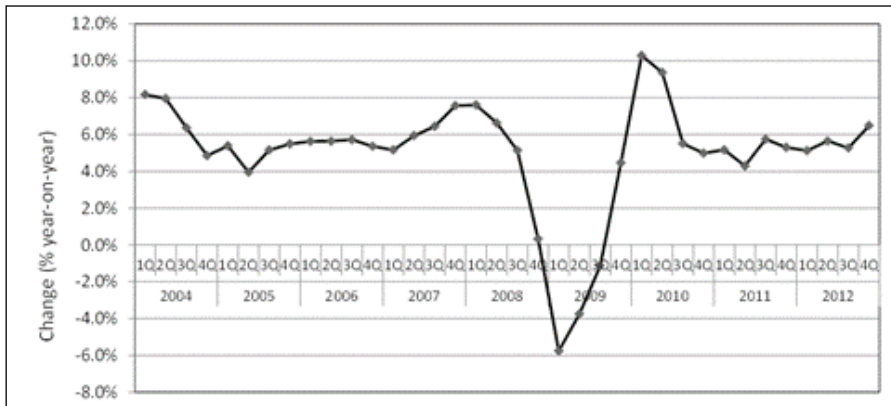


Figure 10: Change in quarterly GDP (% year-on-year, constant 2000 prices)

Source: Department of Statistics Malaysia

New residential launches dropped in 2005 to 57,290 units from 95,339 units the previous year as developers adopted a cautious attitude Bank Negara Malaysia, 2008. The Malaysian economy expanded in 2006 in tandem with strong growth in the US and Asia. Strong external demand was complemented by strong domestic activity as private consumption rose in line with rising incomes, and private investment increased to expand productive capacity to meet demand (Bank Negara Malaysia, 2007). Still developers remained cautious and new launches dropped even further to 38,526 units.

The rest of this subsection helps explain why the sampled population were not severely affected by the GFC. When GDP growth slowed down slightly in 2008 from 6.5% to 4.7%, the property market that year recorded near-double digits growths. REHDA, the trade association representing major developers in Malaysia, attribute the pre-GFC robust property market to three main factors (Mohamad, 2010) :

1. Removal of FIC approval for residential property above RM250,000 (26 Dec 2006)
2. Removal of real property gain tax (1 April 2007)
3. Firm market confidence

Additional boost for the property sector were the various tax incentives introduced for Iskandar Development Region in southern Johor, and the RM381 million government allocation to build 40,000 affordable homes and rehabilitate another 6,000 that had been abandoned. The Malaysian Property Incorporated (MPI) was set up to attract foreign investors in the property sector. To increase efficiency and productivity, the government introduced the One-Stop Centre (OSC) to speed up the process in the handling and approving of housing projects, the New Building and Common Property Act 2007 replaced six laws, exemption for the build-then-sell (BTS) developers from RM200,000 deposit fee and 30% low cost housing provision and fast track approvals for certain types of projects (Valuation and Property services Department, 2009).

Then the GFC hit Malaysia. Prospective housebuyers were cautious due to worsening economic conditions in 2009 (Mohamad, 2010). Even though the Malaysian property market moved on similar low tone with the overall economy for the first two quarters of the year, it recovered in the third and fourth quarters as the stimulus packages took effect (Valuation and Property Services Department, 2009). REHDA described the property market that year as being 'resilient', and the residential and commercial market performance as 'making steady recovery' (Mohamad, 2010). In fact, the volume and value of transactions for 2009 were higher than 2007 (see Table 4). Just like the broader economy, the performance of the property market can be said to be better than expected (Valuation and Property Services Department, 2009). Government stimulus aside, additional measure included reducing registration time from 144 days to 41 days for properties that required valuation and 34 days for those that did not effective 2009 onwards. Budget 2009 focused mainly on housing sub-sector. The government allocated RM50 million under the Housing Assistance Programme to build 1,400 new houses and repair 1,000 homes for the needy. RM300 million was allocated to Jabatan Perumahan Negara to complete houses under various social programmes. Some stimulus measures did not produce the desired effect though. They included home ownership promotion for civil servants in the form of longer house tenure (25 to 30 years), home ownership promotion for the public through partial stamp duty exemptions on sales and loan agreement articles on the purchase of medium cost houses up to RM250,000 and the introduction of lower income tax to stimulate more purchases of medium cost houses. The mobilisation of higher funds through the Housing Credit Guarantee Scheme to assist those without fixed income to own houses did however bear fruit.

4.4 Indonesia

Two equations from the transformed model shows that net profit margin and ROAA of Indonesian were affected in 2012:

$$\begin{aligned} LNPROFIT &= 0.5684 + 0.0366LNLEVERAGE + 0.1039LNGROWTH + 0.0717D2 \\ LNROAA &= -0.0323 + 0.0328LNGROWTH + 0.0350D2 \end{aligned}$$

where D2 is 2012.

This section focuses on this event, before providing explanation as to why they were less affected by the GFC.

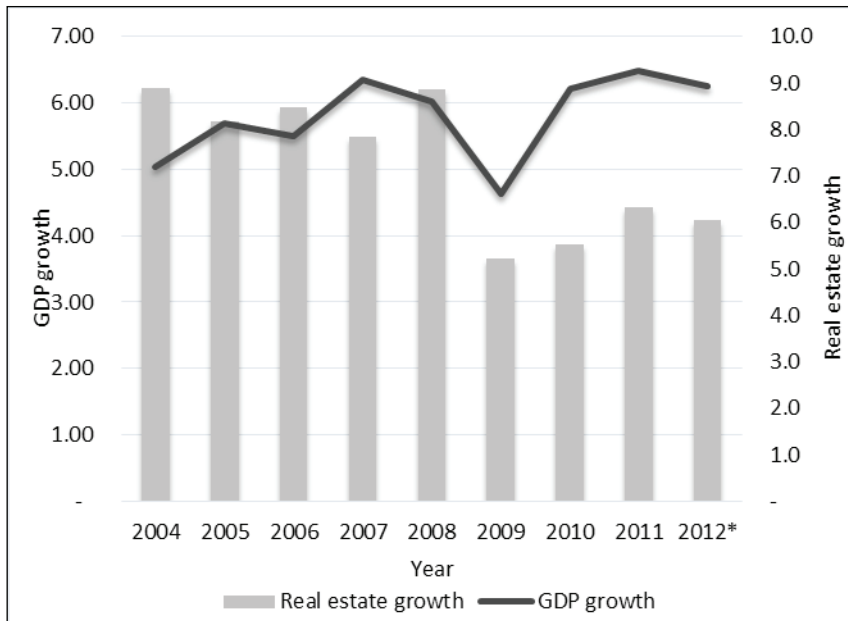


Figure 11: GDP and real estate GDP growth (at 2000 price)

Source: Statistics Indonesia

In 2012, the world was again shaken by another shock so soon after the GFC – The Eurozone Crisis (see Figure 11). Despite the pullback in global demand which slowed down export performance, Indonesia's domestic economy which accounted for more than 50% of the economy was able to maintain steady growth due to strong performance of household consumption and investment (Bank Indonesia, 2013). This strong domestic demand however resulted in escalating import growth. Inflation for volatile foods and administered prices in 2012 was relatively well managed (i.e. 5.7% (yoy)) due to better production and distribution of foodstuff.

The real estate sector was affected by the global economic slowdown in 2012 (see Figure 12). It slowed down slightly to 6.0%. Even so, credit growth was significantly high that year, particularly from the consumption sector that was dominated by residential (KPR) and motor vehicle (KKB) loans. The growth of these two sectors was above the aggregate of credit growth amounting to 24.4% (y-o-y). The residential loans growth, in particular, reached 33.12% (y-o-y). The Residential Property Price Index (RPPI) which covered 14 main cities in Indonesia experienced a drop in the first quarter of 2012, but surged upwards by the third quarter of that year. RRPI for the Jabotabek region (which included Indonesia) suffered an even more pronounced drop due to rising material and labour costs, along with increasing difficulty in bearing licensing cost.

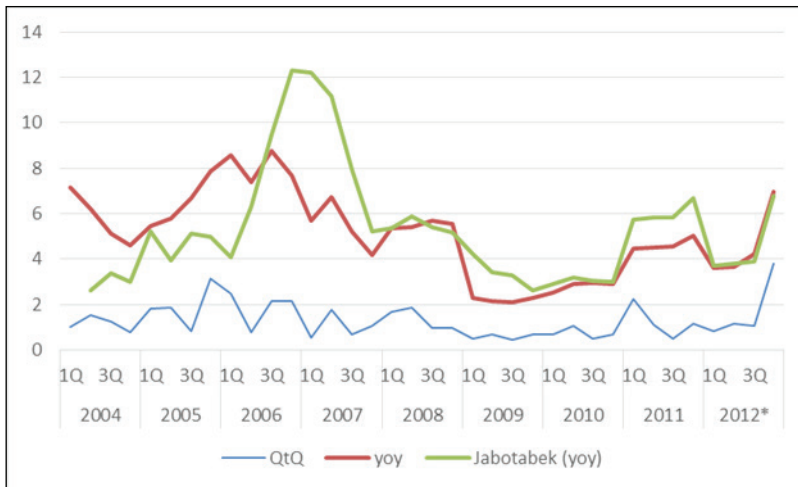


Figure 12: National and Jabotabek RPPI.

It may seem puzzling that the sampled Indonesian companies suffered more from the Euzone Crisis than the GFC given that the impact by the latter on the broad economy and the real estate seem greater (see Figure 11). The remainder of this section dwells on GFC’s impact on Indonesian broader economy and the real estate sector.

In 2008, the general economy slowed down slightly but the real estate sector grew strongly with 8.9% growth (see Figure 12). In 2009, both the general economy and the real estate sector recorded sharply reduced growth brought about by the GFC. The real estate sector only recorded growth of 5.2% as confidence in the financial and real estate sectors was shattered.

Up until September 2008, the economy was still showing some resilience towards the GFC which was already full-blown in the world’s most powerful economies (Titiheruw et. al.,(2009). However, in the fourth quarter of 2008, the GFC began to bear down on the Indonesian economy at an unprecedented speed (Bank Indonesia, 2009). Weakening exports, pressure on the balance of payments and turmoil on the money market took their toll on Indonesia’s economic growth. On the external side, the balance of payments began to accumulate rising deficit and the exchange rate underwent significant depreciation. In the financial market, global liquidity conditions tightened up in tandem with mounting perceptions of emerging market risks. This in turn triggered a slide in the Indonesian Stock Market and Government Securities prices alongside a sharp downturn in the exchange and prompting outflows of foreign capital. Still, the Indonesian economy was able to chart 6.0% growth in 2008 driven by private consumption and exports. Domestic demand made up roughly two-thirds of the economy, which partially helped insulate Indonesia from the full impact of the GFC. The general economy slowed down slightly in 2008, but the real estate sector grew strongly with 8.9% growth (Figure 12). Heavy pressure continued to bear down on monetary and financial system stability in the first quarter of 2009. The economic remained in downward trend due to a deep contraction in exports of goods and services (Bank Indonesia, 2010). These developments undermined confidence among economic actors in the financial and real sectors, as well as potentially reduced the positive performance achieved during the previous

few years. Continuing from the fourth quarter 2009, the Bank Indonesia and government took a number of policies to safeguard macroeconomic and financial stability through monetary and fiscal stimulus. Fiscal policy response was put in place in the face of the contagion. Despite the slowdown, economic growth was 4.6% in 2009, the third highest in the world after China and India. The real estate sector recorded sharply reduced growth of 5.2% in 2009 as confidence in the financial and real estate sectors was shattered.

According to Wilczyński, Indonesia was able to maintain high growth rate in 2009, while Thailand and Malaysia fell into recession because it had implemented a managed floating regime in 2009. There offers four other reasons which includes Indonesia's low share of manufactures in its total exports, its relatively low dependence on export-led growth, and finally, it's relatively low exposure to banks in the US, EU and Japan.

5. CONCLUSION

The public listed property companies of the four countries showed remarkable variation in financial performance during the study period, depending how vulnerable the national economies were to external shocks, the structure of the industry and government interventions. Singaporean companies were the most affected largely because the economy and the property market was the most open among the four countries. They were even affected ahead of the rest of the economy. The double blow of drop in domestic demand as well as international interest resulted in ROAA and ROAE of the sampled companies severely deteriorated. In contrast, Indonesia's economy relied mainly on domestic demand. Instead of being affected by the GFC, it was the inflation due to the Eurozone Crisis that affected most the Indonesia property developers most during the study period.

Thai and Malaysian public listed property companies were affected by the GFC, but the economic stimuli implemented by their governments included measures for the real estate sector, unlike Singapore's. It was unfortunate that the Thai government misjudged the timing for withdrawal of the stimulus packages resulting in their companies suffering a delayed effect from the GFC. As the private players in Singapore play a minor role in the housing sector in Singapore, their plight during the GFC could be excluded from the country's policy intervention priorities without detrimental effect on the broader economy. In fact, in the run up to and even during the peak of the GFC, Singapore's policy makers were striving to cool down the property market.

There are a few lessons that can be drawn from this study. It is axiomatic to say that shocks cannot be predicted. Public listed property companies in more open economies have to be mindful of external shocks than those operating in countries that are more insulated. External shocks can impact the performance of public listed property markets indirectly by weakening domestic demand. The more prominent is the private sector in the domestic real estate market, the more likely is the government to help cushion the impact of the external shocks. However, with all the best intention in the world, the timing of the intervention and its cessation may be misjudged. The one important lesson that can be drawn from this study is that public listed property companies need to be constantly vigilant to domestic as well as international forces acting on their markets, and that they should take the necessary recessionary steps when their market surveillance warns them of impending slumps. Relying totally on government interventions is not wise as the reactions may not fit perfectly with the unfolding events.

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HOW MALAYSIAN CONSTRUCTION INDUSTRY PERFORMS IN THE INTERNATIONAL PRODUCTIVITY COMPARISON

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Abstract

Productivity re-emerged as one of the important pillars in the Eleventh Malaysia Plan (2016-2020). Unlocking the potential of productivity is identified as one of the six game changers in the plan. Since the mid-1990s, Malaysia has focused on increasing innovation and productivity to transform from an input-driven to a knowledge based economy. However, Malaysia continues to lag behind many economies. Construction is an important industry because its output is large and it represents a significant part of the economy. Comparing industry productivity between countries provides a crucial information base for research in comparative analysis and policy making. The construction industry is characterised by the heterogeneity and uniqueness of construction product, complexity of its delivery process and industrial structure and the country specificity of construction products. These characteristics exacerbate difficulties of productivity comparison between different economies. Purchasing Power Parity data from the World Bank's International Program 2011 and employment statistics of the International Labour Organisation are used to generate comparative data of 88 economies after removal of outliers. Malaysia achieved 76% of the world's average of construction labour productivity in the year 2011. It had improved from 62% achieved in the year 2005. The results indicate that developed economies achieve higher construction labour productivity than developing economies in both PPPs and by exchange rates measurement methods. There is converging phenomenon of productivity measured in PPPs and exchange rates when economies transit from developing to developed status. It concluded that construction is transforming from a non-internationally traded product to an internationally traded product.

Keywords: *Productivity, construction industry, international comparison, purchasing power parity*

1. INTRODUCTION

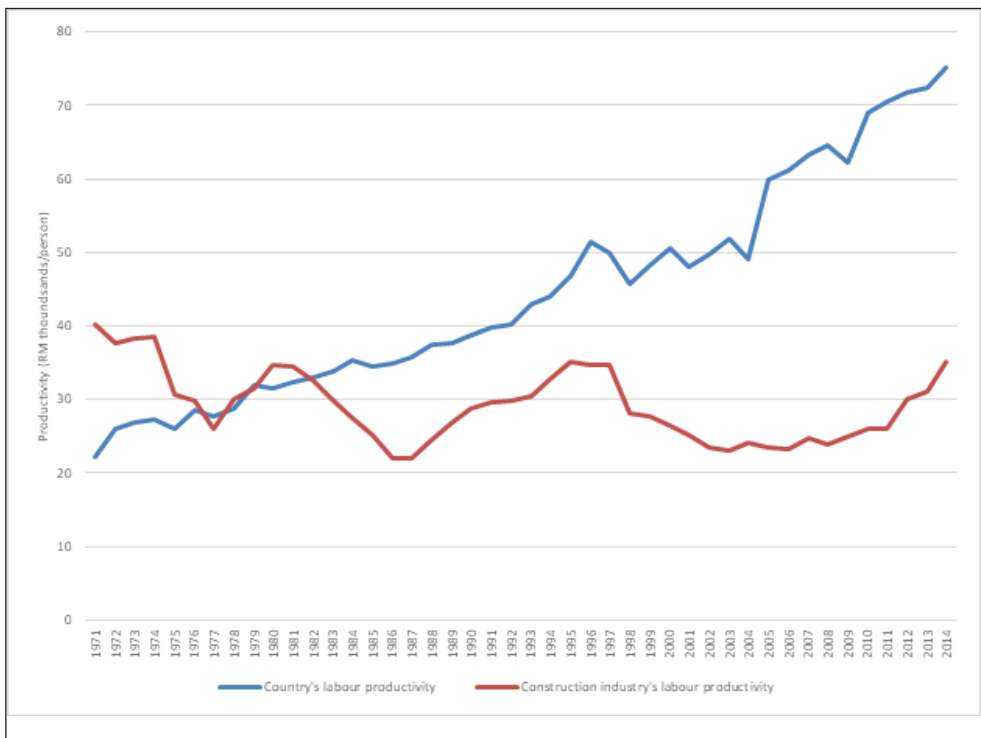
Construction accounts for a significant portion of economic activity and is a catalyst for many other sectors (Langston, 2015). In most countries, construction provides about half their gross domestic fixed capital formation (Hillebrandt, 2000). The world construction industry stands at 5.5% of world Gross Domestic Product (GDP) in 2013 (United Nation Statistics Division, 2014). The construction industry has long been criticized for apparent underperformance (Langston, 2015). In Malaysia, the construction industry employed 9.1% of the country's labour force but shared 4% of the country's GDP and contributed only 0.5% to its growth in 2014. It is the least productive industry among the five major industries in the economy (Table 1). Since 1970s, the construction productivity fluctuated within the bandwidth of RM22,000 per person to RM40,000 per person at constant 2010 price while the overall country's labour productivity had improved more than threefold from RM22,269 per person in 1971 to RM75,092 in 2014 (Figure 1). There was a recovery of construction productivity in mid-1980s after the declination in early 1980s. But the recovery only last until mid-1990s. The growth at the time was predominantly input-driven, supported by private investments in industry and public investments in infrastructure. The growth is not sustainable. By the beginning of 2000s, the construction productivity fell back to almost what had achieved in mid 1980s.

The heterogeneity of construction output remains a complicating factor in productivity measurement (Best and Meikle, 2015). The search for appropriate measures lies on the leading edge of research into the performance of contractors, projects and industries and probably will do so well into the future (Langston, 2015). Over the years, numerous attempts have been made to determine the main drivers of productivity and efficiency in the construction industry (Abbott, 2015). In reality, performance is relative and assessed via comparison to observed best practice. This requires appropriate and current data in an objective (i.e. numeric) format across a wide range of building types, locations, times and regulatory environments that makes the task difficult if not impossible to complete (Langston, 2015). Measurement is the first step that leads to control and eventually to improvement. No single framework or approach fits all situations. The aim of this paper is to establish how Malaysian construction industry compares with the similar industries of the rest of world. The objective of this paper is to use Purchasing Power Parity (PPP) data from the World Bank's International Program 2011 and employment statistics of the International Labour Organisation in order to generate comparative data of construction labour productivity. The study contributes to the knowledge of the world ranking of Malaysian construction labour productivity. The output will be useful to review and reflect how effective are the policies or procedures practiced in the past by the industrial actors and the regulatory institutions and what are the areas for further improvement of the industry.

Table 1: GDP by Economy Activity, Employment by Industry and Labour Productivity in 2014 (at constant 2005 prices)

Industry	GDP By Economic Activity		Employment by Industry		Labour Productivity (RM/person)
	RM million	% share	Thousand persons	% share	
Agriculture	58,245	7.0	1,676.5	12.4	34,742
Mining and quarrying	64,136	7.7	77.7	0.6	825,431
Manufacturing	205,534	24.7	2,207.8	16.4	93,094
Construction	33,297	4.0	1,228.5	9.1	27,104
Services	460,202	55.3	8,293.3	61.5	55,491

Sources: Computed from the data in Economic Report 2014/2015

**Figure 1:** Total Labour Productivity and Construction Labour Productivity of Malaysia, 1971-2014 (at constant 2010 prices)

Source: Computed from Various Issues of Economy Reports

2. INTERNATIONAL COMPARISON OF CONSTRUCTION PRODUCTIVITY

It is not feasible to quantify construction output aggregately because of heterogeneity of these outputs. It leaves the use of monetary value as the only way to aggregate the output of the industry. Often cost of construction is converted in USD to make comparisons. However, using exchange rates when comparing one country's national economy with another could be distorted by price level differences between the countries (Best and Meikle, 2015). The difference between GDP levels in two or more economies reflects differences in both the volume of goods and services produced by the economies and the price levels of economies. These differences do not reflect the relative purchasing power of the currencies in their national market (The World Bank, 2015). Moreover, the supply and demand for currencies are influenced by many factors such as currency speculation, interest rates, government intervention and capital flows between economies. Hence, the volatility of exchange rates often distorts a country's construction costs making it difficult to compare with the cost of construction in other countries (Meikle and Gruneberg, 2015).

2.1 Nominal and Real Expenditure

Normally economies report nominal expenditures on GDP and its constituent aggregates and product groups. Nominal expenditure is expenditure that is valued at national price levels, which are expressed in national currencies or in a common currency after being converted by exchange rates. However, the exchange rates do not correct for differences in price levels between economies and so expenditure is still valued at national price levels. Conversely, real expenditure or purchasing power parity (PPP) deflate the nominal expenditure so that expenditure is valued at a common price level. This reflects real or actual differences in the volume purchased in economies and provides the measures required for international volume comparisons (The World Bank 2015).

2.2 Purchasing Power Parity

PPP is a neutral way of stating the ability of one nation's currency to purchase goods in different nation costs recorded in various national currencies in a single currency (Taillard, 2013). It is defined as a spatial price deflator and currency converter (The World Bank, 2015). A most popular example of such measurement approach is the Big Mac Index. The Big Mac Index was created by The Economist in 1986 as a lighthearted guide to whether currencies are at their "correct" level. It is based on the notion that in the long run exchange rates should move towards the rate that would equalise the prices of an identical basket of goods and services (The Economists, 2016).

The International Comparison Program (ICP) conducted under the charter of the United Nations Statistical Commission (UNSC) is the principal sources of data on the PPPs. The latest round of the ICP 2011 was published in 2015. There are 199 economies participated and produced a full set of results for 177 economies. It accounts for around 97% and 99% of the world's population and the world nominal GDP respectively (The World Bank, 2015). Construction expenditure is one of the 25 sub aggregates of expenditure reported in ICP 2011.

2.3 Productivity

'Performance' and 'productivity' are often used interchangeably in the literature. Studies into the efficiency of multiple projects or contractors may help to understand industry performance, and these types of studies tend to focus on comparative productivity (Langston, 2015). Productivity is an average measure of the efficiency of production, which is expressed as the ratio of output to inputs used in the production process. The productivity measures can be classified as single factor productivity or multifactor productivity. Single factor productivity relates a measure of output to a single measure of input, while multifactor productivity relates a measure of output to a bundle of inputs.

An example of single factor productivity is labour productivity. Labour productivity is easy to measure. It partially reflects the productivity of labour in terms of the personal capacities of workers or the intensity of their efforts and how efficiently labour is combined with other factors of production. It also reflects how many of these other inputs are available per worker and how rapidly embodied and disembodied technical change proceeds (OECD, 2001).

In addition, labour productivity captures the movements of output with gross output or value-added.

When measured as gross output, labour productivity rises as a consequence of outsourcing and falls when in-house production replaces purchases of intermediate inputs. The efficiency gain as a consequence of input substitution such as a change in the individual characteristics of the workforce and a shift in technology or efficiency will not be captured (OECD, 2001).

Value-added based labour productivity measures tend to be less sensitive to processes of substitution between materials plus services and labour. When labour is replaced by intermediate inputs, which takes place in outsourcing, leads to a fall in value added as well as a fall in labour input. The first effect raises measured labour productivity; the second effect reduces it. Hence, value-added based labour productivity measures reflect the combined effects of changes in capital inputs, intermediate inputs and overall productivity, they do not leave out any direct effects of embodied or disembodied technical change (OECD, 2001).

3. Research Methods

The choice of productivity measures depends on the purpose of productivity measurement and the availability of data. Labour productivity used in this paper is a single factor productivity measure based on gross output. The PPP data for construction expenditure of different economies found in the ICP 2011 are used as proxy for output in order to derive the value of productivity. In a nutshell, construction labour productivity (CLP) is the ratio of the quantity of gross construction output to the quantity of labour input (OECD, 2001).

The quantity of labour input in this study is obtained from the International Labour Organisation's central statistics database (ILOSTAT) which is the primary source for cross-country statistics on the labour market. There are 100 indicators and 165 economies labour data available in ILOSTAT database. Employment by construction of the different economies are used as proxies of quantity of

labour input are extracted from the section of Employment by Economic Activity and Occupation of the database (International Labour Organization, 2015).

There are only 93 matching pairs of economies found in the construction expenditure in ICP 2011 and employment statistics of ILOSTAT. They account to 82.5% and 89.9% of real construction expenditure and nominal construction expenditure respectively reported in ICP 2011.

A one-way analysis of variance (ANOVA) was conducted to evaluate the significance of relationship between the development status (independent variables) and the construction labour productivities (dependent variables). The developing status is based on the World Bank's classification of economies, which is based on estimates of gross national income (GNI) per capita for the previous year. As of 1 July 2011, low-income economies are those that had average 2010 incomes per capita of not more than \$1005; lower-middle-income economies had average incomes of \$1,006 to \$3,975; upper-middle-income economies had average incomes of \$3976 to \$12,275; and high-income had average incomes of \$12,276 or more. Low and middle-income economies are commonly referred to as developing economies (The World Bank, 2015).

4. RESULTS AND DISCUSSION

Figure 1 is a boxplot of the CLPs grouped by developing status and shows there are five outliers, two in high income economies (i.e. Aruba and Macao), and two in upper middle income economies (i.e. China and Seychelles), and one in lower middle income economies (i.e. Bhutan). The five outliers are removed from this study. Among these outliers, China and Bhutan appeared to be two extreme cases that might merit more careful checking separately. For example, Bhutan is a small country. Its Eleventh Five Year Plan (2013-2018) reported that its construction sector contributed about 16 percent of nominal GDP and recorded an annual growth of 35 percent in 2011. The construction sector employed less than 5,000 Bhutanese in 2012 (Gross National Happiness Commission, 2013). Is the statistics include all the construction labour in the country?

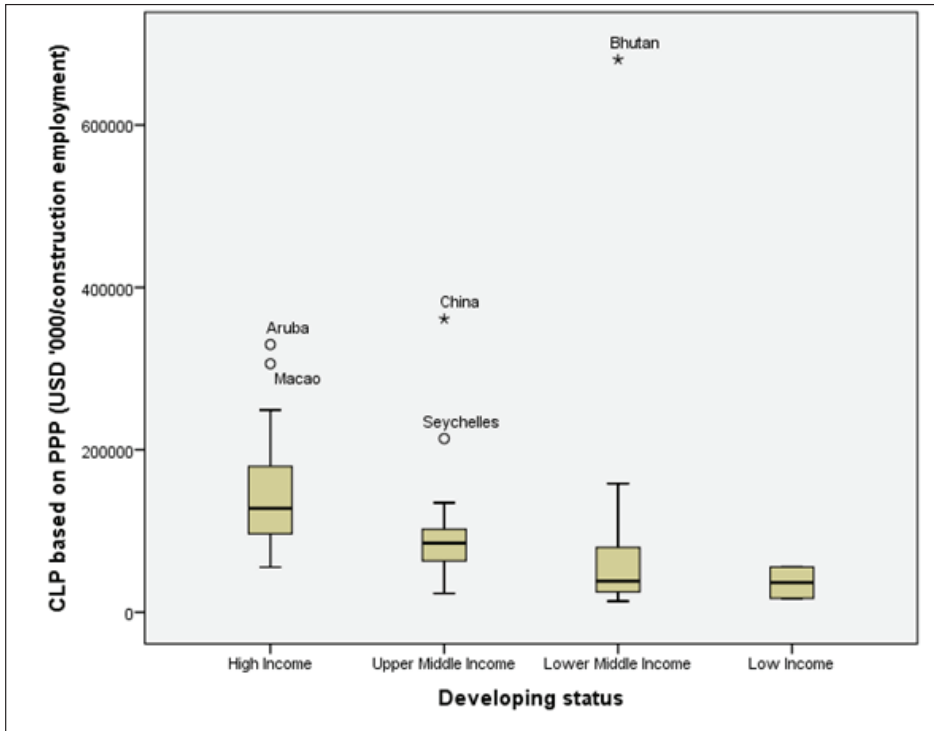


Fig. 2: Boxplot of CLP based on PPP (USD '000/construction employment) and developing status

Table 2 shows the construction labour productivities based on PPP are higher than the construction labour productivities based on exchange rates. In addition, the average construction labour productivity is higher in the economies with higher development status than those economies in the lower development status.

Table 2: Average Construction Labour Productivity based on PPP and Exchange Rates by Development Status

Developing status	N	Construction Labour Productivity based on PPP		Construction Labour Productivity based on Exchange Rates	
		M	SD	M	SD
High Income	47	133 334	47 745	106 529	59 714
Upper middle income	24	81 335	25 588	31 608	10 578
Lower middle income	15	50 290	40 772	16 664	10 100
Low income	2	36 435	27 328	7 812	1 999

Table 3 shows that ratio of variances of construction labour productivity based on PPP or exchange rates and development status are $F(3, 84) = 20.43$, $p = .00$ and $F(3, 84) = 24.71$, $p = .00$ respectively, which indicates that the construction labour productivities are significantly different according to the development status.

Table 3: One-way Analysis of Variance of Construction Labour Productivity on Comparing Developing Status

Developing status	Construction Labour Productivity based on PPP					Construction Labour Productivity based on Exchange Rates				
	Sum of squares	df	Mean square	F	Sig	Sum of squares	Df	Mean square	F	Sig
Between groups	105 046 285 722	3	35 015 428 574	20.434	.000	148 305 307 835	3	49 435 102 611	24.713	.000
Within groups	143 937 784 845	84	1 713 545 058			168 029 397 656	84	2 000 349 972		
Total	248 984 070 568	87				316 334 705 492	87			

Table 4 presents top 10 economies of the remaining 88 economies which have highest construction labour productivity based on PPP and exchange rates. Singapore has the highest construction labour productivity among the 88 economies included in this study when measured in PPP. Singapore's construction labour productivity index value is 678 which is 6.8 times higher than the world average (World average index = 100). However Singapore's construction labour productivity is 4.8 times of average world index when measured in exchange rates. Luxembourg's construction labour productivity is the highest if it is based on exchange rates measurement. Construction labour productivity tends to be higher in the high income economies than the low income economies. In higher-income economies, the gaps between construction labour productivity measures in PPPs and exchange rates are narrower. The construction labour productivity is higher based on exchange rates measurement in higher income economies. The increase in the number of very large projects or projects that require some form of vertical integration causes the growth of very large firms (Runeson and Valence, 2009). As Gruneberg and Ive (2000) explain, the larger firms obtain a higher productivity and faster rate of productivity increase because they own or invest in larger amounts of plant and equipment or other fixed capital per worker; larger firms hire or lease a larger proportion of the fixed capital they use; larger firms have a lower porosity of the working day, higher work intensity or greater non-capital-embodied efficiency; and for the larger firms there is an implied bargain that workers will work with above average intensity and in return will receive above average wages (Gruneberg and Ive, 2000).

Table 4: The Top 10 Economies with Highest Construction Labour Productivity based on PPP

Economies	Construction Labour Productivity based on PPP		Construction Labour Productivity based on exchange rates	
	USD/Person	Index (world=100)	USD/Person	Index (world=100)
Singapore	867,863	678.20	372,628	481.52
Luxembourg	492,639	384.98	421,138	544.21
Saudi Arabia	248,933	194.53	58,159	75.15
Belgium	206,154	161.10	168,909	218.27
Netherlands	199,997	156.29	191,795	247.84
Finland	199,983	156.28	194,469	251.30
Canada	192,678	150.57	213,732	276.19
Hong Kong	192,501	150.43	99,243	128.25
Ireland	189,143	147.81	119,622	154.58
Israel	183,807	143.64	157,050	202.95

Source: Computed from ICP 2011 and employment database maintained by ILOSTAT

Table 5: Malaysian Construction Productivity based on PPP in years 2005 and 2011

Year	Construction Labour Productivity based on PPP		Construction Labour Productivity based on exchange rates	
	USD/Person	Index (world=100)	USD/Person	Index (world=100)
2011	93,417	73.00	29,351	36.64
2005	46,365	62.00	11,140	20.00

Source: Computed from ICP 2011, and ICP 2005 and employment database maintained by ILOSTAT

Malaysian Construction Labour Productivity is 73% of world average in year 2011 based on PPP and 37% of world average if based on exchange rates measurement (Table 5). Low productivity is one of the biggest challenges faced by the local construction sector. The Productivity Report 2015/2016. Reported that the majority of construction works were driven by the private sector. The lack of interest to undertake IBS, especially among private sector project owners, dampened productivity growth of the sector (Malaysia Productivity Corporation, 2016).

One possible explanation of higher value resulted from measurement based on PPP is the construction industry is non-international traded product, it consumes and utilises local resources most of the time. Construction labour productivity in Malaysia improved from 62% of world average in year 2005 to 73% in 2011 (Table 5). It ranks 51 position among the 88 economies in this study. The industry has an obvious improvement between the two periods of measurement, but it is far away from the world average. There is considerable efforts to increase the application of the country's Industrialised Building System (IBS) to increase mechanisation of the industry and to reduce over-dependency on unskilled foreign labour. Government has make it compulsory for public and private projects to utilise IBS components to a minimum of 70% and 50% respectively by 2015.

Construction labour productivity measures of the two methods are tending towards convergence as the economies grow from developing to developed status. Such convergences indicate increasing influenced of the exchange rates on the construction labour productivity. In the case of Malaysia, the

42% difference of two measurement methods in 2005 is narrowed to 36% in 2011. This suggests that the construction industry is changing from being a long-established non-international traded industry to a more complex international traded industry. The role of international contracting is going to change the productivity performance of the construction industry. Construction projects have increased both in their complexity and scale and there are increasing numbers of construction contracts being won by the international contractors. Advanced construction technology, newly developed construction materials, integrated project delivery and trade liberalization are removing the traditional barriers of the construction markets driving their transformation into a competitive international marketplace.

5. CONCLUSION

There are many productivity enhancers within the construction industry worldwide. Lean, BIM, value-based procurement, innovative industry tools and collaboration are all powerful tools to be adopted, but they need to be used together to deliver the most dramatically improved results. Meeting the productivity challenge is an industry-wide problem which requires changing expectations and behaviors of all stakeholders and breaking down the existing siloes and adversarial culture in the industry. The culture of productive excellence can be inculcated amongst all stakeholders in the industry to produce more with less, upskilling rather than expanding workforce, sharing risks and rewards across the value chain and willing to think and act beyond the context of individual projects.

This study evaluates Malaysian construction labour productivity position in the global setting. The PPP measured of productivity corrects the price level differences and reflects real or actual differences in the volume of construction produced in economies. The below world average performance of the industry highlighted the industry needs to learn from the industries in more successful countries on the areas of improvement such as industry practices, construction processes and regulatory interventions.

In the run-up to 2020, the Malaysian government plans to spend RM 260 billion on development projects. About half of this allocation is earmarked for infrastructure development. This substantial amount in the volume of construction works provides an opportunity for the construction sector to adopt new technologies and new methods of construction to provide a possible quantum leap in productivity through the more efficient utilization of technologies, manpower and resources in future.

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DETERMINANTS OF CONDOMINIUM PRICES IN SHAH ALAM

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Abstract

Property prices have significantly been increased over the past few years, notably in the rapid developed state such as Selangor. Most of the low-to-mid range income households could not be able to follow the trend of upsurging housing prices, subtly causing housing unaffordability, potential of property bubble and low successful rate on accepted house loans in Malaysia. With all these constraints in property purchasing, low-to-mid range income households are having difficulties in purchasing a good and value property due to the lack of guidance and references in current market. Therefore, this paper aims to study the determinants of property prices in Selangor. As a state capital of Selangor, Shah Alam is selected as the study area in this research while condominium prices are studied and analysed in this research since condominiums are the most famous type of property for low-to-mid range income households in Malaysia. The determinants influencing condominium prices are categorised into locational and neighbourhood factors, structural factors as well as governmental policies. Multiple linear regression analysis is carried out in this research to study determinants of condominium prices in Shah Alam. This research finding indicates that significant determinants affecting the price of condominiums are built-up area, strata titles ownership and number of storeys. The finding of this paper serves as a good reference for low-to-mid range income households in purchasing condominiums in Shah Alam.

Keywords: *Multiple Linear Regression, Price, Condominium, Determinant*

1. INTRODUCTION

Development of the housing industry plays an important role in urban economy especially to developing country such as Malaysia. It provides employment opportunities as well as motivates the local and oversea investors. Many households and investors see residential properties as an attractive form of investment and residential property prices have been indirectly increased due to high demands from household and investors. In another words, the evolutions of house prices are always affected by the households, investors and housing economists.

Housing markets tend to keep a fast pace in major cities, such as Selangor which has being well developed during the years especially with good infrastructure. Moreover, the demographic changes in Selangor also bring up the housing industry. Furthermore in recent years, high-rise residential had gained popularity among Malaysians and it also become the mode of living for the country's middle and upper class families (Zarin, 1999). Despite the high rise unit price in Selangor has experienced in an increasing growth, people still often invested in this development. This can be due to the pertinent attributes of high-rise properties such as the sharing of facilities and co-ownership of common properties (Hoon and Science, 2008).

Malaysia house prices have significantly expanded over the past few years which the increase in house prices in the country can bring serious impacts such as issues of unaffordability, potential of housing bubble and effects on domestic economy (Ong, 2013). In fact, Malaysia had experienced a dramatic upswing in housing prices during the period of years 2009 to 2012. Moreover, the rapid growth of Kuala Lumpur and Selangor has also caused the property prices to increase drastically (Suhaida et al., 2011). Figure 1 shows that the house price in state Kuala Lumpur and Selangor experienced upscale and more valuable than average house price in Malaysia.

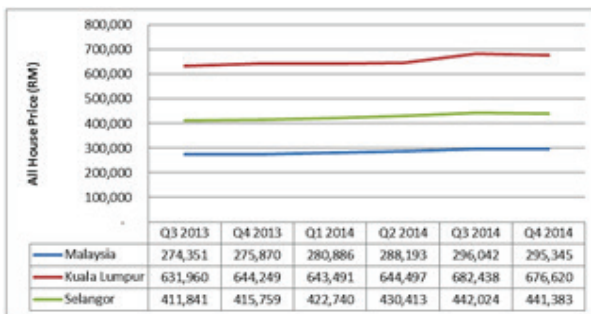


Figure 1: Average House Price of Malaysia, Kuala Lumpur and Selangor

Furthermore, referring to a finding by US-based urban development researcher Ng (2014) reveals Malaysia's residential housing market is "severely unaffordable", even more out of reach than residents in Singapore, Japan and the United States. Zainal Abidin Hashim (2010) argued that the unsustainable of housing can be caused by fluctuation in house prices which do not synchronise with income and the price of house is too high where owners not able to afford monthly mortgage payments. Moreover, the continuously upswing of housing price may lead to housing bubble where if the bubble burst, house market will experience losing persistent rise in house price (Liew & Haron, 2013).

How to control the current situation of high properties price effectively? If the house prices increase continuously, this may leads to issues such as affordability of homeownership and housing bubble? The fluctuation of property price can be caused by various factors including locational and neighbourhood factors, structural factors and government policy. Factors influencing housing prices have to be identified in order to control the housing price and house market before it grow into an unhealthy condition. As such, it is important to determine which factors that causing the upswing of house prices.

Over the past decade, the factors affecting property prices has been attracting interest and concern of buyers or investors. According to Azmi et al.(2012) property values are subjected to various factors and hence making it difficult to be derived. Several factors have been identified which making up housing price increases. Among the factors are locational and neighbourhood factors, structural factors as well as government policies and economic factors. Each of these factors contributes differently to the property prices. It is important for buyers or investors to determine and study these factors before buying a property.

Good location and neighbourhood characteristic are one of the key factors that determine the prices of real estate (Szczepanska, et. al., 2015). Home buyers will priorities the public amenities and environment offered by the house"s neighbourhood while determining the location of their residence as stated by Lee and Lin, (2012).Generally, locational and neighbourhood can be categorised into accessibility to local amenities, transportation infrastructure and environment quality.

Distance is always describing as a key factor that affect the preference of home buyers while deciding to buy a property (Sean and Hong, 2014). Accessibility towards local amenities such as school, recreational parks, places of worship and shopping mall will significantly influence the price of houses. Besides, parks also had a positive effect on house prices even the ability to view the park may have effect on property price too. Hui et al. (2012) point out house prices positively increase with the accessibility to green living and nature space. Jim and Chen (2006) mentioned that most developers believe that price of apartments can increase positively with a pleasant green environment and garden view. Additionally, places of worship are found to have positive effects on neighbouring condominium price within certain distance (Brandt, et.al 2015). Likewise, accessibility towards healthcare facilities and shopping mall surprisingly appears significantly and negatively effect on house prices due to noise and traffic (Brennan et al. 2014).

Transportation infrastructure has impact directly to the condominium prices and rents. Real estate prices have always been closely related to the availability of public transport where the homeowners often willing to pay more to stay at a location accessible to public rail transit (Moorthy, 2014). This is supported by Liew and Haron (2013) who mentioned house price can be risen once updated with public infrastructure such as public transport nearby. Indeed, rail transit can have both positive and negative impact towards properties price. Efthymiou and Antoniou (2013) mentioned that transaction price increases to a property which is less than 500m from a tram or less than 50 m from a bus stop. Furthermore, there will have significant impact on property prices of the area that announced to build the new rail facilities even before the station was opened. Developers will generally forecast the potential property prices of that area by considering factors that may contribute to the values, thus caused the increases of property prices. Conversely, housing prices that located too close and too far

from the highways are low, while those situated in a moderate distance are higher in price (Efthymiou and Antoniou, 2013). In some cases, prices of properties situated nearby the transit reduce due to privacy and security concerns.

However, Kilpatrick, et. al, 2007 claimed that with accessibility to transportation infrastructure also comes with negative externalities of pollution. This is due to the pollution produced by the transportation infrastructure which bring negative affects to the neighbourhood, especially rail stations, airport and ports. Generally, air pollution are caused by increasing of human and industrial activities, thus houses that is near to the rail station which suffering from traffic congestion will have higher levels of air pollution (Efthymiou and Antoniou, 2013). Chau, et. al., 2006 suggested that buyers are willing to pay more for less polluted environment, particularly apartment prices which are found to be more sensitive to air quality in more polluted areas. In addition, noise pollution is another key determinant of real estate prices (Szczepanska et al., 2015). For instance, Efthymiou and Antoniou, 2013 indicated that house prices are discounted up to 0.63% per decibel of noise around the highways and noise generated from the taken off and landing by airplane result the dwelling prices drop around the International Airport of Athens. This is because either air or noise pollution will contribute to serious health problems to the residents.

Structural factors refer to all physical conditions and the quality of the property (Sean and Hong, 2014). Common structural factors including building age, floor level, number of storey, built-up area and number of rooms which each factors bring significant effects to the property prices either positively or negatively.

Floor level refers to the vertical distance between a property and the landscape factor (Sean and Hong, 2014). It is believed that condominium on higher floor levels usually are priced higher compare with those on lower floor levels due to less noise disturbance and better air quality by considering the proximity to avenues and streets. The preferences of residents toward landscape views are noticeably different when a condominium is above certain floor levels. For instance, Hui et al., 2012 suggested the sea view is the most important landscape factor in contributing to a better transaction prices for condominiums with floor level below 20th floor.

Furthermore, number of storey, rooms and built-up size are significantly affect housing price too (Sean and Hong, 2014). Higher construction costs is incurred and longer construction time is required to building with higher number of storey, rooms as well as larger built-up, therefore the property prices will generally higher because developers will generally forecast the potential risk he may face during the constriction and also to cover the cost incurred. Additionally, building age has directly brought negative effects to the house prices.

In Malaysia budget 2014, the latest version of RPGT is announced where there is a significant increase to the current RPGT rates to further curb speculative activities in the local real property market. The new RPGT rate will be 30% for properties sold within the first three years, 20% for properties sold in the fourth year, 15% for properties sold in the fifth year and in sixth and subsequent years, no RPGT is imposed on citizens or permanent residents. In order to reduce the speculative activities, the RPGT rate has increased from 15% to 30% and extending the period from two years to three years. This is due to the past RPGT have leads to many speculators who buy and sell properties for short-term gain have distorting real demand.

Strata titles ownership is believed to affect house prices and also parties' interests in buying a property (Hussin and Pardi, 2003). Malaysian Strata Law has always been commented as outdated and inadequate compare to countries like Singapore and Hong Kong. Fortunately, Strata Titles (Amendment) Act 2013 and Strata Management Act 2013 finally enforced on 1st June 2015. The amended Strata Titles Act has injected clarity and security in the sales and purchase as well as management of subdivided.

Recent government policies and rapid economic growth making Malaysia as an emerging property market among foreign investors (Sean and Hong, 2014). In fact, lending, GDP and property prices are interrelated to one another. Particularly GDP play an important role in influencing the house price. During the period of high growth in GDP, income of the citizen have been increased, demand of houses tend to increase which causing short shortage of supply directly increase the price of property.

2. METHODOLOGY

The determinants influencing condominium prices are categorised into locational and neighbourhood factors, structural factors as well as governmental policies. As a state capital of Selangor, Shah Alam is selected as the study area in this research while condominium prices are studied and analysed in this research since condominiums are the most famous type of property for low-to-mid range income households in Malaysia. Multiple linear regression analysis is carried out in this research to study determinants of condominium prices in Shah Alam.

Property transacted price is required in the research in order to carry out a valid analysis to achieve the objectives. The transactions data in year 2013 and 2014 is collected from JPPH in Shah Alam branch. JPPH is set up and act as a property information center in Malaysia to provide accurate, comprehensive and timely information to all parties involved in the property industry. Property transacted prices plays an essential role for studying the property price trend in the current market. Besides that, property transacted price also the key component to measure the hedonic price in comparing the housing price in particular area and years. One of the classical goals of price statistics is quantification of the "true price change" in a certain quality (Brachinger, 2003).

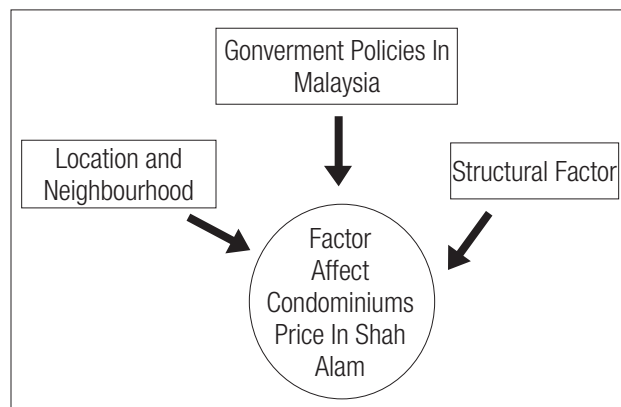


Figure 2: Factors affecting condominium prices

Locational and neighbourhood factors, structural factors and government policies are the potential factors that contribute to the changes of high rise properties price. Tenure, strata titles ownership, built-up area, number of storey, number of rooms, age of building, locational facilities, GDP growth rate and RPGT data are collected and tested by using hedonic regression analysis. Besides, several locational and neighbourhood factors has been analysed in this research. Nearest walking distances between each property to the locational and neighbourhood variables are measured by using Google map.

3. RESULTS AND DISCUSSION

A total of 14 variables are inserted into the model of condominiums which includes tenure (jenis lot), strata titles ownership (pegangan), built-up area (luas ibu), number of storey (tingkat atas tanah), number of rooms (bil bilik tidur), age of building, GDP growth rate, RPGT, distance to Setia City Mall, blue mosque, Taman Botani Negara, MAZ International School, nearest KTM station and Kesas highway.

Table 1: Enter Method Model Summary of Condominiums

R Square	Adjusted R Square	Sig. F Change	Durbin-Watson
0.764	0.728	0.000	2.157

The Sig. F Change of the analysis is 0.000 which is below 0.050. Furthermore, the Durbin-Watson value of 2.157 for condominiums which is near to 2.000. It indicated that correlation is not significant in this model.

R Square is used to define the percentage of the response variable variation that is explained by the linear model. It is also known as the coefficient of multiple determinations for multiple regressions. According to table 1, model of condominiums has R Square value of 0.764 or 76.4% which indicates the variables entered into the model is reasonably well fitted and significantly affecting the house prices.

Table 2: Coefficients of the independent variables for Condominiums in Shah Alam

Model	Unstandardized Coefficients, B	Sig.
(Constant)	-31313.026	0.859
Jenis Lot (Strata title ownership)	68326.528	0.000*
Pegangan (Tenure)	-13163.097	0.267
Luas Ibu (Built up area)	2273.443	0.000*
Tingkat Atas Tanah (Floors above ground)	3989.933	0.010*
Bil Bilik Tidur (Number of rooms)	6618.200	0.805
Age of Building	1306.243	0.365
Setia City Mall	-3186.087	0.470

Blue Mosque	-89.452	0.988
Taman Botani Negara	-2375.437	0.515
International School	3895.809	0.065
Kesas Highway	998.308	0.655
KTM Station	8079.070	0.272
GDP Growth Rate	2365.438	0.889
RPGT	4616.354	0.887

Dependent Variable: Price

The independent variables are significant and bring substantial impact to the dependent variable if the significant value is below 0.05. Strata titles ownership, built up area and floors above ground are the significant variables affecting condominium prices in Shah Alam.

Besides that, B value indicates the degree the independent variables affecting dependent variable, either positively or negatively. Built up area in table 2 has the Sig. value of 0.000 and B value of 2273.443, this explains that the price of condominiums will be increased by RM 2273.44 for every square meter added to the built up area. This is supported by previous similar study that conducted by Management and Taxes (2015) which mentioned that the larger the built-up area, the higher the value of the property. With the same method of interpretation, the price of condominium will be increased by RM 3989.93 for every storey added. This result aligns with condominium selling prices in the market as most of the developers will sell higher condominium units in higher prices.

Strata title ownership has the Sig. of 0.000 and B of 68326.528 in the table 2. The result indicates that condominiums with developer titles are averagely RM 68, 326.53 more expensive. In Malaysia, transfer strata title ownership is always a buyer's concern, particularly to the high-rise residential properties. In short, condominiums with strata title theoretically should be more expensive compared to condominiums with developer titles. However, this phenomenon may be caused by the massive price gap between newer condominiums and older condominiums. This result indirectly shows that newer buildings with developer titles are averagely higher in selling price compared to older buildings with strata titles. The price gap between older buildings and newer buildings are vast and it may be caused by the upsurge of the property prices in recent years.

4. CONCLUSION

Hedonic regression analysis has been used to study the relationship between each factor to the condominium prices in Shah Alam. The significance factors affect the price of properties have been discovered. Structural factors such as number of storey, number of room and strata titles ownership are significantly influencing the price of condominium in Shah Alam. Surprisingly, neither government policy factor nor locational and neighbourhood factor is significantly affecting the condominium property price in Shah Alam.

However, the scope of study for this research is only limited to the condominiums located in Shah Alam. This research can be further expanded by adding more structural factors, government policy factors, locational and neighbourhood factors into the hedonic regression model. Additionally, a

qualitative approach or another quantitative approach is recommended to analyse the condominium prices in Shah Alam to increase the accuracy of the findings as well as cover the externalities which missed out in this quantitative analysis

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