

# Strata Title Reforms In Malaysia: A Review And Challenges Of Regulatory And Governance Panacea

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**Abstract:** Malaysia has some of the largest and most complex strata development in the prime area. A strata scheme is a property development which divides buildings or land into a number of parcels with strata titles. It is separate property deed for each unit in a subdivided under the strata law and necessary as a proof of the ownership of the parcels. The Strata Title Act (STA) 1985 was the first legislation to govern the subdivision buildings into parcels in Peninsular Malaysia. It has gone through a number of modifications and amendments to promote good governance in the property development industry. The latest strata law reforms have accelerated the issuance of strata title, increased protection and facilitated the management of strata for home purchasers and imposed stricter conditions on developers. Until recently, the development of strata schemes in Malaysia has been more notable for its issues and challenges than its successes. This paper is to reviews the legal aspects of the strata development as stipulated in the Strata Title Act 1985 and identifies areas of difficulty in Malaysia that may be the challenges to the interested parties. The research method used is the qualitative research in which it will rely on the analysis of the relevant statutes, rules, regulations, books, journals, articles, thesis, monograph, research grants reports, seminar papers, electronic materials and various newspaper reports. The paper will be of interest to those involved with property developments in international jurisdictions that have similar multi-unit ownership in jurisdictions considering the introduction of similar forms of multi-unit ownership.

**Keywords:** Malaysia, Legislation; Real estate development; Security of Tenure

## 1. INTRODUCTION

Malaysia same as others developed and developing countries have a pertinent global issue regarding to the land scarce resources as multiple uses of land are increasing. High-density growth areas such as Penang, Johor Bahru and Kuala Lumpur are facing land scarcity phenomenon that leads to increase in properties selling prices. This phenomenon is caused by the influx of rural areas which led to accelerate development in urban areas. It has increased rapid urbanization, fast population growth, the supply and demand, investment opportunities and job opportunities (Kamaruzzaman, Salleh, & AlZawawi, 2010).

The leftover portion of land has been utilized by developing multi-stories building which implements multiple ownerships for various development such as residential, commercial industrial or mixed-used properties. Consequently, stratified development in

Malaysia has increased and became typical in optimizing land sources. The strata development has been very successful in Malaysia as about 1, 444, 858 of strata title for separate parcels have been registered (JKPTG, 2020).

The strata properties have their own document of title as the proof of the ownership of each parcel of a building or land called as Strata Title. It is mined from the Register Document of Title which endorsed by the land administrator of land registry or land office. The document of title is a document issued in respect of the parcel of a building or land. All the important legal details such as name of the owner(s), description of the property and notification of any encumbrances are stated in the document. The owner called as ‘registered proprietor’ of the strata title for each parcel has an indefeasible title that have the right to make any land dealings which have been mentioned in Part IV of National Land Code (NLC) 1965 such as leasing, transferring, mortgaging and other permitted activities (Choon et al., 2016).

Malaysia Strata Title was first introduced in Peninsular Malaysia (exclude Sabah and Sarawak) and included Federal Territories of Kuala Lumpur, Putrajaya and Labuan by NLC 1965 on 1st January 1966 which used a term of ‘subsidiary title’ referring to the title issued of parcel of a building. The legal provision stated about subsidiary title in the NLC 1965 were under Section 355 until Section 374 (Choon et al., 2015). NLC 1965 regarding the strata title was adapted from Australian New South Wales Conveyancing (Strata Titles) Act 1961 as the strata title ownership provision was not provided in Federated Malay States LAND Code 1926 (FMS Cap 138). FMS Cap 138 was a predecessor of NLC 1965. Thus, NLC 1965 was the first strata title legislative implemented in Peninsular Malaysia.

However, due to the insufficient of the provision on subsidiary title under NLC 1965, Strata Title Act 1985 (STA 1985) (Act 318) was enacted to meet the current growth trend and socio-economic needs. To solve the issues and problems exist in strata title, the STA 1985 has been amended for several times. In order to achieve the aims, the paper is split into three sections. The first section sets out the Malaysia strata title regulation history. The second section outlines the implementation of STA 1985 and its evolution. The third section outlines the challenges in strata scheme regulation and practices.

## **2. MALAYSIA STRATA TITLE REGULATION HISTORY**

The concept of strata title was derived from Torrens System of land title which was introduced by Sir Robert Torrens in South Australia in 1857. This system administers the ownership of respect parcel of a building or land by issuing a document of title which was extracted from the Register Document of Title which registered by the land administrator of land registry or land office (Shukri & Ainul, 2010). According to Jamila Hussain (1999), “The first Torrens System enactment was introduced in Selangor in 1981 ( Selangor Registration of Titles Regulations No IV of 1891) and similar enactments followed in other Malay States, culminating in the 1928 Land Code which remained in force until the enactment of the NLC 1965. Only Malacca and Penang did the English Deeds system remained until it was replaced by the Torrens System via National Land Code (Penang and Malacca Titles) Act of 1963” (p.8).

The Malaysia Strata Title legislation was originated from New South Wales Conveyancing (Strata Titles) Act 1961 in Peninsular Malaysia on 1st January 1966 by the NLC 1965. The NLC 1965 has popularized the concept of subdivision on buildings into parcels. The registration of the ownerships for each parcel of multi-stories of subdivided buildings were evidenced by issuance of the subsidiary titles .Due to the provision in Federated Malay States Land Code 1926 (FMS Cap 138) as pioneer of the NLC 1965 did not

stated about strata scheme ownership provision, several improvement and mechanisms were introduced to overcome the scarce needed for the individually owned flats or units (Khadijah, 2006). The improvements and mechanisms included device of tenancy in common, the home unit company system and grant of a lease of such flats or units (Choon et al., 2015). The enacted NLC 1965 regarding to strata title has improved the issuance of document of title for apartment buildings and house type units.

The NLC 1965 regarding to the strata title has experienced several of amendments in 1977 (Act A386), 1979 (Act A444) and 1981 (Act A518) as boosting its performance and efficiencies (Choon et al., 2015). According to Jamila Hussain (1999), there were several problems and major shortcomings in the provisions of the subdivided building in the NLC 1965 due to the developers failed to pursue the subdivision. The problems also came with the bureaucracy and crisis in gaining the subsidiary titles.

According to Teo Keong Sood (2001), there were several major deficiencies with the provisional of the NLC 1965. First, there was no obligation on developers to apply for subdivision of a building although they might already have transferred their apartment to the third-party buyers. It gave problems to the former buyers as they need to pay in full for the apartment with no chance of attaining their legal rights as owner of the properties as the sole title of the properties remained with the developers. Second, the original proprietors or developers as they were still the registered owner of the land have used the parcels that already been sold to the purchasers to access further loans. Next, buyers need to pay quit rents and assessments rates although they were not the legal proprietors of the properties. Due to the failures in gaining legal ownership of the properties, new buyers have faced difficulties to apply the financial aid to purchase because the properties could not be attempt as security of a loan. There was no provision for the inclusion of parking lots and storeroom as part of strata title. Furthermore, the provision stated in NLC 1965 referring to the only building with the ground areas more than 5,000 square feet can be subdivided which being the main point for owner of the building could not sell the parcels. Lastly, there was a gap that enabled for the phased development of residential and commercial complexes. Thus, there will be no issuance of the strata title to the owner of the parcel until the other development phases of the projects completed by the developer.

Jamila Hussain (1999) claimed the provisions of NLC 1996 referring to the strata title were pointless. Therefore, in order to overcome the inadequacies and weakness of the provisions in NLC 1965, STA 1985 was enacted to replace the NLC 1965 which has been forced in Peninsular Malaysia started from 1st June 1985 until these days.

### **3. THE IMPLEMENTATION OF STRATA TITLE ACT 1985 & ITS EVOLUTION**

The STA 1985 comes into operation due to overcome the weakness and imperfection of NLC 1965. It is a Federal law enacted to expedite the subdivision of a building into parcels and other related matters to the strata schemes and titles development in Peninsular Malaysia. Shukri and Ainul (2010) claimed the STA 1985 is a homogenous and uniform legislation, was enforced in the West Malaysian States of Johore, Pahang, Terengganu, Kelantan, Kedah, Perak, Selangor, Malacca, Perlis, Penang, Negeri Sembilan and the Federal Territory of Kuala Lumpur, Putrajaya and Labuan. Meanwhile, strata titles in Sabah and Sarawak are administered by the Sabah Land (Subsidiary Title) Enactment 1972 and Sarawak Strata Titles Ordinance 1974.

The main reasons for proposing STA 1985 on 1 June 1985 are to establish uniformity of legislation and regulation relating to the ownerships, registration of titles, transferences of parcels, lease and charge of the parcels of a building and other rights and interests in parcel of

a building (Shukri & Ainul, 2010). Even though the provisions of strata title in NLC 1965 have been repealed and replaced by the new provisions in STA 1985, this law must be read and construed together with the provisions of the NLC 1965 as such provisions are consistent with the provisions of the STA 1985 (Teo, 2001).

Teo Keang Sood (2001) described the former provisions in NLC 1965 relating to the subdivision of buildings, subsidiary titles, parcels, common property, management corporations and councils which existed before the application of STA 1985 on 1 June 1985. In his study also stated even the provisions of subsidiary title in NLC 1965 have been abolished, they still can be implemented and no provision of the STA 1985 should be enforced in any state until rules have been made by the respective State Authorities. The State Authorities have the power to make the variations, modifications, adaptations, additions or deletion in the provisions of STA 1985.

The STA 1985 is a principal and Federal act. Thus, the State Authorities need to empower provisions of the STA 1985. However, the State Authorities are given a rule to establish and apply Strata Titles Rules as such the provisions in STA 1985 are consistent with the rules enacted by State Authorities. Any States Authorities can make variations, modifications, adaptations, additions or deletions relating to the any provision of the STA 1985 as such its provisions are consistent with the state rules. Strata Title Rules must be published in the respective State Gazette before it can be executed. Below is the table of list of Strata Titles Rules and the date of the rules coming into force in the States of Peninsular Malaysia.

Table 3.1: List of Strata Titles Rules and the date of coming in force in the States of Peninsular Malaysia

States	Gazette		Date of coming into force
	No.	Date	
<b>Perlis</b>	Ps PU 4	June 29, 1989	January 1, 1989
<b>Kedah</b>	KPU 1	March 3, 1988	March 11, 1988
<b>Penang</b>	PG PU 15	June 11, 1987	June 1, 1987
<b>Perak</b>	PK PU 8	February 18, 1988	February 19, 1988
<b>Selangor</b>	S PU 4	February 4, 1988	February 4, 1988
<b>Federal Territory Kuala Lumpur</b>	PU (A) 164	May 26, 1988	May 27, 1988
<b>Negeri Sembilan</b>	NS PU 9	March 3, 1988	March 4, 1988
<b>Malacca</b>	M PU 7	August 15, 1987	April 8, 1987
<b>Johore</b>	J PU 31	December 31, 1987	January 1, 1987
<b>Pahang</b>	PHG PU 18	October 29, 1987	November 11, 1987
<b>Terengganu</b>	TR PU 8	June 4, 1988	June 15, 1987
<b>Kelantan</b>	KN PU 5	February 4, 1988	January 1, 1988
<b>Federal Territory Putrajaya</b>	PU (A) 5/2003	January 7, 2003	January 9, 2003

Source: Malaysian Strata Titles (Law and Procedure), (Shukri & Ainul, 2010)

### 3.1 The Amendments of the Strata Title 1985

In the circumstances to meet the current pattern needs of urban development, the STA 1985 has been amended about six times since its proclamation: first by Strata Titles Act (Amendment) 1990 (Act A753) enforced on February 23, 1990. Subsequently by Strata Titles

Act (Amendment) 1996 (Act A951) implemented on August 2, 1996. Thirdly, Strata Titles Act (Amendment) 2001 (Act A1107) established on December 1, 2001. Forth by Strata Titles Act (Amendment) 2007 (Act A1290) implemented on April 12, 2007. Fifth by Strata Titles Act (Amendment) 2013 (Act A1450) came in force on June 1, 2015 and the most recent is Strata Titles Act (Amendment) 2017 (A1518) imposed on January 1, 2017. Table below describes shortly about the important provisions amended in STA 1985.

Table 3.2: The amendments of STA 1985

STA 1985 Amendments	Key Changes of Amendments
<b>STAA 1990 (Act A753)</b>	According to Teo Keang Sood (2001), STAA 1990 was addressed to enhance the procedures and processes for developers to apply the subdivision of building into parcels as it was the main requirement for strata title to be issued. The STAA 1990 also acted as a shield the interests for buyers of the strata schemes before the issuance of their strata title. As to improve the management of a strata scheme aspect, STAA 1990 has established the additional functions on the Management Corporation (MC) since it empowered the MC on the behalf of the parcel owners to apply the issue of warrant of attachment to the land administrators (Mazliza, Azlinor & Nor, 2015).
<b>STAA 1996 (Act A951)</b>	According to Teo Keang Sood (2001), the STAA 1996 enable a developer of a building to submit application for issuance of strata titles even if the land is still held under a qualified title (QT) and the certificate of fitness for occupation (CFO) of the building has not been issued yet. However, before approval of the application can be awarded, the final title (FT) to the land must already been registered and the CFO must be issued for issuance of strata title to parcel owners of a building. Issued strata title of mixed projects comprised multi-stories and single-story buildings that caused single-story building unable to be subdivided and affect the interests of the buyer. Thus, the STAA 1996 came out with a solution that allowed strata titles to be issued for single-story buildings if they were part of the same strata scheme with the multi-stories buildings.
<b>STAA 2001 (Act A1107)</b>	The STAA 2001 aimed to improve the process of subdivision of buildings by endorsing of Registrar's caveat to the strata titles, setting up Strata Title Board and increasing the fines to the developers who did not apply for subdivision of buildings (Shukri & Ainul, 2010). This amendment also gives a power to Director of Lands and Mines in a state and the Land Administrator in the Federal Territory to assign a managing agent to establish the functions of the MC when he is satisfied that the MC has not working appropriately.

<p><b>STAA 2007 (Act A1290)</b></p>	<p>According to (JKPTG, 2012), this amendment has enhanced the new provisions by establishing the operations of Computerization System of Strata Titles that related to the strata titles matters, categorizing low cost building for purposes of issuance of strata titles and the transferring of ownership of strata title to the parcels owners and introducing the concept for the subdivision of land into parcels for the issuance of strata titles. Regarding to the enforcement of STAA 2007, Federal Government has established the Building and Common Property (Maintenance and Management) Act 2007 (Act 663) (BCPMMA 2007) which came in force in April 12, 2007 and introduced by the Ministry of Housing and Local Government. In BCPMMA 2007, the roles of a developer, parcel owners and MC are more clearly defined. It was also enacted to fix the problems and issues exist regarding to management and maintenance of the stratified development.</p>
<p><b>STAA 2013 (Act A1450)</b></p>	<p>The STAA 2013 was enforced together with Strata Management Act 2013 (SMA 2013) (Act 757). The SMA 2013 is formed to fill in the vacuum of BCPMMA 2007 as BCPMMA 2007 for its shortcomings. The STAA 2013 aimed to inhibit the delays of issuance of strata title and to propose the approval from the Director of Lands and Mines for the State or Federal Territory for the subdivision of the building and land prior to the completion parcels of the building or land. Therefore, any sole proprietor of an alienated land need to:</p> <ol style="list-style-type: none"> <li>1. <i>apply for the certificate of proposed strata plan (CPSP) to the Director of Survey within three (3) months from the date of issuance of the document that approved the super structure stage (SSS). It is applicable only to the case where the sale and purchase agreement of any parcel that takes place and the document that certifies the SSS is issued after the enforcement of STAA 2013; and</i></li> <li>2. <i>apply for subdivision of building or land within one (1) month from the date of issuance of the CPSP.</i></li> </ol> <p>The new development projects that are awarded approval by Authority after the implementation of STAA 2013 and SMA 2013 has imposed the issuance of strata titles of parcels must commence upon delivery of vacant possession (VP) (Mazliza, Azlinor &amp; Nor, 2015). The new elements such as Certificate of Share Unit Formula (SiFUS), CPSP, SSS are developed to facilitate the implementation of the new concept VP with strata titles. Meanwhile, SMA 2013 is established to assure the rights of parcel owner and to give appropriate maintenance and management of the building and common property (Ishak, 2012). The Strata Title Board (STB) that has been set up during STAA 2007 is abolished and replaced by Strata Management Tribunal (SMT). SMT is governed by the Strata Management (Strata Management Tribunal) Regulations 2015 and established under Urban Wellbeing, Housing and Local Government Ministry (M. Mohamad, 2018). The SMA 2013 has enhanced a two-tier management corporation of a strata scheme which are a management corporation (MC) and a subsidiary management corporation. MC is established to maintain and manage building and common property enjoyed by all parcel owners and meanwhile subsidiary management</p>

	<p>corporation to maintain and manage the limited common property that is exclusively enjoyed by the limited or a group of parcels owners (N. A. Mohamad et al., 2015, Khadijah, 2015).</p>
<p><b>STAA 2017 (A1518)</b></p>	<p>The STAA 2017 has imposed the parcel tax under owner of the parcels' responsibility which has replaced land tax that was under the responsibility of MC. Thus, there is no double taxation. It also categorized the special buildings as any building that were either occupied before June 1996 or any building occupied from June 1996 up to April 11, 2007. It also imposed the acquisition of stratified buildings in regards to;</p> <ul style="list-style-type: none"> <li>• <i>acquisition of the whole lot with subdivided building or land; or</i></li> <li>• <i>acquisition of part of the lot with subdivided building or land; or</i></li> <li>• <i>acquisition of common property; or</i></li> <li>• <i>acquisition of parcel or provisional block.</i></li> </ul>

### 3.2 The Legal Rights of Strata Title under STA 1985

In a strata scheme, strata subdivision means subdivided a building into strata parcels or subdivided land into land parcels (Babalola et al., 2014). Each parcel and land parcel consists of sole area by means separate strata title is issued upon the approval of subdivision of a building or land into separate parcels. The owners of the parcels of the subdivided buildings or land have the rights to modify, transfer, lease, mortgage their properties like the other landed properties such as terrace house, semi-detached house or bungalow. The strata schemes ownerships registered under STA 1985 are official proof of a parcel owned by registered owner. This section will outline briefly the legal rights of strata title under STA 1985 with respects to the maintenance and management of the parcel of the building or land which are common rights, rights to manage strata scheme and rights to settle dispute.

#### A. Common Rights

There are areas in a strata scheme that can be enjoyed by all the owners of parcels referred as common property because these parts are not owned by the individual parcel owners and not included in any individual parcel (include any accessory parcel) and any

provisional block. The STA 1985 provides for all the owners of the subdivided parcels the rights to enjoy their properties exclusively and share the common property mutually such as recreational amenities, hallways, open spaces, roof, pipes, cables, sewage tank, septic tank and others similar building services may also be common property. Columns and beams which reside within the unit that support the entire building are also classified as common property.

The common property of a strata scheme is maintained and managed by Management Corporation (MC). Thus, repairing and maintaining on the part of common property is under the responsible of MC of the strata scheme. Under the STAA 2013 by provision of 17A has introduced the limited common property (LCP) as LCP only can be enjoyed by certain or a group of owners of parcels and managed by Subsidiary Management Corporation (Sub-MC) (Choon et al., 2015). It grants LCP to be governed and managed separately in such a way that the costs of maintaining and managing such common property may be allocated to the appropriate parcel owners, and the costs of management and maintenance may then be more fairly charged without other owners subsidizing their exclusive use of common property. Meanwhile, under Section 17B of same Act explains that MC shall become the owner of the common property. However, MC do not have any over to transfer the part of common property which forms part of the building or of the land on which the building developed.

#### *B. Rights to Manage Strata Scheme*

The maintenance and repair of an individual parcel including any accessory parcel is the under duties of the owners while the maintenance of common property is a shared duty. The interests of every owner in a strata scheme should be connected and managed through a representative body in a strata scheme. The management of strata scheme could not run properly if there is no any representative body to handle the scheme every time. Thus, the formation of MC under STA 1985 is to facilitate a proper monitoring and management of common property for the benefit of all the owners in a strata scheme. Fees need to be imposed for buildings maintenance and services to maintain the condition of strata buildings. Therefore, all owners can enjoy all the common facilities and amenities provided.

MC is a body which comes into the existence by of law upon the opening of a book of the strata register and has a common seal pursuant under STA 1985. MC act as intermediate for all parcel owners includes owner of provisional blocks or blocks to control and manage the strata scheme. The owner will automatically become a member of the MC. The provision of roles and functions of the MC are provided in SMA 2013 such as to pay the land tax and responsible to make sure the facilities and amenities provided in strata schemes are managed and maintained properly.

#### *C. Rights to Settle Dispute*

In settling the various disputes arising to strata scheme management, the Malaysian legislation has amended STA 1985 in 2001 namely STAA 2001 to set up the STB. However, the STB has been replaced by the SMT under SMA 2013. The SMT is a quasi-judicial body (M. Mohamad, Shariff, Hussein, & Rajamanickam, 2015) to provide the alternative forums to resolve disputes on issues of solely pertaining to the strata management in an ad hoc manner and minimal cost (Hamzah & Abdullah, 2018). Hamzah & Abdullah (2018) also claimed SMT is the most hidden instrument to resolve disputes as it is inexpensive, quicker and less adversarial method compare to the formal judiciary system. There are two (2) tribunals established in Peninsular Malaysia which are Consumer Tribunal governed by Consumer Protection Act 1992 and Homebuyers' Claims Tribunal governed by Housing Development (Control and Licensing) Act 1966 (M. Mohamad, 2018; M. Mohamad et al., 2015).

There are two (2) categories of SMT's jurisdictions namely the pecuniary and subject matter jurisdictions (M. Mohamad, 2018; M. Mohamad et al., 2015). The SMT has the

jurisdictions to hear and determine any claim not exceeding two hundred and fifty thousand ringgit (RM 250,000) as stated in Section 105 (1) of SMA 2013 (Hamzah & Abdullah, 2018; M. Mohamad, 2018; M. Mohamad et al., 2015). Hamzah & Abdullah (2018) stated the parties that are allowed under SMA 2013 to defer the claim are developer, original proprietor, purchaser, JMB, MC, Sub-MC, management agent or any person with registered interests which consists of fourteen (14) types of claim; disputes over non or under performance of statutory duty, cost disputes for residential strata, recovery of debt concerning charges and sinking fund and related payable interest, the procedure and resolution of a general meeting, insurance related matters, the supply of information or documents pertaining to the strata management, consent to adjustments of common property or limited common property and order concerning the decision of COB. Clearly, the SMA 2013 does not establish any jurisdiction to hear any claims relating to the issuance and transfer of strata title or title to any land or interest in land or any franchise as set out in Section 105(3) of the Act (M. Mohamad et al., 2015).

#### **4. THE CHALLENGES IN STRATA SCHEME REGULATION AND PRACTICES**

This section identifies the challenges within the existing legal for governing the strata schemes under the STA 1985 that has contributed problems which effect the proper workflow of a strata scheme. This problem affiliated with application of strata title which will affect the ownerships of the parcels. The arising challenges involve some interested parties which are developer (original proprietor) and parcel owner (parcel purchaser) who are affected by legal perspectives through the issuance and transference processes of strata title. This section will focus on the issues that led to the failure of the issuance and transferences of strata title to the parcel owner. According to (Kamaruzzaman, Salleh, & AlZawawi, 2010), the issuance and transference of the strata title is affected by developer and parcel owner. Therefore, this section analyzes the perceptions of this issue from the both interested parties according to four (4) aspects which are:

- a. *Parcel Leasing*
- b. *Strata Title Registration Documents*
- c. *Insolvency of the Developers*
- d. *Building Maintenance and Management*

##### *4.1 Parcel Leasing*

Generally, the original proprietor will transfer their ownership to parcel owner through the issuance and transference of strata title. Therefore, each parcel owner has the legal rights and obligations to deal any dealings with the strata title after the issuance and transference of the ownership. According to Siang et al. (2015), there are two ways for parcel owner to transfer the ownership which are by using Form 14A to future purchaser or Form 16A as it is used to lease strata scheme ownership to financial institutions as a collateral for housing loan lending by them. However, there are some original proprietors may lease the ownership to purchaser instead of transferring the ownership to the them. According to NLC 1965, leasing is a conveyance by which the owner of the land (lessor) grants to another person (the lessee) less than the freehold period and less than that to which the lessor himself is entitled.

Before the registration of strata title by the authority take places, it is compulsory for original proprietor to apply the subdivision of the building or land under Section 8 STA 1985 for the issuance and transferences of strata title to the purchaser. Thus, the disputes have arisen as whether the original proprietor needs to apply the provisions under Section 8 STA 1985 if they plan to lease the parcels to the purchasers. It will contribute some problems to

the purchaser if they intend to lease the parcel from the original proprietor because the subdivision of the building or land is not stated to lease the parcel in the both provisions of STA 1985 and NLC 1965.

However, there are a few considerations mentioned in a previous study regarding to the parcel leasing by the original proprietors to the purchasers to maintain the interests for both parties. At first, Siang et al. (2015) stated that Sale and Purchase Agreement (SPA) under the control of Housing Development (Control and Licensing) Regulations 1989 Act has been customized for the original proprietor to lease the parcels to the purchasers. Second, Siang et al. (2015) also claimed Form 15A (to lease) is executed to complete the transaction of the parcel leasing between the original proprietor to the purchaser instead of using Form 14A (to transfer) (Siang et al. ,2015). Thus, the lessee would be entitled as the “purchaser”, not the lessee although Form 15A is executed in this land dealing. Transparently, the original proprietor has legal ownership and rights rather than the purchaser as a lessee. It gives only the security of ownership to parcel owners by way of Form 14A instead of Form 15A.

Further, a lessee just can enjoy a right of exclusive possession but do not have the absolute rights towards the property. Therefore, the government needs to command the problems arising that would be the challenges for interested parties to make any land dealing in future by imposing the relevant obligations for lessee to has the same rights with the conventional parcel owner (Siang et al., 2015).

#### 4.2 *Strata Title Registration Documents*

The provisions of Section 9 and Section 10 of the Act have encouraged the difficulties in the process of issuing of strata title. It is over the control of the Director of Lands Office and Mines and Director of Survey Department which are the main position to process the strata title registration documents. There is situation where the time taken to process the strata title outstrips the duration of 12 month or more than one year. It causes uncompleted work, delaying and dissatisfaction on the behalf of the purchaser of parcel as well as the developer or original proprietor. It takes a long process and time for the strata title to be granted by original proprietor to purchaser. Thus, the latest amendment of STA 1985 is expected to shorten the processing time from 170 working days to less than 100 working days to expedite the processes of issuance and transference of strata title.

According to Section 8 STA 1985, it is compulsory for original proprietor to apply the CPSP to the Director of Survey Department within three (3) months from the date of SSS issuance. After the issuance of CPSP under the Section 8A (8), the original proprietor should apply the subdivision of the building or land from Director Lands Office and Mines in accordance with Section 9(1) STA 1985 within a period of one month (1) from the date of CPSP issuance for Director of Lands Office and Mines to register the strata title.

Shukri and Ainul (2010) identified the challenges in processing the issuance and transference of strata titles. The submitted documents for application of strata title frequently modified or amended by the applicant. Consequently, the strata plans were delayed for Registrar of Title to grant strata title to the parcel owner. Next, the land is subjected to a charge or lien when the application of subdivision takes place and no action is taken by the original proprietor to discharge the charge. It is also claimed by Siang et al. (2015) whereby the Director of Lands Office and Mines would not accept the application of subdivision of any building and or land if the land is subjected to any charge or lien. It would delay the issuance and transference of strata title.

According to Kamaruzzaman, Salleh & AlZawawi, (2010), the transfer process of strata title to the purchasers failed due to the application documents did not meet the precondition of Section 9 and Section 10 of STA 1985. Consequently, it would delay the issuance and

transference of strata title. Normally, the failure is affected by the original proprietor. Documents that did not satisfy the requirements are:

- *Schedule of Parcel*
- *Architect's/engineer's certificates*
- *Certificates of Completion and Compliance (CCC) for occupation or issued by public or local authority*
- *Approved buildings plans (including approved amended building plans)*
- *Differences in details of the plans with actual building erected on the land*
- *Conflicting details in the building plan pertaining to common property with the actual building being used*
- *Buildings erected on lands being amalgamated*
- *Buildings do not have adequate access*
- *Share units of each parcel allotted were not equitable*
- *Permits to use space above the reserved land if there is any eave, awning or balcony*
- *Projecting over road reserve*

Regarding to the provisions of STAA 2013 pertaining the needs for the original proprietor of the land to subdivide the building into parcels or subdivide land into land parcels, they could not make the application of CPSP to the Director of Survey Department within three (3) months from the date of issuance SSS. They also could not make application for subdivision of building or land within one (1) month from the date of issuance of the CPSP to the Director of Lands Office and Mines. The arising issues would be the challenges for the developer or original proprietor to hand over the strata title to parcel owner. It would impactful the parcel owner to make any land dealings in future without a strata title as a proof of their rights to own the property.

#### 4.3 *Insolvency of the Developers*

Shukri & Ainul (2010) stated the purchaser could not transfer their parcel to subsequent purchaser or make any other dealings such as lease and charge) due to the absence of strata title as the developer is being wound up or liquidated whilst the application of the issuance and transference of strata title to them are not yet to be finalized. Meanwhile, Khadijah (2015) agreed the purchaser is the most affected interested party as they will be facing difficulties in the future dealings. According to Khadijah and Faridah (2002), when the strata title has not yet been issued, the purchaser of a parcel in a subdivided building would not have guaranteed rights of indefeasibility of title as provided under the NLC 1965. Hence, the absence of strata title gives the uncertainties for the future as there is no security of the ownership.

There is a government agency who is assigned to administer bankruptcy cases and bankrupts' affair namely Malaysia Department of Insolvency (MdI). It focuses on the discovery of assets, realization of asset, ascertainment of debt and distribution of payment to the creditor (Malaysia Department of Insolvency, 2020). Thus, all the property of the developer would go to the Official Receiver (Director General of Insolvency, DGI) and they will take over all the matters regarding to the application of strata title (Khadijah & Faridah, 2002). However, there is a doubt for Official Receiver whether they can keep proper records of owners because they are lacking in knowledge and experiences in dealing with the strata title matters. It is also will give an inconvenience for purchaser to sell their properties to another purchaser as they need to attain the consent for the sub-sales properties from Official Receiver. The purchaser needs to go through the complicated processes and procedures for obtaining the consent from Official Receiver.

The only proof of ownership by the purchaser is the Sale and Purchase Agreement (SPA) prior to the strata title issuance and transference to them. The SPA is executed together with the Deed of Mutual Covenant. According to Khadijah & Faridah (2002), there is an issue arising whereas the original SPA which is executed as Title Deed is lost. It will be giving the difficulties for the purchaser to subsequently transfer their ownership through SPA to the other purchaser. Thus, they need to prepare and stamp the Deed of Assignment between the First Purchaser and Second Purchaser. However, the completion process of the transaction of SPA is been delayed because of the pending in issuance of strata title to the First Purchaser. Crystal clear, it will give uncertainties to the purchaser in transferring their rights to other purchaser in the future.

The purchaser or parcel owner of strata title properties is the one who suffers the most as a result of the absence of strata title even though the failure to issue and transfer strata title is not due to them. The pending in non-issuance and transference of strata title will still remain even if the SPA has been signed between the developer and the financier because developer is failed to apply the strata title with the Authority due to their liquidation (Khadijah & Faridah, 2002).

#### 4.4 *Building Maintenance and Management*

The management and maintenance of strata scheme properties can be divided into two stages. The first stage is before the issuance of Strata Title where the property is under the responsibility of the developer as stated in Sec. 191 of the Housing Development (Control and Licensing) Act and the second stage is after the issuance of Strata Title where the property will be under the responsibility of the Management Corporation (MC) as stated in the STA 1985 (Aziz, Noor Rosly Haniff, Aini, Sarip, & Zyed, 2014). Kamaruzzaman et al. (2010) in their study mentioned the maintenance and service charge need to be paid by parcel owner to the developer or vendor to run the maintenance and management of common property of the subdivided building or land.

According to Kamaruzzaman et al. (2010), it is found that the delaying of transferences of strata title also caused by the parcel owner as they refused disbursing the mortgage and stamp duty, lack of understanding towards the importance of the strata title, dissatisfaction on the maintenance and service charges. Thus, the transfer of strata title to them will present great effects. Furthermore, most of the parcel owners expect the strata title will be transferred quickly to them once the development is started (Aziz et al., 2014). For the developer to hand over the strata title to parcel owner, they need to settle down first the outstanding bills which is stated in SPA for them to get their Title of Deeds.

There are dissatisfactions over the amount of maintenance and services charge imposed by Management Corporations to parcel owner as they need to pay more than the quality of service provided and the allocation of the fees is not realistic (Abd-Wahab et al., 2015; Aziz et al., 2014; Tawil & Goh, 2011, Kamaruzzaman et al., 2010). Unpaid outstanding bills force the developer to hang the process with the financier and could cause the transference of strata title to the parcel owner to be delayed. The lacking in the standard rules and regulations to determine the charges for strata scheme properties (Tawil & Goh, 2011) caused some developers took advantage and delayed the registration of the strata titles so they could impose any regulations and additional fees on the building management system and leads the dissatisfaction among parcel owners (Abd-Wahab et al., 2015).

Therefore, there are a number of recommendations identified to reduce the problems of issuing and transferring strata title to the purchaser by providing transparent information, campaigns and education on the importance and process of issuing and transferring strata title to parcel owner (Kamaruzzaman et al., 2010).

## 5. CONCLUSION

In general, there can be no doubt that strata titles in stratified development in Malaysia has improved within 35 years since STA 1985 has been amended for six times. The massive transformation of governance and administration of STA 1985 can be seen through the STAA 2013 followed by STAA 2007. It shows that the development of various properties especially residential and mixed-use development increases in demand. As strata title units being developed more, the problem will increase in number as time goes by. The pattern of urban development over the next decade and beyond will mainly be in the form of medium and high-density development, and it is therefore very important that the authorities together with the private sector take effective action to resolve these issues. Hopefully, the challenges faced by any authorities and other interest parties regarding to the strata titles will be resolved patterned by the current existing legislation. However, with the expanding of stratified properties, it is almost inevitable that the Malaysia has make its way forwards towards a good governance in administer and developing properties.

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